IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5660-2015 (O/M)
Date of decision : 01.12.2023

Sukhdev Raj ...… Petitioner

Versus

M/s Escorts Ltd. and another ...... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. A.P. Bhandari, Advocate
for the petitioner.

Mr. M.K. Bhandari, Advocate
for respondent No. 1.

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HARSH BUNGER, J.

1. Petitioner (Sukhdev Raj) has filed the instant writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 29.05.2014 (Annexure P-8), passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Controlling Authority') as well as order dated 24.11.2014 (Annexure P-10), passed by the Appellate Authority under the Payment of Gratuity Act-cum-Deputy Labour Commissioner, Faridabad (hereinafter referred to as 'the Appellate Authority'); whereby the claim of the petitioner seeking interest on the delayed payment of gratuity was declined.

2. Briefly, the petitioner filed an application under the Payment of Gratuity Act, 1972 (hereinafter referred to as '1972 Act') before the

concerned Controlling Authority on the plea that he was employed by respondent No. 1-M/s Escorts Limited (hereinafter referred to as 'respondent-Management') with effect from March, 1965 and he retired from service with effect from 30.09.1998. The petitioner claimed that his gratuity was retained by respondent-Management and the same was not paid at the time of his retirement despite several requests made by the petitioner. The petitioner claimed that the aforesaid amount of gratuity was withheld by respondent-Management for more than 12 years in complete violation of provisions of 1972 Act. Petitioner stated that the respondent-Management failed to deposit the gratuity amount before the concerned authority under 1972 Act. The petitioner stated that he was paid gratuity on 04.09.2010, vide cheque No. 874265 dated 28.08.2010, however, he was not paid the interest thereon for the period the amount was withheld, which according to the petitioner was without any reason. As per the petitioner, he submitted a complaint before the Labour Inspector on 26.09.2012, however, of no avail. Accordingly, the petitioner sought determination of the amount of interest on the delayed payment of gratuity amount by respondent-Management.

3. The aforesaid claim of petitioner was contested by respondent-Management by submitting that the petitioner had joined respondent-Management on 08.03.1965 as a Turner 'A' and on 06.12.1967, a charge sheet was filed against the petitioner and after conducting an inquiry, the petitioner was dismissed from the services, vide letter dated 08.04.1968. It was stated by respondent-Management that against the said dismissal, the petitioner raised an industrial dispute, which was referred for adjudication to

the Labour Court. The said industrial dispute came to be decided, vide award dated 08.05.1974 and the order of dismissal of the petitioner was upheld therein. It was further stated that the aforesaid award was challenged by the petitioner before this Court by way of filing a writ petition (CWP-5605-1974), however, the said writ petition was dismissed on 29.04.1976. The petitioner is stated to have preferred an intra-court appeal (LPA-274-1976) against the dismissal of his writ petition, which came to be allowed by a Division Bench of this Court on 29.01.1980 with a direction to respondent-Management to hold a fresh inquiry.

It appears that respondent-Management challenged the Division Bench order of this Court by way of filing SLP-1119-1982, which came to be decided by Hon'ble the Supreme Court, vide its order dated 15.03.1982, wherein the judgment dated 29.04.1976, passed by learned Single Judge in CWP-5605-1974 and judgment dated 29.01.1980, passed by a Division Bench of this Court in LPA-274-1976 as well as Award dated 08.05.1974, were set aside with a direction to Labour Court to take up the reference again. Thereafter, the Labour Court decided the reference afresh by passing an Award dated 27.02.1987, directing reinstatement of the petitioner in service.

4. It is borne out from the paperbook that the aforesaid Award dated 27.02.1987 was again challenged by the petitioner by way of filing CWP-4240-1989, seeking consequential reliefs and on the other hand, respondent-Management challenged the aforesaid award by way of filing CWP-11845-1989. It appears that during the pendency of the aforesaid

litigation before this Court, the petitioner was reinstated in service and he joined his duty on 17.10.1987.

. During the pendency of the aforesaid litigation before this Court, the petitioner attained the age of superannuation and got retired from service of respondent-Company with effect from 30.09.1998, accordingly, the aforesaid writ petitions CWP-4240-1989 and CWP-11845-1989 were disposed of.

5. It is the stand of respondent-Management that it is the petitioner, who did not collect his full and final payment on the plea of pendency of final outcome of the writ petition (CWP-4240-1989). It was stated that the application filed by the petitioner was beyond limitation. The other objections regarding suppression of material facts and regarding maintainability of the writ petition was also raised. It was submitted that the delay was attributable to the petitioner himself as he had failed to submit his no dues/clearance certificate in time. It was denied that respondent-Management had withheld the gratuity for more than 12 years and it was stated that the payment of gratuity was made to the petitioner as per his request and there was no violation of provisions of 1972 Act. The petitioner is stated to have filed an application for payment of gratuity on 25.08.2010, whereupon the payment of gratuity was released to the petitioner and there was no delay in releasing the payment of gratuity to the petitioner on the part of respondent-Management. Accordingly, prayer for dismissal of claim of the petitioner was made.

6. The Controlling Authority, vide its order dated 29.05.2014 (Annexure P-8), rejected the claim of the petitioner by observing as under :-

“ After going through the pleadings of the parties, evidence, documents placed on the record arguments led by the parties and keeping in my view I give my finding as under :-

The applicant failed to submit the no due clearance certificate as well as application (applicant typed) for gratuity on the demand of the respondent. The respondent not withheld the gratuity amount of the applicant. I find that the applicant had himself made statement on Ex.R3 to the extent that his case is pending in High Court and subject to the decision of the court. I also find that the applicant admitted having written Ex.R4 in his own handwriting in which the applicant had admitted about the delay in collecting payment of Gratuity and the delay is on his part on collecting full and final payment. The version of the applicant that Ex.R4 was written under pressure is not believable as he has failed to prove his version of pressure made by the respondent or also failed to produce any documents in this regard. Even the applicant did not led any evidence that he approached the management for release of payment of gratuity after his retirement till the actual receipt of payment i.e. on dt. 4.9.2010. Nothing brought on record by applicant about delay of 2 year and half years and no sufficient cause explained about the delay. As soon as the applicant filed the required documents to the respondent the respondent paid him his (their typed) gratuity. Therefore there is no delay in payment of gratuity to the applicant. This petition is not maintainable hence, this petition is dismissed as having no merit.”

7. Being aggrieved against the aforesaid order dated 29.05.2014 (Annexure P-8), the petitioner preferred an appeal before the Appellate Authority below, however, the said appeal was also dismissed by the Appellate Authority, vide order dated 24.11.2014 (Annexure P-10) by holding as under :-

> *"The appellant appeared as AW-1 and tendered his affidavit Ex.CA along with documents Ex. A-1. On the other hand, the respondent produced Shri A.K. Moudgil Deputy General Manger as RW-1 and proved the documents Ex.R-1 to Ex.R-8. I have perused the evidence led by both the parties and the facts of the present case. The appellant had given an application on 28.6.2010 Ex.R-4 which is an application for clearance. It is given in writing by the appellant that his case was pending in court and now the decision came and this delay to get full and final was from my side. No claim of this delay. This application has been given by the appellant in his hand writing. Similarly, appellant has given application for gratuity which Ex. R-5 and has claimed his gratuity on 25.8.2010 and admitted his signature at point A and point B of Ex. R-5. It is specifically mentioned by the appellant on the back side of Ex. R-5 that "I further declare that I have no further claim regarding gratuity against the Escorts Ltd. Employees Group gratuity fund trust." Thus the appellant has (have typed) himself satisfied when the payment of gratuity was made to him by the respondent and it is admitted by the appellant in Ex. R-4 that delay to get full and final was from his side and he is not claiming anything of this delay. Thus the appellant is estopped*

> *from his own act and conduct and is not entitled to any interest for the period from his retirement till the date of payment of gratuity. The Learned Controlling Authority have given a detailed reasoning in the impugned order, by specifying the provision of Payment of Gratuity Act. The claim petition of the appellant is not maintainable as discussed above.*
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> *Keeping in view the observations and discussion made above and the settled law, the appeal filed by the appellant is dismissed and the impugned order dated 29.05.2014 is upheld. The parties are left to bear their own cost."*

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

9. I have heard learned counsel for respective parties and have perused the paperbook with their able assistance.

10. There is no dispute about the fact that the petitioner had rendered services with respondent-Management and he retired from service with effect from 30.09.1998 upon attaining the age of superannuation. There is also no dispute that the provisions of 1972 Act are applicable to respondent-Management as well as claim of the petitioner. Admittedly, the gratuity amount of the petitioner was paid to him, vide cheque No. 874265, dated 28.08.2010 and the said payment was received by the petitioner on 30.09.2010, therefore, there was an apparent delay in releasing the gratuity amount to the petitioner.

11. It is a well settled by now that 1972 Act has an overriding effect. In ***Allahabad Bank v. All India Allahabad Bank Retired Emps.***

Assn., 2010(1) SCT 531, Hon'ble the 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.*
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> *(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.*
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> *(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 & Ors., 1999(2) SCT 297****].*
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> *(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 & 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 judgment would make it evident that Section 7 (2) of 1972 Act provides that once 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 amount of gratuity is payable. Further Section 7 (3) of 1972 Act provides that 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. There is a specific proviso to sub-section 3 (A) of Section 7, which provides that no such interest shall be payable if the delay in the payment is due to the fault of employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on that ground.

12. The aforesaid provisions of Section 7(3) as well as Section 7(3-A) were considered by Hon'ble the Supreme Court in the case of ***H. Gangahanume Gowda v. Karnataka Agro Industries Corpn. Ltd., 2003(1) SCT 937***, wherein it was 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 in 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. v. 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 v. 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 the 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 provisions 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…"*

A perusal of the aforesaid observations made by Hon'ble the Supreme Court in the case of ***H. Gangahanume Gowda*** (supra) would manifest that the payment of interest is exempted by the proviso to Section 7 (3A) of 1972 Act; only if the delay is on account of fault of the employee and the employer has obtained the permission in writing from the Controlling Authority for the delayed payments.

13. In the instant case, respondent-Management (employer) has not obtained any such permission in writing from the Controlling Authority for the delayed payment, therefore, the petitioner was entitled to interest on the delayed payment of gratuity from respondent-Management (employer) at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits.

14. In view of the above discussion, the instant writ petition is disposed of by setting aside the impugned orders dated 29.05.2014 (Annexure P-8) and 29.11.2014 (Annexure P-10), passed by Authority below and Appellate Authority below respectively. The petitioner shall be entitled to simple interest on the delayed payment of gratuity at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits.

15. The instant writ petition is disposed of in the aforestated terms.

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

(HARSH BUNGER)
JUDGE

01.12.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No