IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5697 of 2023

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Winsome International Limited, a company incorporated under Indian companies Act, 1956 having its registered office at 5th Floor, 16A Brabourne Road, Kolkata 700001, proprietor of M/S Rameshwara Jute Mills, Muktapur, P.O. Navrang, Samastipur, District Samastipur, Bihar through its Authorized Representative namely Kumar Rajesh, aged about 53 years, son of Late Suresh Chandra Prasad, R/o Resident of C/o Suresh Chandra Prasad, Sripalpur, Punpun, Patna-804453 (Bihar).

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Labour Resources Department, Government of Bihar
2. The Deputy Labour Commissioner-cum-Controlling Authority of Payment of Gratuity Act 1972, Darbhanga Division, Darbhanga.
3. The District Magistrate, Samastipur, Bihar.
4. The Additional Collector-cum-Senior Certificate Officer Samastipur, Bihar.
5. Dev Narayan Rai S/o Late Mishri Rai R/o- Village and P.O.- Muktapur, P.S.- Kalyanpur, District- Samastipur (Bihar).

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prashant Bhushan, Advocate.
For the State	:	Mr. Anuradha Singh, SC-21 with
		Mr. Rakesh Prabhat, AC to SC-21.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL ORDER

8 01-11-2023 Heard learned counsel for the parties.

2. The present Writ Petition has been filled for the following reliefs:-

> *"i. For issuance of appropriate writ(s)/order(s)/direction(s) to quash the certificate issued under Section 8 of the Payment of Gratuity Act, 1972 by the Deputy Labour Commissioner-cum-Controlling Authority of Payment of Gratuity Act 1972, Darbhanga Division,*

Darbhanga (Respondent No.-2) which is annexed as Annexure-2, And/or

ii. For issuance of appropriate writ(s)/order(s)/directions(s) to quash the order passed by Deputy Labour Commissioner-cum Controlling Authority of Payment of Gratuity Act, 1972, Darbhanga Division, Darbhanga (Respondent No.-2) which is annexed as Annexure-1, insofar as imposition of interest in concerned."

3. Learned counsel appearing on behalf of the petitioner has stated that the impugned order dated 09.01.2023 passed by the Controlling Authority is contrary to the provision of the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act') more particularly Section 8 of the Act. Learned counsel has stated that the Controlling Authority has erred in calculating the interest on the gratuity amount while issuing the certificate proceedings. It is stated that the interest was already calculated and the total amount payable by the employer was only Rs. 70,874/- vide order dated 28.10.2022. However, while issuing the certificate the Controlling Authority has calculated the interest from the date of retirement of the employee which cannot be permitted.

4. Learned counsel has drawn the attention of this Court to Section 8 of the Act which reads as under:-

"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, 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:*
>
> *[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.]***"

5. Learned counsel for the petitioner has stated that as per Section 8 of the Act, it is only the Collector who can calculate the interest, if any, but not the Controlling Authority, therefore, prayed this Court to set aside the impugned certificate issued by the Controlling Authority.

6. Learned counsel appearing on behalf of the respondents has fairly conceded that the proviso to Section 8 of the Act prevents the authorities from calculating the interest more than the amount of gratuity payable by the employer.

7. A reading of the proviso to Section 8 of the Act

makes it abundantly clear that the authorities cannot calculate interest more than the gratuity amount payable by the employer. In this case the authorities have calculated the interest from the date of retirement of the employee which is not permissible. The interest can only be calculated for the delayed period i.e. from the date of passing of the order by the Controlling Authority till the date of actual payment by the employer.

8. Having regard to the above made submission, the impugned order dated 09.01.2023 is set aside. It is made clear that this order does not prevent the Controlling Authority from issuing a fresh certificate for the delayed payment made by the petitioner. The said certificate shall comply with the provisions of the Payment of Gratuity Act, 1972 more particularly Section 8 of the Act and the proviso enumerated therein.

9. With the above direction, the present writ petition stands **allowed** to the extent indicated.

(A. Abhishek Reddy , J)

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