IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11413 OF 2022

1. Eknath Mahadev Bhagwat
   Age – 70 years,
   R/o. Baban Kalapure Chawl,
   Pimpri, Pune-411 018.

2. Ramesh Tukaram Narwade
   406, Shankeshwar Palace,
   Nehru Nagar,
   Pimpri, Pune0411 018

3. N.M. Chawaria
   Room No.3, Building No. "D"
   Sukhawani Baug
   Adinath Nagar,
   Bhosari, Pune-411 026 … Petitioners

Versus

1. Dy. Chief Labour Commissioner (Central)
   1st Floor, Shram Raksha Bhavan,
   Opp. Priyadarshini, Shivshrusti Road,
   Eastern Express Highway,
   Sion, Mumbai-400022.

2. Hindustan Antibiotics Ltd.
   Through its Managing Director
   Old Mumbai Pune Road,
   Pimpri, Pune-411108. ...Respondents

…

Ms. Asmita Goradia, Ms. Priyanka Dadpe, i/b. Mr. Aagam Doshi for Petitioners.
Mr. D. Ray Choudhari, Senior Advocate i/b. Mr. D. G. Dhanure for Respondent No.2.

...

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 05 SEPTEMBER 2023
PRONOUNCED ON : 27 SEPTEMBER 2023

JUDGMENT :

Rule. Rule is made returnable forthwith. With the consent of the learned counsels appearing for parties, petition is taken up for final hearing and disposal.

2. By this petition, Petitioners challenge order dated 31 March 2023 passed by the Appellate Authority under the Payment of Gratuity Act 1972 (**Gratuity Act**) confirming the order passed by the Controlling Authority dated 27 February 2020. The Controlling Authority has, by order dated 27 February 2020, directed payment of gratuity to the 5 applicants before it. To extent of non-award of interest on the amount of gratuity, the said 5 applicants filed appeal before the Appellate Authority, which has been rejected by order dated 05 April 2021. Only 3 out of said 5 employees have filed this petition challenging the orders of the Controlling Authority and Appellate Authority.

3. Petitioners are retired employees of Hindustan Antibiotics Ltd., an Undertaking of the Central Government. It appears that due to weak financial position of the Company, there has been delay in paying retirement dues to its employees. The Association of employees have filed Writ Petition No.10670 of 2019 before this Court to air employees' grievances about non-payment of various dues, which is pending. Five such employees were not being paid their due gratuity and therefore they

filed a complaint before the Controlling Authority under the Gratuity Act. By order dated 27 February 2020, the Controlling Authority has directed payment of gratuity to said 5 applicants but did not award any interest in respect of delay in payment thereof. They filed an Appeal before Appellate Authority on 07 July 2020. They were paid gratuity on 19 August 2020 in pursuance of the order passed by the Controlling Authority. At the time of making payments, receipts were obtained from Petitioners and in one such receipt executed by Petitioner No.1-Eknath Mahadev Bhagwat, it is stated that he will not claim interest on the amount of gratuity. The Appellate Authority has proceeded to reject the appeal denying interest on twin grounds of weak financial position of Respondent-Company and execution of undertaking waiving off interest. Petitioners have accordingly filed the present petition challenging the orders of the Controlling and Appellate Authorities.

4. Respondents have resisted the petition by adopting three major defences. Firstly, they contend that the Hindustan Antibiotics Retired Employees Association (**Association**), of which Petitioners are members, has already filed Writ Petition No.10670 of 2019 for payment of retirement benefits alongwith interest and therefore the present petition is not maintainable. Secondly, undertakings submitted by Petitioners not claiming interest is sought to be pleaded against them. Thirdly, weak financial condition and non-availability of funds is another ground pleaded for denial of any interest on gratuity.

5. I have heard Ms. Goradia the learned counsel appearing for Petitioner and Mr. Choudhari learned senior advocate appearing for respondent No.2.

6. Learned counsel for Petitioner would contend that interest on gratuity is statutorily payable under Section 7(3-A) of the Act and therefore statutory interest cannot be denied on delayed payment of gratuity. That Writ Petition No.10670 of 2019 filed by Association is for raising various general grievances with regard to nonpayment of retirement benefits, whereas the present petition emanates out of statutory remedy adopted by Petitioners before the Controlling and Appellate Authorities. That therefore pendency of Writ Petition No.10670 of 2019 would not be a reason for not entertaining the present petition. So far as undertakings are concerned, it is submitted that the same are not given voluntarily and shall not binding on Petitioners. That other similarly placed employees have been paid interest on gratuity. In support of his contentions the learned counsel for Petitioner has relied upon judgments of the Supreme Court in ***H. Gangahanume Gowda Vs. Karnataka Agro Industries Corpn. Ltd.,*** (2003), 3 SCC 40 and ***Chhaganlal Keshavlal Mehta Vs. Patel Narandas Haribhai,*** (1982) 1 SCC 223.

7. *Per contra* Mr. Ray Choudhari the learned senior advocate appearing for Respondent No.2-company would oppose the petition. He questions maintainability of the present petition by referring to Writ Petition No.10670 of 2019 pending before the Division Bench of this

Court. He would submit that Petitioners have filed multiple proceedings for same cause of action. He would accuse Petitioners of suppressing filing of said Writ Petition No.10670 of 2019, indicating unclean hands with which Petitioners have approached this Court. He would further contend that Petition is otherwise barred by delay and latches as the same is filed after one and half years of passing of orders by the Controlling Authority. He would rely upon undertakings given by Petitioners, under which they gave up the claim of interest considering the financial position of Respondent No.2. That they have opted for expeditious payment of gratuity without interest and it is now not open for them to turn around and seek interest on the amount of gratuity. That the financial condition of Respondent No.2 does not permit payment of any interest. That Respondent No.2 has borrowed funds from the government and is required to repay the loan / advances of Rs.603.58 Crores as of now. That in such circumstances the Appellate Court has rightly rejected the claim for interest.

8. Rival contentions of the parties now fall for my consideration.

9. Maintainability of the present petition is questioned on the ground of filing of Writ Petition No. 10670 of 2019 by the Association. Petitioners admit that they are members of the said association. The prayers made in the said petition reads thus -

> a) for a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ, order, or direction under Article 226 of the Constitution of India directing the Respondent No. 2 to calculate the arrears of salary of all the members of Petitioner No. 1;

b) for a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ, order, or direction under Article 226 of the Constitution of India directing the Respondents to pay the retirement dues of all the members of Petitioner No. 1 with interest and compensation as deemed appropriate by this Hon'ble Court;

c) for a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ, order, or direction under Article 226 of the Constitution of India directing the Respondents to first pay the retirement dues of members of Petitioner No. 1 before making any payments under the Voluntary Retirement Scheme 2019 or any other Voluntary retirement Scheme to be introduced in the future;

d) for a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ, order, or direction under Article 226 of the Constitution of India directing the Respondents to not come up with any Voluntary Retirement Schemes or any other scheme that gives preferential treatments to any of the employees in receiving their dues from Respondent No. 2 until the dues of all retired employees are settled in full;

e) that pending the hearing and final disposal of the Petition, this Hon'ble Court be pleased to order a stay on the implementation of the Voluntary Retirement Scheme 2019 dated 6.9.2019 (Exhibit "KK" to the Petition);

f) that pending the hearing and final disposal of the Petition, this Hon'ble Court be pleased to restrain the Respondents with coming up with any Voluntary Retirement Schemes or any other scheme that gives preferential treatments to any of the employees in receiving their dues from Respondent No. 2;

g) for ad-interim in terms of prayer (e) and (f), above;

h) for the costs of this Petition; and

i) for such other and further reliefs as deemed fit and proper by this Hon'ble Court in the facts and circumstances of the present case.

10. One of the prayers in Writ Petition No.10670 of 2019 is for payment of retirement dues with interest and compensation. True it is that gratuity is one of the elements of retirement benefits. However, the grievance of the Association in Writ Petition No.10670 of 2019 is about

failure on the part of employer to pay salary and any retirement benefits to its employees. The petition is filed on behalf of members of the Association to air their grievances in respect of nonpayment of salary and retirement benefits. As against this, the employer is under statutory obligation as per the provisions of the Gratuity Act to pay gratuity. For nonpayment of due amount of gratuity, the employee has a statutory remedy of filing of application under Section 7 of the Act. There is further remedy of filing Appeal before the Appellate Authority under Section 7, which reads thus:

> **7. Determination of the amount of gratuity.**
>
> (1)
>
> (2)
>
> (3)
>
> (4) (a) If there is any dispute as 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, 1860 (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 subsection (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.

11. Thus, the Gratuity Act, being a complete code in itself, provides for remedies if any employee is not paid gratuity due under the Act. Those remedies have been exercised by Petitioners in the year 2019

by filing application before the Controlling Authority, which was entertained on merit and order was passed on 27 February 2020 directing Respondent No.2 to pay gratuity to the applicants therein. Since the prayer for interest was not granted, petitioners filed Appeal before Appellate Authority on 07 July 2020. After filing of the appeal, gratuity was paid to them on 19 August 2020. The Appeal has however been rejected by the Appellate Authority by order dated 05 April 2021.

12. Thus, what is challenged in the present petition are the orders passed by the Controlling and Appellate authorities who are vested with jurisdiction under provisions of the Act. Therefore, filing of Writ Petition seeking general prayers for payment of salary and retirement benefits before a Division Bench of this Court by the Association would not preclude an employee from exercising statutory remedy for payment of gratuity and interest. Availability of an alternate remedy under a Statute may be a reason for this Court not to entertain a Writ petition, but the converse may not be legally correct. Filing of a Writ Petition by an Association on behalf of number of employees seeking omnibus prayers relating to various service disputes would not bar a statutory remedy by an employee, even though he is a member of that Association. Exercise of statutory remedy by such employee may be cited to seek non-entertainment of Writ Petition of Association to the extent grievance relating to gratuity of that employee, but it would be farfetched to suggest that the statutory remedy would be barred on account of filing of Writ Petition by the Association.

13. It appears that Respondent No. 2 made a similar attempt before this Court to get the proceedings before the Appellate Authority quashed for reason of filing of Writ Petition by the Association. In ***Hindustan Antibiotic Ltd. Vs. Deputy Chief Labour Commissioner (Central)***, Writ Petition No.9020 of 2021 decided on 15 December 2021, Respondent No. 2-Compnay had filed an application before the Appellate Authority for stay to the proceedings initiated under the Gratuity Act on the ground of pendency of Writ Petition No.10670 of 2019. The Appellate Authority had rejected the application ,which order was under challenged in Writ Petition No.9020 of 2021. This Court passed following order on 15 December 2021 which reads thus-

> 1] Not on board. Taken on board on an application being moved on behalf of the petitioner.
>
> 2] Heard learned counsel for the petitioner and learned AGP for the respondent/State.
>
> 3] An application filed by the petitioner before the appellate authority under the Payment of Gratuity Act, 1972 to stay the proceedings of 15 cases made by the petitioner on the ground that writ petition is filed before this Court is pending adjudication has been rejected by the impugned order. Copy of the petition filed by the petitioner being Writ Petition No. 10670 of 2019 is annexed at Exhibit-A colly.
>
> 4] Perusal of the principal prayers as made in the said petition would show that the prayers as made in such petition do not have any bearing whatsoever qua the proceedings before the appellate authority under the Payment of Gratuity Act. The prayers in the writ petition are on larger issues.
>
> 5] In my opinion, the appellate authority has correctly rejected the stay application as filed by the petitioner. The appellate authority is also correct in observing that invoking of Section 10 of Code of Civil Procedure, 1908 in the present circumstances was totally misconceived. The appellate authority is also correct in observing that the arguments of the proceedings are concluded and now the authority was to proceed to pass final orders on the

> such application of the workmen. In these circumstances, it was for the petitioner to seek stay of the proceedings, which has been rightly turned down by the appellate authority. It appears that the intention is to prolong the settlement of the P.R. dues to the workmen. The petition is hence without merits. It is accordingly, dismissed. No costs.

14. Thus, pendency of Writ Petition No.10670 of 2019 was not considered as a fit ground by this Court for staying proceedings before the Appellate Authority. If this is the position, I do not see why this Court can be prevented from considering the present petition which arise out of challenge to the order passed by the very same Appellate Authority.

15. Learned counsel appearing for Petitioner has also drawn my attention to the prayers made in the interim application No.3163 of 2021 filed in Writ Petition No. 10670/2019, wherein gratuity has been excluded while claiming interest on amounts of retirement benefits.

16. This is a Petition under Article 227 of the Constitution of India in exercise of supervisory jurisdiction over orders passed by the Controlling and Appellate Authorities. On this count as well, the objection as to maintainability of the present Petition is unfounded. The preliminary objection about maintainability raised by Respondent No. 2 is therefore repelled.

17. Coming to the aspect of undertakings, I find that Petitioners have executed acknowledgment receipts to acknowledge payments received towards gratuity on 19 August 2020. Only in case of Eknath Mahadev Bhagwat following endorsement is added in handwriting: '*full*

and final and inform to concerned employees that they would not claim interest on it'. Such endorsement does not appear on the receipts signed by other Petitioners. From language of that endorsement, it appears that the same is added by an official of Respondent No. 2 and not by the employee concerned. It is also required to be noted that before signing the said receipts on 19 August 2020, Petitioners had already filed Appeal before the Appellate Authority on 07 July 2020. If Petitioners have a statutory right to claim interest, the same cannot otherwise waived by adding an endorsement in the receipt of waiver of interest. Petitioners have raised a specific plea that such undertaking was added as a precondition for payment of gratuity. In this connection reference can be made to the judgment of the Apex Court in ***Central Inland Water Transport Corpn. v. Brojo Nath Ganguly***, (1986) 3 SCC 156 in which it is held as under:

> 89. ----- The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. **It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be.** This principle, however, will not apply where the bargaining power of

> the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infrastructural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances.
>
> *(emphasis supplied)*

18. Petitioners have also relied on ***Chhaganlal Keshavlal Mehta*** (supra) in which it is held in paragraph No.22 as under-

> 22. It may be pointed out that estoppel deals with questions of facts and not of rights. A man is not estopped from asserting a right which he had said that he will not assert. It is also a well-known principle that there can be no estoppel against a statute. After the death of Motibhai his son Chimanrai succeeded in law.

19. I am therefore of the view that mere waiver of interest by one of the Petitioners would not act as an estoppel for not claiming statutory interest provided for under Section 7(3-A) of the Act.

20. Under Section 7(3-A) of the Act payment of interest is mandatory. Section 7 Reads thus-

> **7. Determination of the amount of Gratuity.-**
>
> (1)
>
> (2)
>
> (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.

21. Thus interest on delayed payment of gratuity is mandatory under Sub-Section (3-A) of Section 7. In ***H. Gangahanume Gowda*** (supra) the Apex Court held that payment of interest does not lie in the domain of discretion, but it is a statutory compulsion. The Court held in paragraph No.7 as under-

> 7. It is evident from Section 7(2) that as soon as gratuity becomes payable, the employer, whether any application has been made or not, is obliged to 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. Under Section 7(3), the employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable. Under sub-section (3-A) of Section 7 if the amount of gratuity is not paid by the employer within the period specified in sub-section (3), he 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; 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 that ground. From the provisions made in Section 7, a clear command can be seen mandating the employer to pay the gratuity within the specified time and to pay interest on the delayed payment of gratuity. No discretion is available to exempt or relieve the employer from payment of gratuity with or without interest as the case may be. However, under the proviso to Section 7(3-A), no interest shall be payable if delay in payment of gratuity is due to the fault of the employee and further condition that the employer has obtained

permission in writing from the controlling authority for the delayed payment on that ground. Under Section 8, provision is made for recovery of gratuity payable under the Act, if not paid by the employer within the prescribed time. The Collector shall recover the amount of gratuity with compound interest thereon as arrears of land revenue and pay the same to the person entitled. A penal provision is also made in Section 9 for non-payment of gratuity. Payment of gratuity with or without interest, as the case may be, does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with the penalty of payment of interest was the view taken in *State of Kerala v. M. Padmanabhan Nair*. Earlier there was no provision for payment of interest on the delayed payment of gratuity. Sub-section (3-A) was added to Section 7 by an amendment, which came into force with effect from 1-10-1987. In the case of *Charan Singh v. Birla Textiles* this aspect was noticed in the following words: (SCC pp. 214-15, para 4)

> "4. There was no provision in the Act for payment of interest when the same was quantified by the controlling authority and before the Collector was approached for its realization. In fact, it is on the acceptance of the position that there was a lacuna in the law that Act 22 of 1987 brought about the incorporation of sub-section (3-A) in Section 7. That provision has prospective application."

22. In my view therefore, payment of interest on gratuity would not be a matter of discretion of the employer, since the same is a statutory obligation of the employer.

23. Coming to the last aspect of inability of Respondent No. 2 to bear the burden of payment of interest on gratuity, it may be true that its financial condition is weak. However, since the interest on gratuity is statutorily payable, financial condition of the employer cannot be cited as a reason for not fulfilling the statutory obligation.

24. I therefore find the orders passed by the Controlling Authority and Appellate Authority, to the extent of denial of interest of amount of gratuity, to be indefensible.

25. Writ Petition accordingly succeeds. Orders passed by the Controlling Officer and Appellate Authority, to the extent of denial of interest on the amount of gratuity to the Petitioners, are set aside. Respondent No.2 is directed to pay statutory interest provided for under Section 7(3-A) of the Gratuity Act to Petitioners within a period of 04 months from today.

26. Writ Petition is accordingly allowed. There shall be no order as to costs. Rule is made absolute.

SANDEEP V. MARNE, J.

KISHOR VISHNU KAMBLE

Digitally signed by KISHOR VISHNU KAMBLE
Date: 2023.09.29 11:21:42 +0530