

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 6381 of 2008**

1. South Eastern Coalfields Ltd through its Chairman-cum-Managing Director, SECL, Seepat Road, Bilaspur (C.G.)
2. Sub Area Manager, Banki Sub Area, South Eastern Coalfields Ltd., PO Banki, District Korba (C.G.)

---- Petitioners**Versus**

1. The Appellate Authority under the Payment of Gratuity Act, 1972, Raipur (C.G.)
2. The Controlling Authority under the Payment of Gratuity Act, 1972 (Assistant Labour Commissioner, (Central), Bilaspur (C.G.)
3. Shri Rath Ram, S/o Late Hiradhar, R/o Gajra Colony Jhopdi, P.O. Banki Mongra, District Korba (C.G.)

---- Respondents

For Petitioners	Shri Vinod Deshmukh, Advocate
For Respondent No.3	Shri Gary Mukhopadhyay, Advocate

Hon'ble Justice Shri Prashant Kumar Mishra**Order On Board****02/01/2020**

1. Challenge in this petition is to the appellate order passed by the Appellate Authority under Section 7 (7) of the Payment of Gratuity Act, 1972 (henceforth 'the Act, 1972') on 18.06.2008 directing the petitioner to pay simple interest @ 10% p.a. on the gratuity sum of Rs.1,68,087.00 for the period from 01.08.2003 to 16.07.2007. Earlier, the Controlling Authority had allowed simple interest @

10% p.a. from 01.08.2003 to 24.06.2005, which has now been increased by the Appellate Authority from 01.08.2003 to 16.07.2007.

2. Brief undisputed facts of the matter are that the respondent workman attained the age of superannuation on 31.07.2003, however, gratuity was not paid to him within 30 days in terms of Section 7 (1) and (2) of the Act, 1972. The workman had to move an application for payment of gratuity before the Controlling Authority, before which the SECL deposited the amount with the Controlling Authority on 07.06.2005. Indisputably, the entire gratuity amount was actually paid to the workman on 16.07.2007.
3. Petitioner's counsel would argue that the gratuity amount could not be paid to the workman within 30 days of his attaining the age of superannuation, as he could not submit No Dues Certificate before the petitioner and therefore he being at fault, no interest is payable even if no permission was obtained by the SECL in writing from the Controlling Authority for delayed payment of gratuity.
4. Per contra, Shri Gary Mukhopadhyay, learned counsel for the respondent workman, would submit that the matter in issue is squarely covered by the catena of decisions rendered by the Supreme Court as also by this Court. He would refer to the judgment rendered by the Supreme Court in the matter of **H. Gangahanume Gowda vs Karnataka Agro Industries Corpon. Ltd.**, reported in (2003) 3 SCC 40.

5. Indeed, the ground raised by learned counsel for the petitioner for avoiding payment of interest from 24.06.2005 to 16.07.2007 is no longer *res integra* in view of series of pronouncements by the Supreme Court starting from (2003) 3 SCC 40 {**H. Gangahanume Gowda vs Karnataka Agro Industries Corpon. Ltd.**}, (2009) 16 SCC 758 {**Kerala State Cashew Development Corporation Limited and another vs N. Asokan**}, (2013) 3 SCC 472 {**Y. K. Singla vs Punjab National Bank and others**}, (2017) 1 SCC 49 {**State of Uttar Pradesh and others vs Dhirendra Pal Singh**} and that rendered by the Coordinate Bench of this Court in **WPS No.6439/2009**, decided on **08.10.2010**, in the matter of **K. K. Singh vs South Eastern Coalfields Limited and others** and the one decided by the Division Bench of this Court in **WA No.56/2017**, decided on **17.03.2017**, in the matter of **Karnail Singh vs The General Manager and others**.
6. It is thus consistently held that the payment of interest on delayed payment of gratuity in terms of Section 7 (3-A) is mandatory and statutory compulsion. It is settled that unless the delay in payment of gratuity is attributable to the fault of the employer and necessary permission in terms of proviso to sub-section (3-A) of Section 7 of the Act, 1972 is obtained by the employer in writing from the Controlling Authority for delayed payment, the payment of interest in terms of Section 7 (3-A) of the Act, 1972 is imperative and the employer is statutorily liable to make payment of interest and he cannot escape from the liability.

7. Admittedly, in the case at hand, the petitioner did not pay the amount of gratuity to the petitioner within 30 days from the date of superannuation. Similarly, the petitioner did not obtain any permission in writing from the Controlling Authority for the delayed payment. If statute provides for a particular mode of avoiding the payment of interest, upon reasons shown by the employer to the satisfaction of the Controlling Authority, only such method is permissible for avoiding the payment of interest. Making out all reasons before the Controlling Authority or the Appellate Authority or even before this Court subsequently would not come to the rescue of the employer. The satisfaction for such avoidance of payment of interest has to be before the Controlling Authority and not otherwise. Once the petitioner has failed to seek permission in writing from the Controlling Authority, the liability to make payment of interest is mandated by the statute and it is not permissible to absolve the petitioner of the said liability on any count.
8. For the foregoing, the writ petition has no substance. It fails and is hereby dismissed.

Sd/-
Prashant Kumar Mishra
Judge