

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.3329 of 2018

***Aska Cooperative Central Bank
Ltd. Ganjam***

.....

Petitioner

Vs.

***Controlling Authority under the
P.G. Act-Cum-Assistant Labour
Commissioner, Berhampur and
another***

.....

Opposite Parties

CORAM: JUSTICE SANJAY KUMAR MISHRA

ORDER

31.10.2022

Order No.

07.

This matter is taken up through hybrid mode.

2. Mr. S. Satpathy, learned Counsel, submits that in terms of the previous Order dated 30.08.2022, he has already informed the Petitioner-Bank about the said Order passed by this Court.
3. None appears for the Petitioner on repeated calls.
4. Vide Order dated 13.04.2018, though this Court issued notice to O.P. No.2 by Speed Post with A.D., nobody has appeared for the said Opposite Party till date.
5. In the Writ Petition, a prayer has been made to quash the Order dated 27.01.2018 passed in P.G. Case No.9/2017, as at Annexure-3, vide which the Controlling Authority under the Payment of Gratuity Act-Cum-Assistant Labour Commissioner, Berhampur, passed a judgment directing the Petitioner-Bank to deposit the Gratuity with interest for an amount of Rs.4,90,879/- within 30 days from the date of pronouncement of the judgment, with a further observation that if the Petitioner-Bank fails to

deposit the awarded Gratuity amount within the time stipulated, the same will carry interest @ 10% per annum till further payment is made.

6. Being aggrieved by the said Order passed by the Controlling Authority, even though there is a provision of Appeal under Section 7 of the Payment of Gratuity Act, 1972 (for short 'the Act'), this Writ Petition has been filed challenging the said Order passed by the Controlling Authority, with regard to quantum of interest.

Hence, while issuing notice to the contesting Opposite Party No.2, this Court passed a conditional Order on 13.04.2018 in Misc. Case No.2860/2018, with the following observations:

Misc. Case No.2860 of 2018

“ Learned counsel for the petitioner-Bank submits that the petitioner-Bank is ready to pay the total gratuity amount of Rs.3,61,385/- in favour of the opposite party no.2 which the petitioner-Bank will pay within period of three weeks from the date of receipt of certified copy of this order.

So far as the interest amount that pertains an amount of Rs.1,29,494/-, if the petitioner-Bank will deposit within period of four weeks, the operation of the order dated 27.01.2018 passed by the Controlling Authority under Payment of Gratuity Act-cum-Assistant Labour Commissioner, Berhampur in P.G. Case No.9 of 2017 shall be kept in abeyance till the next date of listing. The deposit of 50% of the interest amount shall be without prejudiced to the right of the petitioner.

Interim order will subject to the objection of the opposite party no.2.

It is made clear that if the amount shall not be paid, the interim order shall automatically be vacated.”

7. It is pertinent to mention here that Sub-Section (3-A) of Section 7 of the Act reads as follows:

“ (3-A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period

specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.]

8. In terms of the said Provision enshrined under Sub-Section (3-A) of Section 7 of the Act, 1972, the Central Government vide Notification dated 01.10.1987, notified as follows:

“TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION (II) OF THE GAZETTE OF INDIA-EXTRAORDINARY PUBLISHED ON 01.10.1987

New Delhi, the 1st October, 87

NOTIFICATION

S.O. 874(E), In exercise of the powers conferred by sub-section (3A) of section 7 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central hereby specifies ten percent per annum as the rate of simple interest payable for the time being by the employer to his employee in cases where the gratuity is not paid within the specified period.

2. This notification shall come into force on the date of its publication in the Official Gazette.”

(No.S-70012/6/87.SS-II)

(A.K. Bhattarai)
Under Secretary”

9. Admittedly, the said Notification is still in vogue being not superseded by any further Notification by the appropriate Government varying the said rate of interest, as notified in terms of Sub-Section (3-A) of Section 7 of the Act.

10. In view of such legal provision enshrined under the Act read

with Notification as quoted above, there is no infirmity in the impugned judgment dated 27.01.2018, passed in P.G. Case No.9 of 2017, as at Annexure-3, so far as awarding simple interest @ 10% on the Gratuity amount payable to the Opposite Party No.2.

11. Accordingly, the Writ Petition stands dismissed being devoid of any merit.

12. Needless to mention here that in view of the dismissal of the Writ Petition, the Opposite Party No.2 is at liberty to take necessary steps for realization of the awarded amount in terms of the impugned judgment dated 27.01.2018 passed in P.G. Case No.9 of 2017.

padma



(S.K. MISHRA)
JUDGE