



W.P.No.33289 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 03.01.2023

DELIVERED ON : 25.04.2023

Coram:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. No.33289 of 2014

Roy.K.George

... Petitioner

.Vs.

1.The Assistant Labour Commissioner (Central)
Shastri Bhavan, 26, Haddows Road
Chennai-600 006

2.The Collector
Kolkata, Office of Collector
Kolkata Collectorate
No.11, N.S.Road
Kolkata 700 001

3.The District Magistrate (Certificate Department)
South 24 Parganas, Alipore
Kolkata 700 027

4.M/s.Marshall Sons & Company (Mfg)
No.3, McLoyd House
N.S.C.Bose Road
Kolkata 700 001

...Respondents



W.P.No.33289 of 2014

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 2nd and 3rd respondents to recover Rs.97,425/- along with compound interest at the rate of 15% per annum from 28.09.1999 to till date it is actually paid from the 4th respondent pursuant to the Revenue Recovery Certificate dated 14.09.2011 bearing No.M.48/96/2009-B3 and pay the same to the petitioner within the time frame stipulated by this court.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.V.Kadirvelu for R3
Mr.M.R.Raghavan for R4
R1 and R2 – No appearance.

ORDER

This writ petition is filed by the workman who worked with the 4th respondent-management. The petitioner worked as Works Manager from 15.06.1973 to 23.06.1999. The petitioner's prayer in this writ petition is for a direction to the 2nd and 3rd respondents viz., The Collector, Kolkata Collectorate and the District Magistrate, Kolkata, to recover Rs.97,425/-



W.P.No.33289 of 2014

along with compound interest at the rate of 15% per annum from 28.09.1999 till actually paid by the 4th respondent.

2. The dispute in the instant case is only with regard to the claim for interest on the belated payment of gratuity amount of Rs.97,425/-. This amount has been paid by the Management pursuant to revenue recovery action initiated by the District Collector, Kolkata.

3. The averments in the writ petition is that the petitioner was not paid gratuity. So he preferred application under Section 7(4)(b) of the Payment of Gratuity Act. The gratuity was computed on 12.08.2010 by the Controlling Authority and directed the 4th respondent-management to pay Rs.97,425/- along with simple interest @ 10% per annum from the date it became payable within 30 days.

4. Since no gratuity was paid by the management after computation, application for recovery u/s.8 of the Payment of Gratuity Act was filed by



W.P.No.33289 of 2014

the petitioner-worker. The Controlling Authority issued a revenue recovery certificate on 14.09.2011. However, no action was taken, hence, this writ petition is filed.

5. This court by order dated 20.04.2014, directed the management to pay Rs.97,425/- to the workman within four weeks from the date of receipt of a copy of the said order

6. The calculation memo filed by the petitioner-workman would go to show that on 12.12.2014, Rs.97,425/- has been paid by the 4th respondent management.

7. The argument of the learned counsel for the petitioner-workman is that Section 7(2) puts an obligation on the employer to give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority indicating the amount payable, after computing the same.



8. Section 7 is a complete code by itself regarding the gratuity payable under the Act. Section 7(3) casts an obligation on the employer to pay the amount of gratuity within 30 days from the date it become payable. Section 7(3A) contemplates payment of simple interest at the rate notified by the Government. Proviso to Section 7(3A) states that interest is not payable if the delay in payment of gratuity is due to the fault of the employee and also after obtaining permission from the authority for delayed payment.

9. It is contended by the learned counsel for the petitioner that even after determination by the Controlling Authority, no payment was made by the management. As per Section 8, the authority has to issue a certificate of recovery for the gratuity payable with compound interest at the rate of 15% per annum. Section 8 states that the amount of interest payable under this section shall in no case exceed the amount of gratuity payable under this Act. The last proviso to Section 8 states that the amount of interest payable under this Section shall in no case exceed the amount of gratuity payable under this Act. Therefore, gratuity payable would include compound interest



W.P.No.33289 of 2014

at the rate of 15% p.a., until the payment is made, The learned counsel thus computed the gratuity amount payable as Rs.1602841/-.

10. The learned counsel for the petitioner submits that Payment of Gratuity Act, is a beneficial statute. The decision of the Supreme Court reported in **2003(2) SCC 40/H.Gangahanume Gowda Vs. Karnataka Agro Industries Corpn Ltd.]** make it clear that the 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.

11. The learned counsel would further argue that 4th respondent-management has not challenged the recovery certificate issued by the Controlling Authority. Therefore, the management is now due under the certificate. The compound interest @15% per annum on Rs.8,50,133/- from 12.12.2014 till today Rs.17,50,443/- is restricted to Rs.8,50,133/-. Hence, the total amount due is Rs.8,50,133/- + 8,50,133/- = Rs.16,02,841/- and after deducting Rs.97,425/-, the balance amount payable is Rs.15,05,416/-



W.P.No.33289 of 2014

12. Per contra, the learned counsel for the 4th respondent submits that the petitioner-workman preferred application before the Controlling Authority under the Payment of Gratuity Act after a long delay and the order for gratuity was passed by the authority in the year 2010 along with 10% interest. The revenue recovery certificate was obtained on 14.09.2011 and the said certificate was amended in respect of interest portion from 10% to 15% per annum as compound interest through the order dated 12.12.2011. The petitioner has approached this court after three years for implementation of the order. Further the petitioner has not approached the authority within 60 days.

13. The learned counsel for the 4th respondent submits that Section 8 of the Payment of Gratuity Act shall in no case exceed the amount of gratuity payable under this Act. Therefore, section 7 and 8 would be read harmoniously. Hence, as per Section 8 of the Payment of Gratuity Act, the employee would be entitled only to the equal amount of gratuity by way of interest. Penalty cannot be more than the assessed amount as per the



W.P.No.33289 of 2014

fundamental principle of law. It is also stated that the petitioner has admitted the payment made by the management in respect of gratuity amount of Rs.97,425/- on 12.12.2014.

14. Heard both sides and perused the records carefully.

15. The facts of the case would make it clear that after retirement of the petitioner, when gratuity was not paid, petitioner filed Section 7(4)(b) application and that was computed on 12.08.2010 by the Controlling Authority, and directed the 4th respondent management to pay gratuity of Rs.97425/- along with simple interest at 10% p.a, within 30 days. Thereafter application for recovery was filed under Section 8 of the Act. The Controlling Authority issued a revenue recovery certificate on 14.09.2011.

16. The Honourable Supreme Court in the decision reported in **(2003) 3 SCC 40 [H.Gangahanume Gowda Vs. Karnataka Agro Industries Corpn Ltd.,]** held that there is a clear mandate in the provisions of Section 7 in



W.P.No.33289 of 2014

respect of payment of gratuity within time and to pay interest on the delayed payment of gratuity. There is also provision to recover the amount of gratuity with compound interest in case of the amount of gratuity payable was not paid by the employer in terms of Section 8 of the Act. Since the employer did not satisfy the mandatory requirement of the proviso to Section 7(3-A) of the Act, no discretion was left to deny the interest on belated payment of gratuity.

17. It is an undisputed fact that the petitioner retired from service in the year 1999. Since the 4th respondent management failed to pay the gratuity amount within 30 days, the Controlling authority directed the management to pay Rs.97425/- but due to failure of such payment, revenue recovery certificate was issued on 14.09.2011. Admittedly, the 4th respondent-management has not questioned the amount computed in revenue recovery certificate.



W.P.No.33289 of 2014

18. No doubt, as per Section 8 of the Act, interest is payable on the belated payment of gratuity. It is also seen that as per the directions of this court dated 20.04.2014, management has paid Rs.97,425/- to the workman. As per the statute, interest is to be paid or payable by the employer from the date of the entitlement of the employee till the date of payment.

19. It is needless to mention that the 4th respondent has erroneously withheld payment of gratuity amount for which the petitioner is entitled for payment of penal amount on the delayed payment of gratuity under the provisions of the [Payment of Gratuity Act, 1972](#). Having regard to the facts and circumstances of the case and taking note of the interim order passed by this court on 20.04.2014, awarding interest at the rate of 9% on the delayed payment of gratuity amount from the date of entitlement till the date of the actual payment, will serve the purpose of the Act. If this amount is not paid within six weeks from the date of receipt of a copy of this order, the same shall carry interest at the rate of 18% per annum from the date of amount



W.P.No.33289 of 2014

falls due to the employee. With the above directions, this Writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

25.04.2023

Index:Yes/No
Internet:Yes/No
Speaking Order: Yes/No
nvsri

To

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J.NISHA BANU, J.,

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