IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4165-2023 (O/M)
Date of decision : 03.10.2023

The Managing Director, Haryana Financial Corporation and another
...... Petitioners

Versus

Rakesh Kumar Gupta and others ...... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Padam Kant Dwivedi, Advocate
for the petitioner.

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HARSH BUNGER, J.

1. The instant writ petition has been filed by petitioner under Articles 226/227 of the Constitution of India seeking a writ in the nature of certiorari for quashing the order dated 29.04.2022 (Annexure P-1), passed by respondent No. 3-Controlling Authority under Payment of Gratuity Act, 1972, whereby an application filed by respondent No. 1 (Rakesh Kumar Gupta) under Payment of Gratuity Act, 1972 (in short 'the 1972 Act') seeking gratuity from petitioners has been allowed.

Petitioner further lays challenge to the order dated 18.08.2022 (Annexure P-2), passed by Appellate Authority under Payment of Gratuity Act, 1972 (respondent No. 2 herein), dismissing appeal filed by petitioners against order dated 29.04.2022 (Annexure P-1).

2. Briefly, respondent No. 1 (Rakesh Kumar Gupta) filed an application under 1972 Act before the Controlling Authority on the plea that he joined the services with the petitioner-Haryana Financial Corporation (hereinafter referred to as 'petitioner-Corporation') on 27.08.1979 on regular

basis and he retired as Senior Manager on 30.11.2014 after rendering more than 35 years of service. Respondent No. 1 claimed that he had been paid gratuity amount of Rs. 8,76,871/-, whereas his total gratuity amount comes to Rs. 10,72,958/-, however in terms of provisions of 1972 Act, the said amount was restricted to Rs. 10,00,000/-. It appears that another amount of Rs. 67,271/- more was paid to respondent No. 1 on 25.04.2019 and accordingly, respondent No. 1 claimed that he has been paid total amount of Rs. 9,44,032/-, while the total payable gratuity amount was Rs. 10,00,000/- and, therefore, an amount of Rs. 55,968/- is still outstanding against petitioner-Corporation and he prayed for directions to petitioner-Corporation to pay his dues with interest.

3. The aforesaid claim of respondent No. 1 was contested by petitioner-Corporation on the plea that respondent No. 1 has received gratuity as per Punjab Financial Corporation (Payment of Gratuity to the Employees) Regulations, 1964 and claim application under 1972 Act is not maintainable, therefore, respondent No. 1 was not entitled to any further gratuity amount.

4. On the basis of pleading of the parties, following issues were framed :-

> *"1. Whether the claim application is maintainable or not ?*
> *2. Whether the claimant is entitled to the amount of gratuity, as claimed ? If so, as to what amount ?*
> *3. Whether there existed relationship of employee and employer between the parties ?*
> *4. Relief."*

5. The parties led their respective evidence in support of their claim.

6. Thereafter, Controlling Authority (respondent No. 3 herein), vide order dated 29.04.2022 (Annexure P-1), held as under :-

> *" The A.R. of the respondent argued that the provisions of Payment of Gratuity Act, 1972 are not applicable on the employees to the respondent and the gratuity to the employees of the respondents is payable as per the provisions of Gratuity Regulations of Corporation 1964 and the amount paid as gratuity was rightly paid and therefore, the applicant is not entitled to any balance amount as gratuity.*
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> *On the other hand, the A.R. of the applicant argued that the provisions of the payment of Gratuity Act, 1972 have the override effect on the other enactments and therefore, the provisions of Regulation of 1964 are not applicable in the present case. He also relied upon the case law titled as <u>V.K. Singla Vs. Punjab National Bank and others</u>, Civil Appeal No. 9087 of 2012 Arising out of SLP, Civil No. 14570 of 2012, decided on 14.12.2012 (SC).*
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> *The Hon'ble Supreme Court in this case held as under :-*
>
> > *" Payment of Gratuity Act, 1972, Section 14-Act to override other Regulations-Superior Status has been vested in provision of Act viz-a-viz any other enactment inconsistent therewith."*
>
> *In view of the above decision of the Hon'ble Supreme Court, I hold that the applicant was governed with the provisions of Payment of Gratuity Act, 1972 and not by the Regulation of 1964 and therefore, he is entitled to balance*

gratuity amount of Rs. 55968/-.

The A.R. of the applicant further argued that as per the provisions of the Act, the gratuity was to be paid within one month, but the respondent did not do so and therefore, the applicant is also entitled to interest.

In view of the above arguments and provisions of Section 7 of the Act, I hold that the applicant is also entitled to interest at the rate of 10% per annum from the 13.02.2015 to 25.04.2019 on Rs. 123239/- and from 25.04.2019 to the date of this order on Rs. 55968/-, which is calculated as Rs. 68750/-. This issue is decided accordingly in favour of the applicant.".

7. Being dis-satisfied with the aforesaid order, the petitioner-Corporation filed a statutory appeal under Section 7 (7) of 1972 Act, which was dismissed by the Appellate Authority, vide its order dated 18.08.2022 (Annexure P-2).

8. In the aforementioned circumstances, the instant writ petition has been filed before this Court.

9. I have heard learned counsel for petitioner and perused the paperbook with his able assistance.

10. In *Allahabad Bank v. All India Allahabad Bank Retired Emps. Assn.*, 2010(1) SCT 531, Hon'ble Supreme Court, while considering the provisions of the Payment of Gratuity Act, 1972; has held as under:-

(a) There is no escape from payment of gratuity under the provisions of the Act unless the establishment is granted exemption from the operation of the provisions of the Act by the appropriate Government.

(b) Gratuity payable to an employee on the termination of his employment after rendering continuous service for not less than 5 years and on superannuation or retirement or resignation etc. being a statutory right cannot be taken away except in accordance with the provisions of the Act whereunder an exemption from such payment may be granted only by the appropriate Government under Section 5 of the Act which itself is a conditional power. No exemption could be granted by any Government unless it is established that the employees are in receipt of gratuity or pension benefits which are more favourable than the benefits conferred under the Act.

(c) In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect. Possibly for this reason, Section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act, if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. [*Municipal Corporation Delhi v. Dharam Prakash Sharma* *and Ors.*, 1999 (2) SCT 297]

(d) An establishment is under the statutory obligation to pay gratuity as provided for under Section 4 of the Act which is required to be read along with Section 14 of the Act which says that the provisions of the Act shall have effect notwithstanding anything inconsistent therein contained in any enactment or in any instrument or contract having effect by virtue of any enactment other than this Act.

(e) The provisions of the Act prevail over all other enactment or instrument or contract so far as the payment of gratuity is concerned. The right to receive gratuity under the provisions of the Act cannot be defeated by any instrument or contract.

(f) In *Hindustan Lever and Anr. v. State of Maharashtra and Anr.*, (2004) 9 SCC 438 relying upon the decision in *Purshottam H. Judye v. V.B. Poddar*, (1966) 2 SCR 353 it was held that the word 'instrument' would include award made by the Industrial Tribunal.

(g) Section 2 (d) of the Act defines Controlling Authority as an authority appointed by the appropriate Government under Section 3 of the Act. Under Section 3 the Controlling Authority is made responsible for the administration of the Act and it further provides for appointment of different authorities for different areas. Section 7 deals with for determination of the amount of gratuity. Every person who is eligible for payment of gratuity under the Act is required to send a written application to the employer in the prescribed form for payment of such gratuity. Sub-section (2) of Section 7 provides once the gratuity becomes payable, the employer shall, whether an application has been made or not, 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 so determined and arrange to pay the amount of gratuity to the person to whom the gratuity is payable. The Scheme envisaged under Section 7 of the Act, is that in case of any dispute to the amount of gratuity payable to an employee under the Act or as to the admissibility of any claim of, or in relation to, an employee payable to gratuity etc. the employer is required to deposit with the Controlling Authority the admitted amount payable as gratuity. In case of any dispute parties may make an application to the Controlling Authority for deciding the dispute who 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 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 to the employee.

> Sub-section (7) of Section 7, provides for an appeal against the order of the Controlling Authority. The Act, nowhere confers any jurisdiction upon the Controlling Authority to deal with any issue under sub-section (5) of Section 4 as to whether the terms of gratuity payable under any Award or agreement or contract is more beneficial to employees than the one provided for payment of gratuity under the Act. This Court's order could not have conferred any such jurisdiction upon the Controlling Authority to decide any matter under sub-section (5) of Section 4, since the Parliament in its wisdom had chosen to confer such jurisdiction only upon the appropriate Government and that too for the purposes of considering to grant exemption from the operation of the provisions of the Act.

A perusal of the aforesaid judicial pronouncement would manifest that the provisions of 1972 Act has an overriding effect and gratuity amount payable to an employee in terms of provisions of 1972 Act is a statutory right and exemption from payment may be granted only by appropriate Government under Section 5 of 1972 Act unless it is established that the employees are in receipt of gratuity pension benefits, which are more favourable than the benefits under 1972 Act. In the instant case, the petitioner has failed to show that any exemption has been granted to the petitioner-Corporation in terms of Section 5 of 1972 Act, therefore, it cannot be disputed that the provisions of 1972 Act are applicable to the claim of respondent No. 1.

11. As far as the claim of balance amount of gratuity is concerned, there is no dispute about the fact that respondent No. 1 retired from service on 30.11.2014 and at that relevant time, the maximum limit of gratuity payable under 1972 Act was Rs. 10,00,000/-. Admittedly, respondent No. 1 had been paid an amount of Rs. 9,44,032/- and his claim for balance amount of gratuity i.e. Rs. 55,968/- has been rightly allowed by the Controlling Authority under 1972 Act.

12. As regards grant of interest at the rate of 10% on the delayed payment is concerned, the Central Government has issued Notification dated 01.10.1987, the relevant extract of which reads as under :-

> "*S.O. 873 (E) – In exercise of the powers conferred by sub-section (3A) of Section 7 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies ten per cent per annum as the rate of simple interest payable for the time being by the employer to his employee in cases where the gratuity is not paid within the specified period.*
>
> *2. This notification shall come into force on the date of its publication in the official Gazette.*"

A perusal of above extracted would manifest that the Central Government had specified 10% rate of simple interest per annum by the employer to the employee where gratuity is not paid within the specified period. In *H. Gangahanume Gowda Vs. Karnataka Agro Industries Corpn. Ltd., 2003(1) S.C.T. 937*, it has been held by Hon'ble the Supreme Court that interest on the delayed payment of gratuity beyond the prescribed period i.e. 30 days is statutory and the payment of interest is mandatory; and there is no discretion available with the Court or the authority, except in case the employee was himself responsible for delay and the employer has obtained permission in writing from Controlling Authority for the delayed payment on that ground. Hon'ble the Supreme Court held 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(3A), 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 And Ors. vs. M. Padmanabhan Nayyar [1985 (50) FLR 145]. Earlier there was no provision for payment of interest on the delayed payment of gratuity. Sub-section (3A) was added to Section 7 by an amendment, which came into force with effect from 1st October, 1987. In the case of Charan Singh vs. M/s. Birla Textiles and Another [1988 (57) FLR 543 SC], this aspect was noticed in the following words:

> *"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."*
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> *xxxxx xxxxx*

9. It is clear from what is extracted above from the order of learned Single Judge that interest on delayed payment of gratuity was denied only on the ground that there was doubt whether the appellant was entitled to gratuity, cash equivalent to leave etc., in view of divergent opinion of the courts during the pendency of enquiry. The learned Single Judge having held that the appellant was entitled for payment of gratuity was not right in denying the interest on the delayed payment of gratuity having due regard to Section 7(3A) of the Act. It was not the case of the respondent that the delay in the payment of gratuity was due to the fault of the employee and that it had obtained permission in writing from the controlling authority for the delayed payment on that ground. As noticed above, there is a clear mandate in the provisions of Section 7 to the employer for 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 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 requirements of the proviso to

Section 7(3A), no discretion was left to deny the interest to the appellant on belated payment of gratuity. Unfortunately, the Division Bench of the High Court, having found that the appellant was entitled for interest, declined to interfere with the order of the learned Single Judge as regards the claim of interest on delayed payment of gratuity only on the ground that the discretion exercised by the learned Single Judge could not be said to be arbitrary. In the first place in the light of what is stated above, the learned Single Judge could not refuse the grant of interest exercising discretion as against the mandatory provisions contained in Section 7 of the Act. The Division Bench, in our opinion, committed an error in assuming that the learned Single Judge could exercise the discretion in the matter of awarding interest and that such a discretion exercised was not arbitrary."

13. In view of above discussion, I do not find any merit in the instant writ petition and same is accordingly dismissed.

14. All pending application(s), if any, shall stand closed.

(HARSH BUNGER)
JUDGE

03.10.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No