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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CM-13851-CWP-2023 in/and
CWP-20065-2022
Date of Decision: 13.12.2023

The Punjab State Cooperative Bank Ltd.

..... Petitioner

Versus

Deputy Chief Labour Commissioner (C), Chandigarh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Naginder Singh Vashist, Advocate
for the non-applicant/petitioner.

Mr. Padamkant Dwivedi, Advocate
for applicant/respondent No.3.

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HARSH BUNGER J.

CM-13851-CWP-2023:

Prayer in the present application is for placing on record the short reply filed by way of an affidavit of respondent No.3.

For the reasons mentioned in the application, short reply filed by way of an affidavit of respondent No.3 is taken on record, subject to all just exceptions.

Application is accordingly disposed of.

<u>CWP-20065-2022</u>:

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking setting aside of impugned order dated 16.06.2022 (Annexure P-15) and order dated 19.10.2020 (Annexure P-9) passed by Appellate Authority under the Payment of Gratuity Act, 1972 and the Controlling Authority under the Payment of Gratuity Act, 1972, respectively, whereby petitioner-Bank has been directed to release the gratuity of respondent No.3 with interest @ 10% per annum. A further prayer has been made to stay the impugned order dated 16.06.2022 (Annexure P-15) and order dated 19.10.2020 (Annexure P-9) during pendency of the instant writ petition.

2. Briefly, respondent No.3 (Amrit Sagar) joined the services of petitioner-Bank on 11.08.1990 and he retired from the service after attaining the age of superannuation of 58 years on 30.04.2019. Thereafter, respondent No.3 applied for extension of one year in service in terms of the Punjab Government Instructions, as adopted by the Bank, whereupon he was granted extension in service, w.e.f. 01.05.2019 to 30.04.2020. It appears that the Central Government vide Amended Act of 2018 raised the maximum limit of gratuity payable to the employee under the Payment of Gratuity Act, 1972 (hereinafter to be referred as 'the 1972 Act'), from Rs.10 Lacs to Rs.20 Lacs, w.e.f. 29.03.2018. However, the Government of Punjab, Department of Finance, Directorate of Public Enterprises & Disinvestment is stated to have issued a letter dated 13.09.2019 (Annexure P-3) directing all the PSUs/Boards/Apex Cooperative Institutions (including petitioner-Bank) of the State of Punjab to withdraw the implementation of Notification dated 29.03.2018 issued by the Central Government in respect of Section 4(3) of the 1972 Act, vide which the maximum limit of gratuity payable to an

employee was increased from Rs.10 Lacs to Rs.20 Lacs.

3. It is the case of petitioner-Bank that the Punjab Government Instructions dated 13.09.2019 (Annexure P-3) was adopted by the petitioner-Bank by passing a specific resolution and recording the same in Proceedings Book of the Bank; and in terms thereof, the release of gratuity as per the amended provisions of the 1972 Act was prohibited. It is stated that the petitioner-Bank is bound by Instructions of the Punjab Government and gratuity of all employees, who retired/superannuated/resigned or expired after the issuance of Instructions dated 13.09.2019, was released/being released as per the old provisions of the 1972 Act (unamended).

As per the petitioner-Bank, respondent No.3 had completed 29 years of service and his last drawn salary was Rs.1,02,237/-, accordingly as per the provisions of Section 4(2) of the 1972 Act, the payable gratuity of respondent No.3 comes to Rs.17,10,504/-, however, keeping in view the Punjab Government Instructions dated 13.09.2019, petitioner-Bank had paid only an amount of Rs.10 Lacs to respondent No.3 vide release order dated 02.07.2020 (Annexure P-5). It appears that the petitioner-Bank had intimated respondent No.3 regarding credit of Rs.10 Lacs to his Savings Bank Account on 30.06.2020.

4. Respondent No.3 filed an application dated 01.09.2020 (Annexure P-6) under the 1972 Act before respondent No.2 herein, seeking a direction upon the petitioner-Bank for releasing his gratuity, which was contested by the petitioner-Bank; whereupon, the Controlling Authority under the 1972 Act proceeded to pass the order dated 19.10.2020 (Annexure P-9) directing the petitioner-Bank to pay the balance amount of gratuity of Rs.7,10,504/- along with interest (simple) @ 10%, from 01.05.2019, within thirty days of receipt of the order.

5. Being dissatisfied with the aforesaid order dated 19.10.2020 (Annexure P-9), the petitioner-Bank filed a statutory appeal under Section 7(7) of the 1972 Act before the Appellate Authority (respondent No.1 herein), which was also dismissed vide order dated 16.06.2022 (Annexure P-15). Accordingly, petitioner-Bank filed the instant writ petition before this Court.

6. Respondent No.3 has contested the instant writ petition by filing his short reply dated 21.08.2023, wherein the following stand has been taken in paragraph No.7:-

> "*That still further the Managing Director of the petitioner-Bank vide its letter dated 10.02.2023 addressed to all the District Managers of all Central Cooperative Banks in the State of Punjab has directed to extend the benefit of amended Section 4(3) of the Payment of Gratuity Act, 1972 by way of Amendment Act of 2018 thereby raising the maximum limit of gratuity payable under Act from Rs. 10 lacs to Rs. 20 lacs w.e.f. 29.03.2018 to all its employees who have superannuated after 29.03.2018. A copy of such letter dated 10.02.2023 is annexed herewith as **Annexure R-3/3**. The answering respondent having retired from service w.e.f. 30.04.2019 is thus entitled for the maximum amount of gratuity of Rs. 20 lacs and thus the orders under challenge do not suffer from any infirmity whatsoever.*"

7. Learned counsel for respondent No.3 submits that after issuance of letter dated 10.02.2023 (Annexure R-3/3), no dispute remains as regards the entitlement of respondent No.3 to receive the enhanced amount of gratuity as provided vide the Amendment Act of 2018, whereby a maximum limit payable to an employee was increased from Rs.10 Lacs to Rs.20 Lacs w.e.f. 29.03.2018.

8. At this stage, learned counsel for the petitioner submits that

vide letter dated 10.02.2023, the only grievance of petitioner-Bank is in respect of the payable interest @ 10% per annum, as granted to respondent No.3 by the authorities below, and it is prayed that the same may be reduced.

9. Per contra, learned counsel for respondent No.3 has opposed the aforesaid submission made by learned counsel for the petitioner in respect of the interest payable. It is submitted that the authorities below have rightly granted the interest @ 10% per annum in terms of the Central Government Notification dated 01.10.1987 (Annexure R-3/1), 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.*"

10. Learned counsel for respondent No.3 has further referred to the judgment rendered by the Hon'ble Supreme Court in ***"H.Gangahanume Gowda Vs. Karnataka Agro Industries Corpn. Ltd.", 2003(1) S.C.T. 937***, wherein it has been held that interest on the delayed payment of gratuity beyond 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.

11. I have heard learned counsel for the parties and gone through the paper book with their able assistance.

12. As regards the applicability of amended provisions of the 1972 Act upon respondent No.3 is concerned, the same stands clarified vide letter dated 10.02.2023 (Annexure R-3/3) issued by the Punjab State Cooperative Bank Ltd. The relevant extract thereof reads as under:-

"*5. That since the Gratuity Act is applicable to the employees of the Cooperative Bank; hence all those employees who were superannuated after 29.03.2018 are entitled to get enhanced payment of gratuity as per the Amended Act of 2018. The employees who though were superannuated prior to 29.03.2018 but were relived after 29.03.2018 by virtue of extension in service are not entitled to get enhanced payment of gratuity as per the Amended Act of 2018.*

This issue with the concurrence of the Managing Director."

13. In view of the above extract, there is no dispute about the fact that provisions of the 1972 Act (as amended up to date) would be applicable in the case of respondent No.3 and the petitioner-Bank is liable to pay the gratuity in terms of the amended provisions of Section 4(3) of the 1972 Act, whereby the maximum limit of gratuity was enhanced from Rs.10 Lacs to Rs.20 Lacs, w.e.f. 29.03.2018, as concededly, respondent No.3 retired from service on 30.04.2019.

14. Further, as regards the grant of interest at the rate of 10% per annum is concerned, respondent No.3 has placed on record a copy of notification dated 01.10.1987 (Annexure R-3/1) issued by the Central Government, whereby it had been specified that 10% per annum of the rate of simple interest shall be payable by the employer to the employee, in cases where gratuity is not paid within the specified period. The petitioner-Bank has not been able to show any other notification with a varied interest component.

15. Furthermore, in the case of ***H.Gangahanume Gowda*** (supra), it has been held as under:-

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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."*

16. Keeping in view the aforesaid legal position of law, I am of the considered view that respondent No.3 has rightly been granted the gratuity along with Simple Interest @10% and no fault can be found with order dated 16.06.2022 (Annexure P-15) and order dated 19.10.2020 (Annexure P-9) passed by the Authorities below. Accordingly, the instant writ petition, being bereft of any merits, is dismissed.

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

13.12.2023 **(HARSH BUNGER)**
Apurva **JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No