BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2023

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.18539 of 2023

N.Chezhian ... Petitioner

Vs.

1.The Assistant Commissioner of Labour /
Controlling Authority under the Payment of
Gratuity Act (Additional Charge),
Sengulam Colony,
Integrated Labour Department Complex,
Mannarpuram,
Trichy-20.

2.The Pudukottai District Co-operative Spinning
Mills Limited,
Represented by its Managing Director / Administrator,
Duraiarasapuram,
Aranthangi-614 616,
Pudukottai District. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in his proceedings in Na.Ka.No.A2/4649/2017, dated 10.03.2023 and quash the same and consequently direct the respondents to pay a sum of Rs.2,35,788/- calculated with compoundable interest at the rate of 15% to the petitioner as per Section 8 of the Payment of Gratuity Act, 1972 and further interest on it until the amount is paid.

For Petitioner : Mr.V.Karthikeyan

For Respondents : Mr.M.Prakash
Additional Government Pleader

ORDER

The present writ petition has been filed for a Writ of Certiorarified Mandamus, calling for the records of the first respondent in his proceedings in Na.Ka.No.A2/4649/2017, dated 10.03.2023 and quash the same and consequently direct the respondents to pay a sum of Rs.2,35,788/- calculated with compoundable interest at the rate of 15% to the petitioner as per Section 8 of the Payment of Gratuity Act, 1972 and further interest on it until the amount is paid.

2. Heard the learned Counsel for the petitioner and the learned Additional Government Pleader for the respondents and carefully perused the materials available on record.

3. The petitioner was appointed as a Supervisor on 27.05.1981 in South Arcot Co-operative Mills Limited at Tindivanam. After being transferred to various Co-operative Mills in Tamil Nadu, finally the petitioner joined the second respondent Co-operative Mill and worked as an Assistant Manager and on attaining the age of superannuation, he retired from service on 31.03.2016. The petitioner during the period from 01.07.2003 to 05.07.2007 worked in Srivilliputtur Co-operative Spinning Mill and the said Spinning Mill did not offer the petitioner to pay Gratuity for that period. That apart, the second respondent did not come forward to pay the petitioner with post retirement gratuity within thirty days of his retirement. So the petitioner was compelled to demand payment of gratuity before the first respondent in P.G case No. 540/2016 and the first respondent vide order, dated 10.03.2017, calculated the petitioner's gratuity period as 31 years and directed the second respondent to pay the gratuity balance amount of Rs.1,98,112/- with 10% interest as per Section 7 (3A) of the Gratuity Act. As against which, the petitioner filed an appeal on 02.06.2017 before the Joint Commissioner of Labour in P.G Appeal No.18/2018 and sought Gratuity and include the period of four years of non service.

4. The second respondent also filed an appeal on 26.06.2017 under Section 7(7) of the Gratuity Act against the order passed by the first respondent. In which, the second respondent contended that the petitioner is not entitled to gratuity for non working days and the petitioner is not entitled to the gratuity pending disposal of the writ petitions in W.P.No.11685 of 2013 and W.P.No.6653 of 2013 filed by the petitioner. The Joint Commissioner of Labour granted relief in favour of the petitioner and calculated 35 years of service contributed by the petitioner in the various Co-operative Mills on 08.04.2019 and directed the second respondent to pay gratuity amount of Rs.10,13,997/-. The amount already paid was a sum of Rs.7,00,000/- and the remaining amount of Rs.3,13,997/- has to be paid in view of the modification of the order of the first respondent by the Joint Commissioner of Labour. For the aforesaid outstanding amount of gratuity amounting to Rs.3,13,997/- along with interest on receipt of the order of the Joint Commissioner of Labour on 05.09.2019, the petitioner requested the second respondent on 10.09.2019 to pay the outstanding gratuity due to him as per the order of the Appellate Authority with interest. However, the second respondent remained mute and

hence, the petitioner submitted a representation to the first respondent on 10.10.2019 for recovery of gratuity amount from the second respondent with 15% compound interest under Section 8 of the Payment of Gratuity Act with Form T.

5. Thereafter, the first respondent paid the gratuity amount of Rs.2,40,784/- in the petitioner's bank account on 09.07.2020. In furtherance to the same, the second respondent also issued two cheques on 21.07.2020, one cheque was for the adjudged gratuity amount of Rs.1,59,192/- and the another for the difference in gratuity due to revised salary of Rs.59,123/-, in which the interest payable to the petitioner was wrongly calculated with 10% interest instead of 15%. Hence, the petitioner pointed out the errors in the calculation list with respect to interest to the second respondent and requested to calculate 15% interest on gratuity amount and pay the remaining gratuity amount to the second respondent. However, the second respondent had sent a reply to the petitioner on 25.08.2020 stating that they have already paid the petitioner's gratuity in full with interest. Thereafter, on 06.10.2020, the petitioner received the order of the first respondent signed on 08.05.2020 and the same was not a

speaking order. An order of issuing Rs.1,54,683/- as the remaining interest amount payable to him came to be passed and no calculation list was attached thereat.

6. Pursuant to the same, after calculating the interest on 15.10.2020, the petitioner had sent a representation to the first respondent on 22.01.2021 and to the Labour Commissioner on 22.01.2022 for payment of gratuity with 15% compound interest as per Section 8 of the Payment of Gratuity Act. The first respondent had sent the intimation to the petitioner to appear before him on 09.06.2022 vide proceedings, dated 23.05.2022 for the claim petition submitted by the petitioner on 18.05.2022. After the three stages of hearing, the first respondent vide proceedings, dated 10.03.2023 decided the petitioner's claim and refused to grant gratuity with 15% compound interest thereby rejecting the petitioner's claim. Challenging the same, this writ petition came to be filed.

7. The learned Additional Government Pleader for the second respondent has filed a counter and he submitted that in compliance of the orders passed by the Joint Commissioner, Labour, the second respondent has paid a sum of

Rs.1,59,192/- and Rs.59,123/- vide two cheques issued to the petitioner on 21.07.2020 by calculating 10% of interest. However, the petitioner on receiving the same, once again claims compound interest of 15% of interest and hence, the second respondent rejected the case of the claim of the petitioner vide the impugned order. The petitioner having receiving the entire gratuity amount ultimately, claiming 15% of interest for the arrears of gratuity amount is untenable. If the claim of the petitioner is taken into consideration, similarly placed employees like him for whom the payment of gratuity has been delayed would also seek the same and would open a pandora's box. In view of the same, the petitioner's claim cannot be considered and on that line, he pressed for dismissal of this writ petition.

8. It is no more *res integra* that compound interest is payable under Section 8 of the Payment of Gratuity Act 1972 and the Hon'ble High Court of Bombay-Nagpur Bench in the case of ***Sharda Nanda Lal Das Vs. The Assistant Labour Commissioner (Central), Nagpur and Controlling Authority under the Payment of Gratuity Act, 1972 and Another*** reported in

2019 (4) Mh.L.J. has dealt with a similar case and the relevant portion of which is extracted as follows:

> *"18. Therefore, in the facts of the present case, the compound interest payable under Section 8 of the said Act to the employee has to be calculated from the date when the appeal filed by the employer stood dismissed by the Appellate Authority. The said date is 24.06.2014. The employer ought to have paid the amount of gratuity along with simple interest deposited by it before the Controlling Authority, immediately upon dismissal of its appeal on 24.06.2014 and upon failure to do so, it ran the risk of paying compound interest under Section 8 of the said Act from 24.06.2014 i.e. the date of dismissal of its appeal. The words "within the prescribed period" used in Section 8 of the said Act ought to mean the period prescribed under the order of the Controlling Authority whereby the liability of the employer was determined under Section 7 of the said Act.*
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> *23. Therefore, a reasonable interpretation of Sections 7 and 8 of the said Act read together and applying them to the facts of the present case, would show that the employee would be entitled to grant of compound interest at 15% per annum under Section 8 of the said Act from 24.06.2014 i.e. the date on which the Appellate Authority dismissed the appeal of employer to 02.11.2015 when the amount was actually received in the account*

of the employee. There can be no doubt about the fact that the employee was not at fault at any point in time for delay during the aforesaid period. It was also not the case of the employer that because the employee was issued a charge-sheet he was not entitled for gratuity, because he stood exonerated of the charges on 22.01.2016, as recorded in the impugned order passed by the Controlling Authority. The employer never made an issue of the said aspect and in any case, as per the judgment of the Hon'ble Supreme Court passed in the case of Y.K.Singla Vs. Punjab National Bank and Others (supra), in such situation, where the employee stood finally exonerated, no fault could be attributed to him for delay in actual payment of gratuity under the said Act.

24. As regards the submission made on behalf of the employee that the entitlement of grant of interest for the period 05.07.2013 to 02.11.2015 already stood determined by order, dated 01.02.2017 of Division Bench of this Court in writ petition No.4771 of 2016, it would be appropriate to note that in the said order, the Division Bench has held that the employee is entitled to grant of interest till the amount is actually received by him. Therefore, as per the aforesaid order of the Division Bench of this Court, there can be no doubt about entitlement of interest of the employee under Section 8 of the said Act till the amount is actually received by him but the liability of the employer and its extent remained to be determined. In the facts of the present case *and applying the provisions of Sections 7 and 8 of the said Act read together, the employee is held to be entitled to compound interest at the rate of 15% per annum under Section 8 of the said Act on the principal amount of Rs.10,00,000/- from 24.06.2014 to 02.11.2015. For the period between 05.07.2013 to 24.06.2014, when the appeal was pending before the Appellate Authority and the amount deposited by the employer under proviso to Section 7(7) of the said Act was lying with the Controlling Authority, the employer cannot be held liable to pay compound interest under Section 8 of the said Act, because holding so would render the provision of appeal under Section 7(7) of the said Act as illusory."*

9. In yet another case, the Hon'ble Apex Court in the case of ***Y.K.Singla Vs. Punjab National Bank and Others reported in 2013 (3) SCC page 472*** has dealt with the similar case and the relevant portion of which is extracted as follows:

"24. Furthermore, from the mandate of Section 14 of the Gratuity Act, it is imperative to further conclude that the provisions of the Gratuity Act would have overriding effect with reference to any inconsistency therewith in any other provision or instrument. Thus viewed, even if the provisions of the 1995

Regulations had debarred payment of interest on account of delayed payment of gratuity, the same would have been inconsequential. The benefit of interest enuring to an employee, as has been contemplated under Section 7(3-A) of the Gratuity Act, cannot be denied to an employee whose gratuity is regulated by some provision / instrument other than the Gratuity Act. This is so because the terms of payment of gratuity under the alternative instrument have to ensure better terms than the ones provided under the Gratuity Act. The effect would be the same when the provision concerned is silent on the issue. This is so because the instant situation is not worse than the one discussed above, where there is a provision expressly debarring payment of interest in the manner contemplated under Section 7(3-A) of the Gratuity Act. Therefore, even though the 1995 Regulations are silent on the issue of payment of interest, the appellant would still be entitled to the benefit of Section 7(3-A) of the Gratuity Act. If such benefit is not extended to the appellant, the protection contemplated under Section 4(5) of the Gratuity Act would stand defeated. Likewise, even the mandate contained in Section 14 of the Gratuity Act deliberated in detail hereinabove would stand negated.

25. We, therefore, have no hesitation in concluding that even though the provisions of the 1995 Regulations are silent on the issue of payment of interest, the least that the appellant would *be entitled to are terms equal to the benefits envisaged under the Gratuity Act. Under the Gratuity Act, the appellant would be entitled to interest on account of delayed payment of gratuity (as has already been concluded above). We therefore hold that the appellant herein is entitled to interest on account of delayed payment, in consonance with sub-section (3-A) of Section 7 of the Gratuity Act."*

10. Fully in consonance to the aforesaid judgments, appreciating the fact that the petitioner would be entitled to payment of interest for delayed payment of Gratuity, I hereby quash the impugned order, dated 10.03.2023 vide proceedings in Na.Ka.No.A2/4649/2017 and consequently remand back the same to the respondents for reconsideration and pass appropriate orders in accordance with law, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

11. This writ petition stands allowed, accordingly. There shall be no order as to costs.

26.09.2023

NCC : Yes
Index : Yes
Internet : Yes
BTR

To

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Gratuity Act (Additional Charge),
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2.The Managing Director / Administrator,
The Pudukottai District Co-operative Spinning
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Duraiarasapuram,
Aranthangi-614 616,
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L.VICTORIA GOWRI, J.

BTR

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