IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.4360 OF 2022

Rachana M. Patwardhan ...Petitioner
vs.
Regional Manager,
National Insurance Company Limited and Others ...Respondents

Mr. D.J. Dalal, for the Petitioner
Mr. Piyush Shah a/w. Mr. Jay Vora, for Respondent No. 1.
Ms. Anusha Amin, for Respondent Nos. 2 and 3.

CORAM : N. J. JAMADAR, J.
DATE : MARCH 06, 2023

P.C.:

1. The challenge in this petition is to an order dated 7th January, 2022 passed by the Appellate Authority under section 7(7) of the Payment of Gratuity Act, 1972 (the Act, 1972) whereby the Appellate Authority declined to interfere with an order dated 21st June, 2021 passed by the Controlling Authority under the Act, 1972 rejecting the application preferred by the petitioner for the payment of differential interest on gratuity under rule 10(1) of the Central Rules.

2. By the said application, the petitioner sought a direction to the respondent No. 1 employer to pay interest on the original gratuity amount of Rs. 12,80,885/- for the period 24th April, 2018 to 18th August, 2020.

3. The petitioner retired from service on 30th November, 2015 as an Assistant Manager putting in 37 years and 10 months continuous service. As the respondent No. 1 committed default in payment of gratuity within the statutory period, the petitioner preferred an application before the Controlling Authority. By an order dated 22nd December, 2017 the Controlling Authority directed respondent No. 1 to pay gratuity quantified at Rs. 12,80,885/- along with interest @ 10% p.a. w.e.f. 1st December, 2015 till the date of actual payment, under section 7(3-A) of the Act, 1972.

4. The respondent No. 1 preferred an appeal before the Appellate Authority. By an order dated 12th October, 2019 the Appellate Authority dismissed the appeal. In the meanwhile, the respondent No. 1 deposited the original amount of gratuity along with interest @ 10% till the date of deposit i.e. 24th April, 2018 with Controlling Authority. However, the said amount came to be credited to the account of the petitioner on 18th August, 2020. The petitioner, thus, preferred an application before the Controlling Authority for the differential interest for the period 24th April, 2018 to 18th August, 2020.

5. As noted above, by an order dated 21st June, 2021 the

Controlling Authority rejected the application opining, inter alia, that the respondent No. 1 had already deposited the gratuity along with interest till the date of deposit i.e. 24th April, 2018.

6. The Appellate Authority was also of the view that having already deposited the original amount of gratuity along with interest on 24th April, 2018 itself, the respondent No. 1 employer can not be compelled to pay the differential interest as respondent No. 1 was exercising the statutory remedy of appeal under section 7(7) of the Act, 1972.

7. Mr. Dalal, learned counsel for the petitioner strenuously submitted that the Controlling Authority as well as the Appellate Authority committed error in rejecting the claim for differential interest. It was submitted that the liability to pay interest on gratuity is statutory. No discretion is left with the authorities to exempt or relieve the employer from payment of interest, if the gratuity is not paid within the stipulated period, unless a case is made out under the provisions of section 7(3-A) of the Act, 1972.

8. Mr. Dalal would urge that in the case at hand, by an order dated 22nd December, 2017 the respondent No. 1 was directed to pay

simple interest on the unpaid gratuity from 1st December, 2015 till the date of **actual** payment. Since, the amount of gratuity along with interest came to be paid to the petitioner on 18th August, 2020, the date of deposit by the respondent No. 1 of this amount with the Controlling Authority is of no significance.

9. Mr. Dalal placed a strong reliance on the following observations made in the case of **H. Gangahanume Gowda vs. Karnataka Agro Industries Corpn. Ltd.**[1]

> 7] ...... 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 has obtained permission in writing from the controlling authority for the delayed payment on that ground.

10. Mr. Dalal submitted that the authorities below misdirected themselves in construing the deposit of the amount with the Controlling Authority as the compliance with the obligation of the employer to pay the amount of gratuity along with interest. Mr. Dalal submitted that the deposit of the said amount with the Controlling Authority can not be said to be unconditional in as much as respondent No. 1 had requested the Controlling Authority not to

1 (2003) 3 Supreme Court Cases 40.

release the said amount till the decision of the appeal. Such stand does not arrest the accrual of interest, submitted Mr. Dalal.

11. To bolster up this submission, Mr. Dalal placed reliance on a judgment of this Court in the case of **Sharda Nandlal Das vs. Assistant Labour Commissioner, (Central) Nagpur and Controlling Authority[2].** In the said case, after the appeal was dismissed by the Appellate Authority, the employer therein had addressed a communication to the Controlling Authority not to release the amount as it intended to challenge the order of Appellate Authority before the High Court. This Court held by addressing such communication, the employer ran the risk of paying compound interest under section 8 of the Act, 1972 from the date of dismissal of the appeal.

12. I find it difficult to accede to the submission of Mr. Dalal that the aforesaid analogy can be applied to the facts of the case at hand. In the instant case, the respondent No. 1 had deposited the amount of original gratuity of Rs. 12,80,885/- along with interest @ 10% p.a. from 1st December, 2015 to 24th April, 2018. During the pendency of the appeal, the appeal came to be dismissed on 12th October, 2019. It does not seem that during the pendency of the appeal, the

2 2019 (4) Mh,L.J. 70

petitioner had sought withdrawal of the amount deposited by respondent No. 1 employer.

13. The emphasis on the **actual** payment, laid by Mr. Dalal, cannot be construed to the extreme to mean that despite making the deposit of the amount with the Controlling Authority and having done all that which was in its power, respondent No. 1 employer could still be held liable to pay interest on the said amount. Therefore, I do not find any merit in the petition.

14. The petition stands dismissed.

(N. J. JAMADAR, J.)