

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No. 18589 of 2018

***Managing Director, Orissa State
Cashew Development Corporation
Ltd., Bhubaneswar and another***

Petitioners

Mr. A. K. Dash, Advocate

-versus-

***Controlling Authority under
Payment of Gratuity Act-Cum-
Assistant Labour Commissioner,
Khordha and another***

Opp. Parties

*Mr. S. Mohanty, Adv.
(for O.P. No.2)*

**CORAM:
JUSTICE S. K. MISHRA**

**ORDER
16.08.2022**

Order No.

- 06.**
1. This matter is taken up through hybrid mode.
 2. The Corporation-Petitioners have preferred this Writ Petition assailing the Order dated 13.06.2018 passed in P.G. Case No.02 of 2018 by the Controlling Authority-Cum-Assistant Labour Commissioner, Khordha, vide which it has been ordered that the Opposite Party No.2 is entitled to get simple interest @ 10% per annum on the principal gratuity amount of Rs.3,50,000/- for the period from 01.10.2008 to 30.10.2017 in terms of Section 7(3-A) of the Payment of Gratuity Act, 1972.
 3. The contesting Opposite Party No.2 has appeared and filed a detail Counter Affidavit on 31.07.2019 stating therein that in view of the provision enshrined under Section 7(3-A) of the Payment of Gratuity Act, 1972, which stipulates that the amount of gratuity payable under Sub-Section (3), if 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. Needless to mention here that Proviso to the Sub-Section (3-A) stipulates 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 the said ground.

In the Counter Affidavit, a further stand has been taken by the contesting Opposite Party No.2 that there is a specific provision of Appeal under Section 7(7) of the Payment of Gratuity Act, 1972 to the effect that a person aggrieved by an Order under sub-section (4) may, within sixty days from the date of receipt of the Order, prefer an Appeal to the appropriate Government or such other Authority, as may be specified by the appropriate Government in the said behalf. Instead of preferring an Appeal in terms of Sub-Section (7) of Section 7 of the Payment of the Gratuity Act, 1972, the present Writ Petition has been preferred by the Petitioners-Corporation intentionally to avoid the statutory deposit to be made in terms of the proviso to Sub-Section (7) of Section 7 of the Payment of Gratuity Act, 1972 and as there is an alternative remedy in terms of the said special statute, the present Writ Petition is not maintainable. To fortify the said stand taken in his Counter, the learned Counsel for the Opposite Party No.2 also submitted that even on merit also, the impugned Order dated 13.06.2018, as at Annexure-1, passed by the Opposite Party No.1 does not suffer from any illegality or error deserving interference of this Court as the provision under sub-section 7 (3A) of the Payment of Gratuity

Act, 1972 is clear and unambiguous, which reads as follows :

“ (3A) 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.”

Emphasis supplied

4. It is fairly conceded by the learned Counsel for the Petitioners-Corporation that the Corporation did not obtain any permission in writing from the Controlling Authority to delay the payment of the Opposite Party No.2 on the plea of non-payment and non-fixation of pay of the Opposite Party No.2 on account of 6th Pay Commission w.e.f. 01.01.2006 and other consequential benefits so also pendency of W.P.(C) No.20418 of 2013, which was finally disposed of on 11.07.2017 directing the Petitioners-Corporation to calculate arrear D.A., Leave Salary and Gratuity within a stipulated period.

5. Sub-Section (7) of Section 7 of the Payment of Gratuity Act, 1972 reads as follows:

“ (7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the Appellate Authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days:

[Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the Controlling Authority to the effect that the appellant

has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the Appellate Authority such amount.]”

Emphasis supplied

6. Admittedly, neither the Petitioners-Corporation sought for permission of the Controlling Authority to delay the payment of Gratuity of the Opposite Party No.2 nor preferred an Appeal in terms of Sub-Section (7) of Section 7 of the Payment of Gratuity Act, 1972. Hence, this Court is not inclined to interfere with the Order impugned dated 13.06.2018 passed in P.G. Case No.02 of 2018 by the Controlling Authority-Cum-Assistant Labour Commissioner, Khordha.

7. Though the learned Counsel for the Petitioners-Corporation sought for liberty to approach the Appellate Authority in terms of Section 7 (7) of the Payment of Gratuity Act, 1972, in view of the reasons assigned above and that to after four years of passing of the impugned Order dated 13.06.2018, as at Annexure-1, so also legal provisions under the said Act permitting the Authority to award interest for delayed payment of Gratuity, this Court is not inclined to grant any liberty to the Petitioners-Corporation.

8. Accordingly, the Writ Petition stands dismissed. No Order as to the costs.

(S. K. MISHRA)
JUDGE