

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**FMA 320 of 2024
+
IA NO. CAN/1/2024**

**Bhatpara Municipality
Vs.
Amiya kumar Roy & Ors.**

**Before: The Hon'ble Justice Arijit Banerjee
 &
 The Hon'ble Justice Prasenjit Biswas**

For the Respondent no. 1
/ Writ petitioner

Mr. Rananeesh Guha Thakurta, Adv.
Ms. Senjuti Sengupta, Adv.
Ms. Dipa Roy, Adv.

For the Appellant

Mr. Shiv Shankar Banerjee, Adv.
Mr. Rajib Mukherjee, Adv.

For Judgment on

03.05.2024

Arijit Banerjee, J. :-

1. A judgment and order dated December 20, 2023, whereby the writ petition of the respondent no. 1 herein being WPA 26053 of 2023 was disposed of by a learned Judge of this Court, is under challenge in this appeal at the instance of the respondent no. 3 in the writ petition, i.e., Bhatpara Municipality.

2. The respondent no. 1 herein was an employee of Bhatpara Municipality. He retired from service on February 28, 2018.

3. In an earlier round of litigation, alleging that the gratuity amount payable to him upon his superannuation has not been released in his favour, the respondent no. 1 had approached a learned Judge of this Court by filing WPA 11710 of 2020. The main prayer in that writ petition was for a writ of and/or in the nature of mandamus directing the respondents to disburse the gratuity amount along with interest within a specified time period. The writ petition was disposed of by the learned Judge by a judgment and order dated August 5, 2021. The operative portion of the said order reads as follows:-

“Gratuity is an entitlement of the employee who has rendered uninterrupted and honourable service to the municipality. The municipality as the employer is not showing any charity by releasing gratuity in favour of its retired employees. As the Municipality has already approached the Government for release of funds, this court is of the opinion that the gratuity amount payable to the petitioner should be released within a period of eight weeks from the date of communication of this order. The question of granting interest is left open.

The quarrel between the State Government and the municipality with regard to release of funds cannot affect the right of a retired

employee to get his gratuity. His livelihood solely depends on the retirement benefits and the inaction of the respondents is oppressive, harassive and violative of the rights of a senior citizen.

The Secretary of the Department of Urban Development and Municipal Affairs shall also ensure that such employees who retired from the Bhatpara Municipality, are not mal-treated and exploited in such manner. Necessary funds be released by the government as per law.”

4. Since the gratuity amount was not paid to the respondent no. 1 herein within the time period indicated in the aforesaid order, the respondent no. 1 filed a contempt application being CPAN 848 of 2021. When the contempt application came up for hearing before the learned Judge, it was submitted by learned Advocate for the Municipality that the gratuity amount had been paid to the retired employee, although belatedly. The learned Judge disposed of the contempt proceedings. Her Ladyship, further observed that “the issue of interest was not a part of the original order of this Court and hence further adjudication on the point of interest is beyond the scope of the contempt application. The petitioner is at liberty to take necessary steps claiming interest on gratuity, in accordance with law”.

5. It appears that thereafter the respondent no. 1 herein made a representation to the Municipality claiming interest on the delayed payment

of gratuity. Such representation was rejected by the Municipality by a memo dated September 12, 2023. The memo reads as follows:-

“In your writ petition and in the contempt application there is no whisper regarding interest claim, which is full knowledge on your part.

After accepting the all dues of Gratuity as per Writ Petition and as per claim, you are estopped by the principle of “Doctrine of Waiver and Estoppel” from further claiming of interest or any claim including gratuity.”

6. Challenging such memo, the respondent no. 1 herein approached a learned Judge of this Court in the present round of litigation, by filing WPA 26053 of 2023. The said writ application was disposed of by the learned Judge by a judgment and order dated December 20, 2023, which is impugned in the present appeal by the Municipality. The operative portion of the impugned order reads as follows:-

“The Municipality vehemently opposes the prayer for interest on account of the delayed payment of gratuity. The Municipality has filed affidavit-in-opposition relying upon the principle of waiver and estoppel. It has been submitted that as the said prayer of the petitioner was not allowed by the Court on the earlier occasion, the petitioner is estopped from raising the issue of payment of interest.

It has to be taken that the petitioner has waived his right to claim interest.

The aforesaid issue fell for consideration before this Court in WPA 26043 of 2023 (**Lakhan Oraon –vs– The State of West Bengal & Ors.**). The aforesaid writ petition was disposed of by this Bench on 20th December, 2023 by setting aside the impugned order of rejection and by passing further direction.

The petitioner herein stands in the same footing as that of Lakhan Oraon (supra) and, accordingly, the same direction is passed herein. The principle of doctrine of waiver and estoppel as relied upon by the Municipality in rejecting the claim of interest cannot be made applicable in the facts and circumstances of the instant case.

The impugned order is set aside. The Municipality is directed to pay interest @10% PA on the gratuity amount from the date on which it fell due till the date of actual payment. If the aforesaid amount is not disbursed within a period of eight weeks from today, the Municipality will be bound to pay to the employee additional interest of 3% PA i.e. 10+3=13% PA on account of delayed payment of gratuity to be calculated on the due amount from the date it became payable till the date of actual payment.”

7. Being aggrieved, the Municipality has come up before us by way of the present appeal.

8. Appearing for the appellant, Mr. Shiv Shankar Banerjee, learned Advocate, submitted that there was no intentional delay on the part of the Municipality in releasing the gratuity amount in favour of the respondent no. 1 / writ petitioner. The Municipality had no funds. Hence, it was unable to pay the gratuity dues of the writ petitioner immediately upon his retirement. Learned Advocate took us through certain correspondence exchanged between the Municipality and the State Government to buttress his point that the Municipality in fact was suffering from severe financial crunch. The funds allocated for payment of retired employees stood exhausted. The Government, upon a query raised by the Municipality, clarified that funds allocated for other purposes could not be diverted for payment of retiral dues of employees of the Municipality. Therefore, Learned Advocate argued, there was no fault on the part of the Municipality. For reasons entirely beyond the control of the Municipality, there was delay in payment of the gratuity dues of the writ petitioner.

9. Learned Advocate drew our attention to Sections 7(3A) and 8 of the Payment of Gratuity Act, 1972. The said Sections read as follows:-

“7(3-A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer 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, as that Government may, by notification specify:

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 this ground.

8. Recovery of gratuity._ If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon [at such rate as the Central Government may, by notification, specify,] from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto :

Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

Provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act”.

10. Learned Advocate also drew our attention to a judgment of a Single Judge of the Gujrat High Court in the case of **Ashvinkumar Ramniklal Jani v. State of Gujarat, reported at 2022 SCC OnLine Guj 575** and submitted that in that case the Court awarded simple interest at the rate of 9 per cent on the amount of gratuity that was paid to the retired employee belatedly. He also drew to our attention the order of a learned Judge of this Court in the case of **Md. Asfar Hossain v. State of West Bengal, reported at AIR ONLINE 2020 CAL 176** to demonstrate that the rate of interest awarded in that case was 8 per cent per annum. In WP(C) No. 23834 of 2013, filed before the High Court of Orissa at Cuttack, a learned Single Judge had awarded 6 per cent interest on the delayed payment of gratuity instead of 10 per cent that had been awarded by the Controlling Authority under the Payment of Gratuity Act. That order was carried in appeal. A Division Bench of the Orissa High Court, by an order dated November 18, 2021, passed in WA No. 322 of 2019 dismissed the appeal, affirming the order of the learned Single Judge. The matter appears to have been carried to the Hon’ble Supreme Court by way of Special Leave to Appeal (C) No. 4468 of 2022. By an order dated February 22, 2024, the Hon’ble Supreme Court

granted 4 weeks time to the petitioner to remove defects as was pointed out in the office report. We are not told what happened thereafter.

11. By citing the aforesaid decisions, learned Advocate for the Municipality tried to argue that although the maximum rate of interest payable under Section 7 (3A) of the Payment of Gratuity Act, 1972, is 10 per cent, in most of the cases, the Courts award a lesser rate of interest. The maximum rate should not be allowed if there has been no intentional delay or laches on the part of the employer in releasing the gratuity amount to the retired employee. The employer should not be penalized if there has been no fault on its part.

12. Learned Advocate for the respondent no. 1/ writ petitioner filed a notification issued by the Central Government under Section 7(3A) of the 1972 Act specifying 10 per cent per annum as the maximum rate of simple interest payable by an employer to a retired employee if the gratuity is not paid within the specified period. He says that the said notification issued on October 1, 1987, is still in force.

13. Learned Advocate for the writ petitioner further submitted that the gratuity amount is paid to a retired employee to enable him and his family to maintain a minimum standard of living after he retires and he stops receiving the monthly salary. It is a social welfare measure. Lack of funds cannot be a legitimate excuse for the employer to withhold payment of gratuity to a retired employee.

14. We have carefully considered the rival contentions of the parties.

15. That a retired employee is entitled to receive his retiral dues including gratuity immediately upon retirement or in any event, within a reasonable time period after his superannuation, is well established. Retiral benefits are meant to enable the retired employee to live a life of dignity. Hence, he must be compensated for the delay in payment of such dues. The compensation is awarded by way of interest.

16. Section 7(3A) of the Payment of Gratuity Act, 1972 provides for payment of interest on delayed payment of gratuity at a simple rate, not exceeding the rate that the Central Government may notify from time to time. Learned Advocate for the respondent/writ petitioner has produced a notification dated October 1, 1987, issued by the Central Government specifying 10 per cent as the rate of interest for the purpose of Section 7(3A) of the 1972 Act. Nothing has been brought on record by the parties to show that there was any subsequent modification of the said notification. Therefore, the rate of 10 per cent per annum would still be in force. We do not find that the learned Judge has committed any error in awarding interest at the rate of 10 per cent on the delayed payment of gratuity.

17. Learned Advocate for the appellant argued that awarding the maximum permissible rate of interest in favour of the respondent/writ petitioner, would work injustice to the appellant in the facts and circumstances of this case. Normally, interest is awarded at a rate less than the maximum of 10 per cent

per annum. We do not find merit in such argument of the appellant. It is entirely within the discretion of a learned Judge as to what rate of interest should be awarded on delayed payment of gratuity subject to the ceiling of 10 per cent per annum. Unless it is shown that such discretion has been exercised arbitrarily, injudiciously or unreasonably, no interference by the appeal Court is warranted.

18. We agree with learned Advocate for the respondent/writ petitioner that financial crunch cannot be a valid ground for the employer to defer payment of gratuity to a retiring employee. It is a question of survival of such employee and his/her family members.

19. Learned Advocate for the respondent/writ petitioner relied on the decision of the Hon'ble Supreme Court in the case of ***The K.C.P. Employees' Association, Madras v. The Management of K.C.P. Ltd. Madras & Ors., reported at 1978 (36) F.L.R. 217***, in support of the proposition that under Section 7(3A) of the Payment of Gratuity Act, the Court has no discretion and is obliged to award interest at the rate of 10 per cent per annum on delayed payment of interest. We have read the decision. It has nothing to do with Payment of Gratuity Act. That case involved of Payment of Bonus Act, 1965. The Hon'ble Supreme Court held that it is imperative to maintain separate balance sheet and profit and loss accounts for every year of accounting. This was relevant for determining the amount of bonus that was

payable to the employees. There was irregularity in the concerned company's balance sheets and profit and loss accounts. The Supreme Court upheld the High Court's direction to the tribunal to reinquire and rectify the balance sheets and profit and loss accounts for the years in question. This decision has no manner of application to the facts of the instance case.

20. The other decision relied upon by learned Advocate for the respondent/writ petitioner is that in the case of ***H. Gangahanume Gowda v. Karnataka Agro Industries Corporation Ltd. reported at 2003 (96) FLR 986***. In that case the Single Judge of the High Court came to the finding that there was delayed payment of gratuity but did not award any interest to the retired employee. The Division Bench of the High Court did not interfere with the order of the learned Single Judge holding that it was within the discretion of the learned Judge as to whether or not to award interest. The matter being carried to the Hon'ble Apex Court, it was held that once the Court comes to a finding that there has indeed been delay in releasing the gratuity amount in favour of a retired employee, the Court has no discretion but to pay interest on such delayed payment. This is the statutory mandate of Section 7 (3A) of the Payment of Gratuity Act. In the facts of that case the Hon'ble Supreme Court directed payment of interest at the rate of 10 per cent per annum. However, nowhere in the decision, the Supreme Court laid down that it is obligatory to pay interest at 10 per cent per annum and not at any lesser rate. Indeed, the language of Section 7(3A),

makes it abundantly clear and there is no ambiguity at all that the rate of interest that may be awarded on delayed payment of gratuity is a rate not exceeding 10 per cent i.e., a rate up to 10 per cent. The Court has a discretion in the matter. This discretion naturally has to be exercised in a judicious manner depending on the facts and circumstances of each case. The said decision, as we read it, is not an authority for the proposition that the Court, whenever it comes to a finding that there has been delay in payment of gratuity to a retired employees, must, award interest at the rate of 10 per cent per annum and nothing less.

21. As regards the direction of the learned Judge for payment of interest at the rate of 13 per cent per annum if the gratuity amount along with simple interest at the rate of 10 per cent is not paid within 8 weeks from the date of the learned Judge's order, we are of the view that in the facts and circumstances of this case the additional 3 per cent ought not to have been granted by the learned Judge. The notification issued by the Central Government specifying 10 per cent per annum as the maximum rate at which interest may be granted on delayed payment of gratuity, is a statutory notification issued in exercise of power conferred on the Central Government by Section 7(3A) of the Payment of Gratuity Act, 1972. Therefore, we are of the view that no rate of interest exceeding 10 per cent per annum should ordinarily be made applicable where there is delay in payment of gratuity to

a retiring employee. We leave the point open as to whether or not the Court has the power to award interest at a rate exceeding 10 per cent per annum. Such point need not be decided in this case.

22. Learned Advocate for the respondent/writ petitioner, referred to another notification dated December 1, 1987, issued by the Central Government in exercise of power conferred on it by Section 8 of the Payment of Gratuity Act, whereby the Central Government specified 15 per cent per annum as the rate of compound interest, recoverable by the Collector along with the amount of gratuity and payable to the person entitled thereto. Learned Advocate argued that in view of the aforesaid, interest at the rate of up to 15 per cent per annum may be awarded on delayed payment of gratuity.

23. We do not think that the aforesaid contention is correct. Section 8 would come into operation only when an application is made to the Controlling Authority under the Payment of Gratuity Act by or on behalf of the aggrieved employee. If such an application is made, the Controlling Authority shall issue a certificate for the amount of gratuity payable under the 1972 Act to the Collector. The Collector shall then recover such amount together with compound interest thereon at the rate of 15 per cent per annum from the date of expiry of the time prescribed for payment of gratuity, as arrears of land revenue and pay the same to the person entitled thereto. There are certain restrictions in Section 8 which are not relevant for the present purpose. In our considered opinion, Section 8 has no relevance in the

present case as admittedly no application has been made to the Controlling Authority.

24. In view of the aforesaid we modify the order under appeal by setting aside the additional 3 per cent interest that the learned Judge directed the appellant to pay in the event of non-payment of the gratuity amount along with interest at the rate of 10 per cent per annum, within 8 weeks from the date of the order of the learned Judge. The appellant shall pay the gratuity dues of the respondent/writ petitioner with simple interest at the rate of 10 per cent per annum from the date when the gratuity amount became due to the respondent / writ petitioner till the date of actual payment, within 8 weeks from date. This will not prevent the respondent/writ petitioner from making an application before the Controlling Authority under Section 8 of the Payment of Gratuity Act, 1972, or take such other action as he may be entitled to in law.

25. With the aforesaid modification of the order impugned, the appeal and the connected application stands disposed of. There will be no order as to costs.

26. Urgent Photostat certified copies of this Judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Arijit Banerjee, J.)

I agree.

(Prasenjit Biswas, J.)