IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CLMA DELAY CONDONATION APPLICATION NO. 2695 OF 2020
IN
SPECIAL APPEAL NO. 80 of 2020

State of Uttarakhand and others. ……Appellants.

Vs.

Bishan Singh Nayal ...Respondent

Sri C.S. Rawat, learned Additional Chief Standing Counsel for the State of Uttarakhand / appellants.
Sri Ravindra Singh Bisht, learned counsel holding brief of Sri Devendra Singh Bohra, learned counsel for the respondent.

Dated: 22nd June, 2020

Coram: Hon'ble Ramesh Ranganathan, C.J.
Hon'ble R.C. Khulbe, J.

Ramesh Ranganathan, C.J. (Oral)

The application seeking condonation of 165 days' delay in preferring the appeal is not opposed by Sri Ravindra Singh Bisht, learned counsel holding brief of Sri Devendra Singh Bohra, learned counsel for the respondent-writ petitioner and the delay is, therefore, condoned. The application seeking condonation of delay stands allowed.

2. This Special Appeal is preferred against the order passed in Writ Petition (S/S) No. 1981 of 2015 dated 02.09.2019, whereby the learned Single had directed the respondents to pay simple interest to the respondent-writ petitioner on the gratuity amount of Rs. 7,24,350/-, for the period 28.02.2014 to 08.01.2015, as per the rate notified by the Central Government for the relevant year. This direction was issued by the learned Single Judge holding that the parties had not pleaded whether it was the delay on the part of the petitioner, or the respondent, in not paying the gratuity amount. In issuing such directions, the learned Single Judge took note of the provisions of the Payment of Gratuity Act, 1972 (for short the "1972 Act").

3. Sri C.S. Rawat, learned Additional Chief Standing Counsel, would submit that the respondent-writ petitioner is a government

servant and is not governed by the 1972 Act; it is the U.P. Retirement Benefits Rules, 1961 (for short the "1961 Rules") which apply; the 1961 Rules do not provide for payment of interest on belated payment of gratuity; the appellants had, in their counter-affidavit, assigned reasons for the delay in payment of gratuity; and the learned Single Judge was, therefore, not justified in directing payment of interest on belated payment of gratuity, for the period from 28.02.2014 when the respondent-writ petitioner retired from service, till 08.01.2015 when gratuity was paid to the respondent-writ petitioner.

4. Section 1(3) of the Payment of Gratuity Act, 1972 makes the Act applicable to (a) every factory, mine, oilfield, plantation, port and railway company; (b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months; and (c) to such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf. Section 1(3-A) stipulates that a shop or establishment to which this Act has become applicable shall continue to be governed by this Act, notwithstanding that the number of persons employed therein, at any time after it has become so applicable, falls below ten. It is not contended, on behalf of the respondent-writ petitioner, that the Central Government had issued a notification making the 1972 Act applicable to government servants; and, in the absence of any such notification, it is evident that, in view of Section 1(3), the provisions of the 1972 Act are not applicable to State Government employees.

5. When we asked Sri C.S. Rawat, learned Additional Chief Standing Counsel, whether the 1961 Rules prohibit payment of interest on delayed payment of gratuity, Sri C.S. Rawat, learned Additional Chief Standing Counsel, would submit that the 1961

Rules do not provide for payment of interest on delayed payment of gratuity. While there is no specific provision in the 1961 Rules for payment of interest on delayed payment of gratuity, the fact remains that the 1961 Rules do not prohibit payment of interest on delayed payment of gratuity either.

6. An employee, who retires from service, is entitled for payment of gratuity on time, and unexplained delay in making payment of gratuity would entitle him to be compensated for such delay. The question whether there has been a delay in payment of gratuity and, if so, whether the delay is of such a nature as to justify payment of interest would depend on the facts and circumstances of each case, and would vary from one case to another. In case the official respondents are able to satisfactorily explain the delay in payment of gratuity, the Court may then not be justified in directing them to pay interest for belated payment of gratuity. The submission of Sri C.S. Rawat, learned Additional Chief Standing Counsel, that the order in this case may constitute a precedent in other cases is, therefore, not tenable.

7. On the question whether the respondents have satisfactorily explained the delay in payment of gratuity from 28.02.2014 till 08.01.2015, our attention was drawn to the counter-affidavit filed by Sri Laxmi Narain Pant, Director, Treasury, wherein reference is made to the Government Order dated 12.08.1983, and it is stated that, if there is any delay in payment of gratuity, then, if interest is payable, it has to be paid by the concerned head of office. It is further stated that the pension matter of the respondent-writ petitioner was received by the Camp Office, Haldwani on 30.10.2014 and, after verifying the pension papers, an order regarding payment of pension was made by the office on 08.01.2015. The Director, Treasury has not explained, in his counter-affidavit, why it took more than two months, from 30.10.2014 till 08.01.2015, for payment of pension. Be that as it may, this affidavit is silent regarding the delay caused between

28.02.2014 and 30.10.2014 in processing the respondent-writ petitioner's claim for payment of gratuity.

8. In the counter-affidavit filed by the Agriculture and Soil Conservator Officer, it is stated that, while the respondent-writ petitioner was working in the Agriculture and Soil Conservation Unit, Kashipur earlier, he remained either on medical leave or earn leave on most of the days; he was an habitual absentee; disciplinary proceedings were initiated against him; and, therefore, delay was caused in payment as disciplinary proceedings were pending and his promotion and pay fixation remained affected since 01.03.2000. This affidavit is also silent as to when disciplinary proceedings were initiated; how long disciplinary proceedings remained pending; whether any such disciplinary proceedings were pending when the respondent-writ petitioner retired from service on 28.02.2014; and why a decision was taken to pay gratuity to the respondent-writ petitioner despite pendency of disciplinary proceedings.

9. Sri C.S. Rawat, learned Additional Chief Standing Counsel for the State Government, would then draw our attention to the averments in the Special Appeal wherein it is stated that, since the respondent-writ petitioner remained unauthorisedly absent on different occasions, disbursement of salary could not be done to him properly, because of which the third ACP benefits could not be granted to him at the right time, and payment of his retirement benefits was delayed; and payment of gratuity was also delayed for the same reason, and was not delayed deliberately. Even this affidavit is bereft of necessary particulars justifying delay in payment of gratuity.

10. In this context, it must be borne in mind that the jurisdiction, which the Division Bench exercises in an intra-Court appeal, under Chapter VIII Rule 5 of the Allahabad High Court Rules, is limited. Both the Division Bench and the learned Single Judge exercise the very same jurisdiction under Article 226 of the Constitution of India, and the learned Single Judge is not a Court subordinate. Even

if two views are possible, and the view taken by the learned Single Judge is one such, the Division Bench would not interfere even if the other view canvassed before it, on behalf of the appellant, is found more attractive. In the absence of a valid explanation being furnished for the delayed payment of gratuity, we see no reason to interfere with the order under appeal. It is made clear that the amount, which the Government is required to pay from the Public Exchequer towards interest for belated payment of gratuity, can be recovered from the Officer(s) responsible for such lapses.

11. Subject to the aforesaid observations, the Special Appeal fails and is, accordingly, dismissed. No costs.

(R.C. Khulbe, J.) **(Ramesh Ranganathan, C.J.)**
22.06.2020 22.06.2020

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