IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

229 **CWP-10876 of 2016**
Date of Decision: 30.04.2024

Kahan Singh **.... Petitioner**

Versus

Punjab State Civil Supplies Corporation Limited and others
....Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Harpal Singh Saggu, Advocate for the petitioner.

Mr. Anil Kumar Sharma, Advocate for the respondents.

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SANJAY VASHISTH, J.(Oral)

1. By way of present writ petition, petitioner-Kahan Singh has sought quashing of the order dated 23.10.2015 (Annexure P-2) passed by the Appellate Authority under The Payment of Gratuity Act, 1972 (for short, 'the Act of 1972'); whereby period of payment of interest @ 12 % per annum as granted by the Controlling Authority i.e. 01.10.2013 till the time of payment has been reduced to 28.05.2015 till the time of payment.

2. Learned Counsel for the petitioner argues that the petitioner served the department of Punjab State Civil Supplies Corporation Limited (PUNSUP) regularly from 06.10.1997 to 31.08.2013. After rendering the service of about 36 years, the last drawn wages of the petitioner were Rs.28,602/- per month. Therefore, he filed an application for receiving of the gratuity amount of Rs.5,94,038/- under the Act of 1972.

3. Prime contention of the petitioner is that within 30 days of his retirement, employer (respondents herein) are bound to pay the

complete gratuity amount, failing which respondents would be liable to pay the said gratuity amount alongwith interest. Thus, while observing that the petitioner had retired on 31.08.2013 with the last drawn wages as Rs.28,602/- per month, held him entitled for gratuity amount of Rs.5,94,041/-. Controlling Authority further granted the relief to the petitioner that the said amount of Rs.5,94,038/- would entail the interest @ 12% per annum from the date it fell due i.e 01.10.2013.

While saying so, Controlling Authority gave its reasoning that it was the conduct of the Employer which made the employee to contest the claim application. Had the right of the gratuity amount been considered by the Employer itself, there was no occasion to contest the litigation. It is employer-respondent(s), who reached in the appeal and the Appellate Authority vide its order dated 23.10.2015 observed that the employee had retired from service with effect from 31.08.2013, but claimed his gratuity amount before the Controlling Authority on 14.01.2014 i.e. after a period of about four months. While referring to the **Rule 10 of the Payment of Gratuity (Punjab) Rules, 1973,** Appellate Authority observed that the employee has to approach the Controlling Authority for issuance of direction under Section 7(4) of the Act of 1972, within 90 days of the occurrence of the cause.

4. While considering the submission addressed by the Employer, Appellate Authority modified the order, though same is not happily worded and observed that the employee would be entitled for the interest amount only from the date of the passing of the order by the Controlling Authority i.e. 28.05.2015 till the amount was deposited.

5. Learned counsel appearing on behalf of the petitioner submits that the view taken by the Appellate Authority is contrary to the settled proposition of law as laid down by the Hon'ble Apex Court in case titled as ***'H. Gangahanume Gowda VS. Karnataka Agro Industries Corpn. Ltd', 2003 AIR (Supreme Court)1526, Law Finder Doc Id # 378***, and referred to paragraph No. 7.

For the sake of convenience, paragraph No.7 of the aforesaid judgment is reproduced herebelow:

> *"**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."

6. Considering the aforesaid interpretation of law laid down by the Hon'ble Apex Court, this Court is also of the view that it is the duty of the employer to pay the gratuity amount to its employees, who so ever is entitled to receive the same within 30 days of his retirement. Of course, if the Management commits default, it would be held liable to pay the interest amount as prescribed under Section 7(3A) of the Act of 1972, which says as under:

> *"7. **Determination of amount of gratuity***
> *(1)xxx*
> *(2)xxx*
> *(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 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)xxx*
> *(5)xxx*
> *(6)xxx*
> *(7)xxx*
> *(8)xxx"*

7. Learned counsel for the respondents-Employer is not in a position to produce any other law contrary to the view point taken by the Hon'ble Apex Court and same being relied by the petitioner.

However, he proposes a slight modification in the order of the Controlling Authority by saying that the amount of interest cannot exceed the notified rate of interest by the Central Government as provided under Section 7 (3A) of the Act of 1972.

8. Thus, the impugned award dated 23.10.2015 is hereby modified and respondent(s)-Management is directed to pay the gratuity amount to the petitioner alongwith interest @ 12 % per annum from the date it became payable. However, it will be open for the respondent(s)-Management to produce the notification of the Central Government applicable at the time of retirement of the employee for repayment of long term deposits as provided under Section 7(3A) of the Act of 1972, the Authority would ensure that the employee would not be entitled for the rate of interest over the gratuity amount more than what the Central Government had notified and is applicable on the date of the retirement, failing which whatever has been held by the Controlling Authority would sustain in entirety.

Accordingly, the present writ petition is dismissed with the aforesaid modification.

[SANJAY VASHISTH]
JUDGE

April 30, 2024
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Whether speaking/reasoned yes/no
Whether reportable? yes/no