



W.P.No.39079 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	21/12/2023
Pronounced on	11 /6/2024

C O R A M

The Hon'ble Dr.Justice D.NAGARJUN

Writ Petition No.39079 of 2015

V. Sundararajan ... Petitioner

Vs

1. The Chairman cum Managing Director,
Nuclear Power Corporation of India Ltd.,
(A Government of India Enterprise)
Nabhikiya Urja Bhavan,
Anusakhthi Nagar,
Mumbai-400 094.

2. The Station Director,
Madras Atomic Power Station,
Nuclear Power Corporation of India Ltd.,
(A Government of India Enterprises)
Kalpakkam, Kanchipuram District,
Tamil Nadu-603 102.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Mandamus, to direct the second respondent to calculate and pay interest for the gratuity amount paid belatedly .



W.P.No.39079 of 2015

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For petitioner

... M/s.S.T.Varadarajulu

For respondents

... M/s.V.Vijay Shankar

O R D E R

This Writ Petition is filed seeking Mandamus to direct the second respondent to calculate and pay the interest for the gratuity paid belatedly.

2. The facts in brief are that the petitioner was worked as a Helper 'D', ESL, at Madras Atomic Power Station, since 01.10.1972. He retired from service after attaining the age of superannuation on 31.05.2011 after completion of 39 years of service.

3. On 20.08.2010, he went to the house of his superior officer/in-charge to grant leave for LTC. He has refused to grant leave, even after making repeated request. His superior officer/ in-charge by name Thiru.Venkataraman has filed a false complaint against the petitioner alleging that on 20.08.2010 and 21.08.2010, the petitioner has entered his office, abused, assaulted with umbrella and threatened him. A charge memo was issued to the petitioner on 02.09.2010 and enquiry was ordered. When the petitioner was requested for assistance during the course of enquiry and the same was refused. The



W.P.No.39079 of 2015

petitioner has filed Writ Petition in W.P.No.8392 of 2011, and the same was disposed of, directing the respondents to provide assistance. The petitioner has submitted a letter dated 11.07.2011, to permit him to take the assistance of Sri. Ayyalu or an Advocate during the course of enquiry but the same was not considered. The petitioner has filed W.P.No.18439 of 2011 and the same was dismissed. Final order was passed on 06.06.2012 withholding leave encashment.

4. On his retirement from service, the respondent had settled Provident Fund, Gratuity and other retirement benefits. Final orders were passed on completion of enquiry on 06.06.2012, however, his gratuity of Rs.3,30,268/- was settled eight months from thereafter, i.e., 14.02.2013. However, the respondents have not paid interest for belated payments of Gratuity. The respondent however have granted interest for belated settlement of Provident Fund amount. The petitioner has sent representation on 04.09.2013, 19.08.2013, 20.02.2015, 22.04.2015 and 10.07.2015 to pay the interest on belated payment of Gratuity but the same is still pending. Therefore, the petitioner has filed this Writ Petition.

5. Learned counsel for the respondent has filed counter affidavit.



W.P.No.39079 of 2015

Though, many aspects are mentioned in the counter affidavit in respect of enquiry initiated against the petitioner, those aspects are not relevant to the issues before this Court, in which the petitioner is claiming interest for belated payment of Gratuity. In respect of belated payment of the Gratuity is concerned, it is mentioned in the counter affidavit that there was no delay in payment of the gratuity as the appeal submitted by the petitioner against the order of the penalty was confirmed by the Appellate Authority dated 21.08.2012 and thereafter, necessary application forms were sent to the petitioner on 25.10.2012 and duly filled and signed the forms from the petitioner was received by the respondents on 16.11.2012 and gratuity was paid to the petitioner on 14.02.2013. Therefore, it is submitted by the learned counsel for the respondents that the relevant forms which duly filled were received only 16.11.2012 and the payment was made on 14.02.2013 and the delay caused of two months and twenty eight days is not intentional and it is only due to the administrative exigencies, therefore, sought for dismissal of the Writ Petition.

6. Heard both sides and perused the records.

7. Section 7 of the Payment of Gratuity Acts reads as under:



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W.P.No.39079 of 2015

“(1) A person who is eligible for payment of gratuity under this Act or any person authorized, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) 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 gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A) 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



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W.P.No.39079 of 2015

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.]

(4) (a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

(c) The controlling authority shall, 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 a 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 or, as the case may be, such amount as reduced by the amount already deposited by the employer.



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W.P.No.39079 of 2015

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit -

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or] heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely :

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents,

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of



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W.P.No.39079 of 2015

witnesses.

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code, 1860 (45 of 1860). (7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days. Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under subsection (4), or deposits with the appellate authority such amount.]

(8) The appropriate Government or the appellate



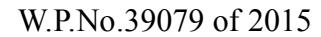
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W.P.No.39079 of 2015

authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority.”

8. As per Section 7 (3)(A) of the Payment of Gratuity Act in case if Gratuity is not paid by the employer within 30 days from the date it becomes payable to the person to whom the gratuity is payable, simple interest not exceeding the rate notified by the central government shall be paid. In the case on hand, gratuity normally should have been paid within thirty days from the date of retirement. However, since, disciplinary proceedings were pending against the petitioner, the respondent have actually deferred payment of gratuity. According to respondent, the petitioner has preferred an appeal aggrieved by the penalty and the same was confirmed by the Appellate Authority only 21.08.2012, subsequently, the necessary application forms were processed and finally all the filled in application forms were received by the respondents on 16.11.2012 that means according to respondents, by 16.11.2012, the petitioner has completed all the formalities and thereby, the gratuity should have been paid by then. Though the respondents have submitted that the delay occurred on account of appeal filed by the petitioner was pending,



9. Since the applications were sent by the petitioner which were received by the respondent on 16.11.2012 and since the gratuity was paid on 13.12.2012, there is a delay of two months and twenty eight days in payment of gratuity. Therefore, considering Section 7(3)(A) of the Payment of Gratuity Act, 1972, the petitioner is entitled for the interest for belated payment of gratuity.

10. In view of the above, the Writ Petition is allowed, directing the respondents to pay the interest for a period two months and twenty eight days for belated payment of gratuity of Rs.3,30,268/- at the rate of 10% per annum, within four weeks from the date of receipt of copy of this order. No costs.

11.06.2024

Index : Yes / No
Speaking/Non-speaking Order
Neutral Citations: Yes/No
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W.P.No.39079 of 2015

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W.P.No.39079 of 2015

Dr.D.NAGARJUN, J.

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Pre-delivery order made in

W.P.No.39079 of 2015

11/6/2024