

203 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-5815-2019

Date of decision : 20.10.2023

Avtar Singh

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Puneet Kumar Bansal, Advocate
for the petitioner.

Mr. T.P.S.Walia, AAG, Punjab.

Mr. Maheshinder Singh Sidhu, Advocate
for respondent No.3.

DEEPAK MANCHANDA, J.(Oral)

Petitioner has filed this writ petition under Article 226 Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to release remaining part of gratuity and leave encashment along with interest @ 18% per annum. Further, the prayer is for issuance of directions to respondent No.5 to release the entire amount of provident fund.

On the last date of hearing i.e. 13.07.2023, the following order was passed:-

“Learned State counsel seeks one more opportunity to comply with the instructions issued vide order dated 28.02.2023.

Perusal of the order dated 28.02.2023 shows that leave encashment amount of 300 days, if any, was directed to be paid to the petitioner within a period of 2 months from the date of aforesaid order.

Respondent No. 2 is directed to file an affidavit explaining reasons as to why the said order has not been complied so far, failing which he shall appear in person before this

*Court to explain the delay.
Adjourned to 20.10.2023.”*

Learned counsel appearing on behalf of respondent No.2 refers to the Additional Affidavit of Uma Shankar Gupta, Director, Directorate of Local Government Punjab on behalf of respondent No.2 dated 11.10.2023, wherein it has been mentioned that pending amount of leave encashment i.e. Rs.1,11,017/- has already been paid to the petitioner vide cheque dated 21.06.2023. Further, respondent No.3 vide its office letter No.4110 dated 03.10.2023 has informed that it has released the remaining part of gratuity of Rs.1,78,347/- to the petitioner vide cheque bearing No.299456 dated 03.10.2023.

The above fact is not disputed by learned counsel for the petitioner, however, he submits that payment of interest @ 18 % per annum on delayed payment is pending and prays that the same be paid in a time bound manner.

The Hon'ble Supreme Court on the issue of payment of interest in the case of “***H.Gangahanume Gowda Vs. Karnataka Agro Industries Corpn.Ltd.***”, 2003 AIR (Supreme Court) 1526, has 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 & 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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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.”

In the light of judgment referred above, where no satisfactory explanation for the delay in disbursing the retrial benefits as well as interest on the same has come-forth, the prayer of the petitioner for payment of interest on delayed payment is accepted. The respondent No.3 is directed to pay the same @ 6% per annum for the period of delay on the amounts as paid to petitioner.

The respondent No.3 is directed to pay interest as aforesaid within three months from the receipt of certified copy of this order.

The writ petition is accordingly disposed of.

(DEEPAK MANCHANDA)
JUDGE

20.10.2023
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No