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ORISSA HIGH COURT: CUTTACK

W.P.(C) No. 19122 of 2018

In the matter of an application under Articles 226 and 227 of the Constitution of India

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Managing Director, Odisha Forest Development Corporation Ltd., Bhubaneswar ..... Petitioner

-Versus-

Hadubandhu Nayak & others ..... Opp. Parties

For Petitioner : Mr. S.K. Pattnaik, Senior Advocate

For Opp. Parties : Mr. M.K. Nayak, Adv. (O.P. No.1)

P R E S E N T:

THE HONOURABLE MR. JUSTICE SANJAY KUMAR MISHRA

Date of Hearing and Judgment: 11.10.2022

Mr. S.K. Mishra, J. In this Writ Petition, the Petitioner-Corporation assails the judgment dated 30.07.2018 passed by the Appellate Authority under P.G. Act-Cum-Deputy Labour Commissioner, Cuttack, in P.G. Appeal No.2 of 2016, whereby the Order dated

24.02.2016 passed by the Controlling Authority under P.G. Act-Cum-Assistant Labour Commissioner, Cuttack, in P.G. Case No.8 of 2005 was set aside and direction was given to pay to the Opposite Party No.1 the differential interest exceeding the total amount of Gratuity.

2. The factual matrix leading to filing of the present Writ Petition, in brief, is that the Opposite Party No.1 was working as a Divisional Manager in the Petitioner-Corporation. While working as such, Vigilance G.R. Case No.18 of 1994 was initiated against the Opposite Party No.1 under Section 13(1) read with Section 13(2) of the Prevention of Corruption Act, 1988 in the court of Special Judge, Vigilance, Berhampur, and he was placed under Suspension w.e.f. 28.05.1994 by Order dated 25.05.1994. However, during pendency of the said vigilance case, the Opposite Party No.1 was reinstated in service on 05.01.1996 and was superannuated from service w.e.f 01.07.1999 and in view of the pendency of the vigilance case, the period of suspension of the Opposite Party No.1 could not be regularized.

After about six years of his retirement, while the vigilance case was still pending, the Opposite Party No.1 filed an application on 16.05.2005 before the Petitioner-Corporation for payment of his Gratuity. Due to non-payment of Gratuity, the Opposite Party No.1 filed P.G. Case No.8 of 2005 before the Controlling Authority under P.G. Act-Cum-Assistant Labour Commissioner, Cuttack, claiming an amount of Rs.2,92,145/- towards his Gratuity.

3. On being noticed, the Petitioner-Corporation appeared before the Controlling Authority and filed its objection in P.G. Case No.8 of 2005. Ultimately, the Controlling Authority, vide Order dated 30.07.2008, held that the Opposite Party No.1 is entitled to Rs.2,92,145/- towards Gratuity with interest @ 10% per annum from 01.07.1999 till the actual payment is made. The operative portion of the said Order reads as follows:

> " Whereas Sri Hadibandhu Nayak, Ex-Divisional Manager, of your Organisation has filed an application U/s.7 of the Payment of Gratuity Act before this Court and the same was heard in your presence. After hearing, I have come to the findings that the said employee is entitled to get the balance <u>gratuity amount of Rs.2,92,145/- (Rupees Two Lakhs Ninety Two thousand and One hundred Forty Five) only in this Court within a period of 30 days from receipt of this order along with a simple interest @ 10% per annum w.e.f.1.7.99 till the final payment."</u>

(emphasis supplied)

4. Pursuant to the Order dated 30.07.2008, the Petitioner-Corporation sanctioned an amount of Rs.2,75,810/- vide Order dated 03.11.2008 and the same was deposited with the Controlling Authority vide Cheque dated 12.11.2008. The Petitioner-Corporation also deposited Cheque dated 15.12.2008 for Rs.1,37,098/- before the Controlling Authority towards interest. After depositing the said amount, the Petitioner-Corporation preferred P.G. (A) Case No.10 of 2009 before the Appellate Authority-Cum-Deputy Labour Commissioner, Cuttack, challenging the Order dated 30.07.2008 in P.G. Case No.8 of 2005. During pendency of the P.G. (A) Case No.10 of 2009, the Opposite Party No.1 was acquitted from the charges in G.R. Case No.18 of 1994 by judgment dated 16.05.2011, where after his period of suspension from 28.05.1994 to 05.01.1996 was regularized by the concerned Authority vide Order dated 27.11.2012. Ultimately, P.G. (A) Case No.10 of 2009 preferred by the Petitioner-Corporation was dismissed, vide Order dated 30.09.2014, with the following observations:

> " That advocate on behalf of the appellant and respondent are present. This is an appeal against the impugned order dtd.30-07-2008 passed by the Controlling Authority-Assistant Labour Commissioner

> under the Payment of Gratuity Act, Cuttack in P.G. Case No.14 of 2009. The advocate on behalf of appellant Orissa Forest Development Corporation submitted that the respondent is not entitled to the benefit of Gratuity under the Provision of Payment of Gratuity Act as claimed. The respondent strongly opposed to the said submission of the appellant and submitted the relevant facts along with certain documents in relation to his entitlement. The advocate for the respondent further submits that as the ld ALC-cum-Authority Payment of Gratuity Act has answered issues the affirmatively and passed a reason order to pay the gratuity amount and determined the amount to be tune of Rs.2,92,145/- with simple interest @ 10% per annum w.e.f 01-07-1999. After accepting the said impugned judgment the appellant management has paid the gratuity amount of Rs.2,92,145/-along with interest but some residual amount of Rs.1,54,339/- has not been paid to the respondent with a view that the vigilance case which was instituted U/s.13(2) r.w 13(1) of P.C. Act bearing vigilance P.S. Case No.18/1995 is pending and the period of Suspension w.e.f 28-05-1994 to 05-01-1996 was not decided due to pending of the vigilance case. It is further clarified by the advocate to the respondent that the vigilance case bearing G.R. Case No.18 of 1994 U/s. 13(1) and 13(2) has been decided by the Spl. Judge Vigilance Berhampur vide its judgment dtd.16-05-2011 where from it is seen that the respondent is acquitted from all the charges as alleged. Besides that the General Manager of the OFDC also issued office order on 27-11-2012 about the regularization of the suspension period keeping in view the acquittal of the respondent and he is entitled to get all the service benefit.
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> In view of the aforesaid submission and perused of the LCR as well as the documents submitted by the respondent in my considered opinion the respondent is entitled to the residual amount of gratuity of Rs.1,54,330/- with interest thereon till the date of actual payment.
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> In view of the above I do not find any merit in appeal which is accordingly dismissed without cost."

5. In pursuance of the Order dated 30.09.2014 passed by the Appellate Authority, in addition to the Gratuity amount of

Rs.2,75,810/-, apart from differential Gratuity amount of Rs.16,335/-, since Rs.1,37,098/- had already been deposited on 06.12.2008 with the Controlling Authority towards interest, further interest of Rs.5,227/- was paid vide voucher dated 30.05.2015, totaling to Rs.1,42,820/- and the rest amount of Rs.1,49,820/- was paid to the Opposite Party No.1 vide voucher dated 14.08.2015. Thus, in all, the Opposite Party No.1 was paid Rs.2,92,145/- towards Gratuity, so also the same amount towards interest in a phased manner on the ground of limitation prescribed in the Proviso under Section 8 of the Payment of Gratuity Act, 1972 (for short 'the Act') with regard to maximum quantum of interest. Being dissatisfied with the payment made by the Petitioner-Corporation, Opposite Party No.1 filed an application before the Controlling Authority in terms of Rule-19 of the Payment of Gratuity (Central) Rules, 1972 claiming therein further amount of Rs.2,48,531/-. Being noticed, the Petitioner-Corporation appeared and filed its objection solely on the ground that in view of Section 8 of the Act, no further amount would be payable to Opposite Party No.1 beyond Rs.2,92,145/-, which was the principal Gratuity amount, so also equal amount towards interest, already paid to the Opposite Party No.1.

6. After hearing the Opposite Party No.1 and the Petitioner-Corporation, the Controlling Authority rejected the application of the Opposite Party No.1, vide Order dated 24.02.2016, the operative portion of which reads as follows:

> " As per Sec-8 of P.G. Act amount of interest payable in no case shall exceed the amount of gratuity payable under the said Act. It is clear that the applicant has already received Rs.2,92,145/- towards interest in addition to awarded amount of gratuity of equal amount of Rs.2,92,145/-. Though the applicant has claimed additional amount of Rs.2,48,531/- towards interest on account of delayed payment of gratuity amount, the same is not sustainable in view of restriction provided under Sec-8 of the said Act. On that ground the petition of the applicant is heard and rejected."

7. Being aggrieved by such rejection Order dated 24.02.2016, the Opposite Party No.1 filed P.G. Appeal No.2 of 2016 before the Appellate Authority under P.G. Act-Cum-Deputy Labour Commissioner, Cuttack, praying therein to set aside the said Order dated 24.02.2016 passed by the Controlling Authority and pass appropriate Order for payment of balance amount of Rs.1,77,722/- as on 10.08.2015.

8. Being noticed, the Petitioner-Corporation appeared in P.G. Appeal Case No.02 of 2016 and filed its Counter/objection. Apart from delineating therein about

various payments made to Opposite Party No.1, the sole ground of objection to the said Appeal was that the additional amount of interest, as claimed by the Opposite Party No.1, is not sustainable in view of the restriction imposed under Section 8 of the Act, which provides that the amount of interest payable, in no case, shall exceed the amount of Gratuity payable under the Act.

9. Finally, the Appellate Authority, referring to the judgment of the apex Court in the case of **M. Gangahanume Gowda vs. Karnataka Agro Industries Corporation Ltd.,** reported in AIR 2003 SC 1526, vide Order dated 30.07.2018, allowed the Appeal, with the following observations:

ORDER

> "In light of the provisions of law and observations stated above I find that the Appeal filed by the Appellant has merit and hence is allowed on contest. The Respondent No.1 i.e. Chairman-Cum-Managing Director, Odisha Forest Development Corporation Ltd., Plot No.A/84, Kharavella Nagar, Unit-Ill, Bhubaneswar, Dist. Khurdha is directed to deposit the balance interest amount of Rs.1,77,722/- (Rupees One Lakh Seventy Seven Thousand Seven Hundred Twenty-two) only within 30 days from the date of pronouncement of this judgment."

10. Aggrieved by the judgment dated 30.07.2018 passed in P.G. Appeal No.2 of 2016, the present Writ Petition has been

filed by the Petitioner-Corporation on the plea that the impugned Order suffers from irregularity, illegality and is arbitrary, so also contrary to the statutory provision.

11. Being noticed, the contesting Opposite Party No.1 has filed a Counter Affidavit and the sum and substance of the said Counter Affidavit is that the Controlling Authority was unjustified to limit the interest amount to Rs.2,92,145/- in terms of Section 8 of the Act as the said Provision is applicable to execution proceeding, where the amount of Gratuity payable under the Act is not paid by the Employer, within the prescribed time, to the person entitled thereto and the Controlling Authority, on an application made to it, in the said regard by the aggrieved person, issues a certificate for the amount to the Collector, who has to recover the same, together with compound interest thereon from the date of expiry of the prescribed time, as arrear of land revenue and pay the same to the person entitled thereto and in the said event, the Collector cannot recover interest more than the amount of Gratuity payable under the Act.

12. Heard learned Counsel for the Parties. Since pleadings have been exchanged between the Parties, with the consent of

the learned Counsel for the Parties, the Writ Petition is being heard and decided finally at the stage of admission.

13. Mr. S.K. Pattnaik, learned Senior Counsel for the Petitioner-Corporation, submits that in view of the Proviso under Section 8 of the Act with regard to award of interest, Opposite Party No.3 was not justified to pass the impugned Order dated 30.07.2018 directing to deposit the balance interest amount of Rs.1,77,722/- and the said Order dated 30.07.2018 deserves to be set aside.

Learned Senior Counsel for the Petitioner-Corporation further submits that though the Appellate Authority, relying on the judgment of the apex Court reported in AIR 2003 SC 1526, has passed the impugned Order, in the said judgment, no where it has been held that Section 8 of the Act would not be applicable with regard to calculation and awarding interest by the Controlling Authority as provided under Section 7(3-A) of the Act.

14. Per contra, the learned Counsel for the Opposite Party No.1 submits that though admittedly his application dated 09.07.2015 before the Controlling Authority was in terms of

Rule 19 of the Payment of Gratuity (Central) Rules, 1972 in Form ‘ T ’ for recovery thereof under Section 8 of the Act, but vide said application, Opposite Party No.1 prayed for recovery of the unpaid differential Gratuity, so also interest thereon based on the Orders passed by the Controlling Authority in P.G. Case No.8 of 2005.

15. Learned Counsel for the Opposite Party No.1 further submits that Section 8 of the Act permits the Controlling Authority to issue a certificate of the amount payable to the applicant, which is recoverable with compound interest thereon at such rate as the Central Government may, by notification specify, from the date of expiry of the prescribed time, as arrear of land revenue and pay the same to the person entitled thereto. He further submits that, without application of mind, misinterpreting Section 8 of the Act, the Controlling Authority illegally rejected the application of the Opposite Party No.1 instead of issuing a certificate for that amount to the Collector, which is rightly set aside by the Appellate Authority directing the Petitioner-Corporation to deposit the balance interest amount of Rs.1,77,722/- though the amount should

have been more than as ordered by the Appellate Authority, in view of the provision enshrined under Section 8 of the Act.

16. Learned Counsel for the Opposite Party No.1 submits that in pursuance of Order dated 25.09.2014 passed by the Appellate Authority in P.G. (A) Case No.10 of 2009, the Petitioner-Corporation issued an Office Order dated 10.08.2015, as at Annexure-F, to the Counter Affidavit filed by the Opposite Party No.1, wherein it was clearly indicated that though the payable amount of interest on the Gratuity amount is Rs.4,69,867/- but the same was limited to Rs.2,92,145/- as per Section 8 of the Act and since the differential amount on interest in terms of the said calculation made by the Corporation comes to Rs.1,77,722/-, there is no infirmity in the said impugned Order dated 30.07.2018 passed in P.G. Appeal No.2 of 2016.

17. For better appreciation, it is apposite to take note of Sections 7 and 8 of the Act. Section 7 of the Act provides for determination of the amount of Gratuity where as Section 8 of the Act deals with the procedure for recovery of Gratuity amount determined under Section 7 of the Act, which read as follows: (Excerpt)

7. **Determination of the amount of gratuity**.—(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity, within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3-A) <u>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:</u>

[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.]

(4) (a) If there is any dispute to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.]

(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.]

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

8. Recovery of gratuity.- If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, <u>the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon [at such rate as the Central Government may, by notification, specify], from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto:</u>

[Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

Provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act.]"

(emphasis supplied)

18. A reading of Section 7 of the Act discloses that the same determines the manner in which the Gratuity payable to an employee is to be calculated. Sub-Section 3 of Section 7 of the Act mandates an employer to arrange to pay the amount of Gratuity within thirty days from the date it becomes payable to the person to whom the Gratuity is payable. Sub-Section 3-A of Section 7 of the Act postulates that if the amount of Gratuity payable under Sub-Section 3 of the Act is not paid, then the employer is obligated to pay simple interest at such rate, not exceeding the rate notified by the Central Government from time to time from the date, on which the Gratuity becomes payable to the date on which it is paid, simple interest at such rate. By Standing Order 874(E) dated 1st October, 1987, the rate of interest notified by the Central Government is 10% per annum. The Proviso to Sub-Section 3-A of Section 7 of the Act directs that interest shall not be payable if the delay in payment is due to the fault of employee and the employer has obtained permission in writing from the Controlling Authority for the delay payment on this ground.

19. Further, there is no such restriction under Sub-Section (3-A) of Section 7 of the Act with regard to awarding interest on

the Gratuity payable beyond the principal amount. Rather, as per the said Provision, it has been clearly stipulated that "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."

20. Now coming to Section 8 of the Act, the same provides the manner in which the recovery of Gratuity can be effected. It postulates that the Controlling Authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same together with compound interest thereon from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto. The second Proviso to Section 8 of the Act carves out an exception as a result of which the amount of interest payable under the said Section, in no case can exceed the amount of Gratuity payable under the Act. Hence, Section 7 of the Act determines the manner in which the amount of Gratuity

payable to the workmen is to be calculated and Sub-Section 3-A of Section 7 of the Act contemplates that if the payment is not made then simple interest at the rate of 10% per annum is payable by the employer. Hence, the first stage ends with the determination of the Gratuity under Section 7 of the Act. If the Gratuity determined under Section 7 of the Act is not paid by the employer then an aggrieved person has to take recourse to Section 8 of the Act, which can be stated to be the recovery provision. Hence, Section 8 of the Act is attracted only when the aggrieved person applies to the Controlling Authority that the Gratuity determined or payable has not been paid to the employee upon which the certificate is issued by the Controlling Authority for that amount to the Collector which is to recover the same with interest and which as per Second Proviso of Section 8 of the Act cannot exceed the principal amount.

21. From the provision enshrined under Section 8 of the Act, it is crystal clear that the said provision is applicable to execution proceeding after determination of the said amount by the Controlling Authority in terms of the provision enshrined under Section 7(4)(b) of the Act and in case of non-

payment of the determined amount by the Controlling Authority, the consequence is to be followed in terms of Section 8 of the Act, wherein there is a bar as to grant of interest payable under the said Section and in view of the said bar, in no case the recovery to be made by the Collector by imposing compound interest thereon should exceed the amount of Gratuity payable under the Act.

22. In view of such clear and unambiguous provision enshrined under Section 7 vis-à-vis Section 8 of the Act, this Court is of the view that there is no infirmity or illegality in the Order passed by the Appellate Authority dated 30.07.2018 in P.G. Appeal No.2 of 2016.

23. Having regard to the said statutory scheme, this Court is unable to accept the contention of the learned Senior Counsel for the Petitioner that at highest the interest payable would be an amount equal to the principle amount as contemplated by Section 8 of the Act.

24. Accordingly, the Writ Petition stands dismissed. No Order as to cost.

25. In view of the dismissal of the Writ Petition, the Petitioner-Corporation is directed to make such payment in terms of the Order dated 30.07.2018 passed in P.G. Appeal No.2 of 2016, to the Opposite Party No.1 within a period of four weeks from the date of communication/production of the certified copy of this Order.

(S.K. MISHRA)
JUDGE

Orissa High Court, Cuttack
The 11th October, 2022/PCD