

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2604 of 2022

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1. Food Corporation of India through the General Manager, Regional Office, Arunachal Bhawan, Exhibition Road, Police Station - Gandhi Maidan, District - Patna.
 2. The General Manager, Food Corporation of India, Regional Office, Arunachal Bhawan, Exhibition Road, Police Station - Gandhi Maidan, District - Patna.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Labour and Employment, New Delhi.
2. The Deputy Chief Labour Commissioner (Central) Patna - Cum - Appellate Authority under the payment of Gratuity Act, 1972, Maurya Lok Complex, 2nd Floor, Patna - 800001.
3. The Assistant Labour Commissioner (Central) - Cum - Controlling Authority, under the payment of Gratuity Act, 1972, Maurya Lok Complex, 2nd Floor, Patna - 800001.
4. Shri Kumar Madan Mohan, Son of Late Dwarika Singh, Saraswati Kunj, Mohalla - M.G. Nagar, South of Buddha Dental College, Kanti Factory Road, Patna - 800020.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.P.K.Verma, Sr.Advocate Mr.Sanjay Kumar,Advocate
For the Union of India	:	Ms.Punam Kr.Singh, CGC

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 18-01-2023

In the instant petition, petitioner has prayed for the following reliefs:-

“(i) Issuance of a writ in the nature of writ of certiorari quashing the order dated 12/2010-2021 passed by the learned Deputy Chief Labour Commissioner (Central)-cum-Appellate Authority under the payment of Gratuity Act, 1972 contained in Annexure-4 whereby and whereunder it has been ordered that the amount determined by the Controlling Authority under section 7 (4) (c) plus interest



has to be compulsorily deposited along with appeal and further the appellant is directed to deposit the remaining amount Rs.5,46,440/- (Five lakhs forty six thousand four hundred forty only) as determined by the Controlling Authority within 10 days failing which the appeal filed by the Appellant stands dismissed.

ii) Issuance of a writ in the nature of writ of certiorari quashing the order dated 08/9-11-2021 passed by the learned Deputy Chief of Labour Commissioner (Central)-cum-Appellate Authority under the payment of Gratuity Act, 1912 as contained in Annexure-5 whereby and whereunder the appeal filed by the appellant dismissed on account of non-deposit of remaining amount of Rs.5,46,440/- (Five lakhs forty six thousand four hundred forty only) within the stipulated time.

iii) Issuance of a writ in the nature of writ of mandamus directing the concerned learned Appellate Authority under the payment of Gratuity Act to hear and decide the appeal on merit which has been filed on behalf of the petitioners against respondent No.4.

iv) Issuance of any other writ(s) or order(s) or direction(s) which may be deemed fit and proper in the facts and circumstances of the case.”

2. Short question for consideration in the present case is before entertaining appellate authority against the controlling authority whether interest determined amount by the controlling authority is required to be taken into consideration for the purpose of depositing certain amounts to entertain appeal by the appellate authority or not? Section 7 of the Payment and Gratuity Act, 1972 reads as under:-



“7. Determination of the amount of the 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.

(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.]

*(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.

(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit—

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the [nominee or, as the case may be, the guardian of such nominee or] heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses.



(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(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.]

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify, or reverse the decision of the controlling authority."

3. Section 7(7) of the Payment and Gratuity Act is in respect of filing of appeal against the controlling authority order or determination of gratuity amount along with the interest. Reading of Section 7(7) it is crystal clear that who ever files appeal against the controlling authority ingredients are that he should produce the certificate against the controlling authority to the effect that



appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under Sub-Section 4. Section 7(4) is also silent insofar as determination of interest. Therefore, the present litigation is required to be determined only in respect of Section 7(7) of Payment and Gratuity Act, 1972. There is no mandatory or directory requirement to entertain appeal. Appellant shall deposit gratuity amount along with the interest.

4. In the light of these facts and circumstances, the appellate authority has committed error in rejecting the petitioner's appeal filed under Section 7(7) of Payment and Gratuity Act, 1972 against the controlling authority on the score that appellant failed to deposit interest part as determined by the controlling authority.

5. On the other hand, learned counsel for the respondents submitted that deposit of gratuity amount is required to be determined along with the interest while the controlling authority has already determined gratuity amount and interest.

6. The aforesaid contention of the respondent is not appreciable for the reasons that language employed in Section 7(7) of Payment and Gratuity Act, 1972 is only in respect of debt amount of gratuity required to be deposited and it does not speak of amount of gratuity along with interest. Therefore, the petitioner has made out a *prima facie* case so as to interfere with the orders



of appellate authority dated 12/20.10.2021 and 08/9.11.2021.
Accordingly, it is set aside and the present petition stands allowed.

7. In view of the order passed in this writ petition I.A.
No. 1 of 2022 and I.A. No. 2 of 2023 stands disposed off.

8. The appeal filed by the petitioner stands restored on
the file of the appellate authority. Appellate Authority is hereby
requested to decide the appeal within a period of three months
from the date of receipt of this order. The petitioner is permitted to
approach the appellate authority insofar as disbursement of
gratuity amount.

(P. B. Bajanthri, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.01.2023
Transmission Date	NA

