



\$~9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CONT.CAS(C) 93/2020**

NEELAM BHUTANI

..... Petitioner

Through: Mr Vijay Kinger, Advocate.

versus

M/S ANSAL PROPERTIES & INFRASTRUCTURES LTD & ORS

..... Respondents

Through: Ms. Nishtha Khurana, Advocate

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

14.02.2024

%

1. The present contempt petition has been filed alleging willful disobedience of the order dated 13th September, 2019 in *W.P.(C) No. 2456/2019*, wherein the parties had arrived at a settlement after they had been referred to the Delhi High Court Mediation and Conciliation Centre, by virtue of Settlement Agreement dated 24th July, 2019.
2. As per the terms of the said agreement, the petitioner was entitled to payment of Rs. 10,50,000/- by respondent no. 1 company. It was further noted in the Settlement that the said amount of Rs. 10,50,000/- shall be paid to the petitioner herein in five installments.
3. The Court vide order dated 13th September, 2019 had directed that in case there was a delay in making the payment to the petitioner, then the



same shall carry interest at the rate of 9% per annum. The order dated 13th September, 2019 passed in W.P.(C) No. 2456/2019, reads as under:

“1. The present petition preferred under Articles 226 of the Constitution of India assails order dated 16.01.2018 as also the award dated 22.03.2018 passed by the learned Labour Court, Dwarka Courts, Delhi in LIR No.3893/2016 directing the petitioner to pay full back wages to the respondent for the period between 24.10.2011 to 30.11.2014.

2. Vide order dated 22.04.2019, the parties were referred to the Delhi High Court Mediation and Conciliation Centre, where they have arrived at an amicable settlement and have accordingly entered into a settlement agreement dated 24.07.2019. The terms of the settlement as set out in paragraph 7 reads as under:-

“7. The following settlement has been arrived at between the Parties hereto;

a) It is agreed between the Parties that the first party shall pay an amount of Rs.10,50,000/- (Rupees Ten Lakhs Fifty Thousand only) to the second party towards full and final settlement of this very award including interest and leave encashment etc but excluding the claim of gratuity, if any, against the first party.

b) The first party has agreed to pay the aforesaid settlement amount of Rs.10,50,000/- (Rupees Ten Lakhs Fifty Thousand only) to the second party in the following manner:-

(i) Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand only) at the time of signing of the present settlement agreement by way of cheque No.898918 dated 23.07.2019 drawn on Yes Bank, Ashok Marg, C Scheme, Jaipur paid before Samadhan.

(ii) The balance amount of Rs. 8,00,000/- (Rupees Eight Lakhs only) shall be paid in four monthly installment of Rs. 2,00,000/- (Rupees Two Lakhs only) each payable on 24.08.2019, 24.09.2019, 24.10.2019 and finally on 24.11.2019.

c. That in case the first party fails to pay any installment, then the first party shall be liable to pay the entire amount of award of Rs. 12,26,796/- with interest @ 9% subject to deduction of amount already paid to the second party till then.



d. It is also clearly understood and agreed by the parties, the first party/management in particular, that the present settlement agreement relates only to the present petition bearing W.P (C) No. 2456/2019 and shall not include the recovery by the second party against the first party/management in terms of award in LIR No. 4149/2015 execution of which is pending before Deputy Labour Commissioner vide Diary No. 1553 dated 25.10.2018.

e. It is further agreed between the Parties that on receipt of the entire settlement amount of Rs. 10,50,000/- by the second party from the first party in five installments, the second party shall be left with no claim with respect to order dated 16.01.2018 and award dated 22.03.2018 in Old ID No. 127/12 LIR No.3893/16 Unique ID 02402C0224622012 passed by Sh. Umed Singh Grewal, Ld.Presiding Officer, Labour Court, POLC-XVII, Dwarka Delhi.

f. It is further agreed by the second party that she shall not make any claim against the second party towards her leave encashment, medical and LTC, if any from the first party, however, it is agreed by the parties that she shall be entitled to make her claim for her gratuity amount as per rules from the first party.

g. That both parties have agreed that the present W.P. (C) 2456/2019 may be disposed off in terms of the present Settlement Agreement.

3. In terms of the aforesaid settlement, the respondent has agreed to accept a sum of Rs.10,50,000/- in full and final settlement of all her claims except gratuity, which is payable to her in accordance with the payment of Gratuity Act, 1972. The settlement further records that the petitioner would pay the agreed sum of Rs.10,50,000/- to the respondent in five instalments of which the first instalment of Rs.2,50,000/- was payable at the time of signing of the settlement agreement and the remaining Rs.8,00,000/- was to be paid to the respondent in four equal monthly instalments of Rs.2,00,000/- each, payable on 24.08.2019, 24.09.2019, 24.10.2019 and 24.11.2019 respectively.

4. Learned counsel for the parties jointly submit that the respondent has already received a sum of Rs.4,50,000/- in terms of the aforesaid settlement agreement. Learned counsel for the petitioner submits that



the petitioner will abide by the terms of the settlement and will pay the remaining three instalments to the respondent on or before the time set out in the settlement.

5. Learned counsel for the petitioner assures the Court that the gratuity payable to the respondent for her service from 09.01.1978 till the date of her superannuation i.e. 30.11.2014 will be released to her within a period of four months from today.

6. The writ petition is, accordingly, allowed by modifying the impugned award to the above extent. The petitioner will abide by the terms of the settlement and accordingly besides paying the remaining amount of Rs.6,00,000/- in instalments in terms of the settlement agreement dated 24.07.2019, will also within a period of four months pay gratuity to the respondent for her service between 09.01.1978 to 30.11.2014.

7. It is made clear that the respondent will not be entitled to make any further claims of any kind whatsoever against from the petitioner and the impugned award would no longer be enforceable.

8. The writ petition along with the pending application is disposed of in the aforesaid terms.”

4. Learned counsel appearing for the petitioner submits that though certain amounts have been paid to the petitioner, however, more amounts are payable to the petitioner. Thus, he submits that the balance amount payable to the petitioner till April, 2023 is Rs. 5,27,101/-. He relies upon the table of calculations attached with his affidavit, which reads as under:

“xxx xxx xxx

Computation table depicting the gratuity and interest amount, received amount and the balance due against the contemnor

Last withdrawn salary on 01.04.2014

Rs. 37,456/month

Superannuation of deponent on 30.11.2014

• *Gratuity would be calculated as:*

$$\frac{15 \times (37,456) \times 37}{26} = \text{Rs. 7,99,541}$$

• *Interest on gratuity @9% since 30.11.2014 till April 2023* *Rs. 5,99,655*

• *Total amount*

Rs. 13,99,196

• *Amount received*

Rs. 8,72,095



Balance amount

Rs. 5,27,101

Now the total outstanding amount due against contemnor comes is Rs. 5,27,101 till April, 2023.

xxx xxx xxx”

5. Learned counsel appearing for the petitioner also draws the attention of this Court to the order dated 15th June, 2018 in *W.P.(C) No. 4149/2015*, to submit that 10% increment was payable to the petitioner on the salary. He further submits that the last drawn salary of the petitioner was Rs. 37,456/-.

6. Per contra, learned counsel appearing for the respondent submits that the last drawn salary of the petitioner was Rs. 25,374/-. She further submits that the salary of the petitioner has been calculated after granting her the benefit of 10% increment that was to be given per annum. She further submits that the basic difference between the calculation given by the petitioner and the respondent is that the petitioner has calculated the basic salary by also adding the amount payable towards House Rent Allowance (“HRA”) and conveyance allowance. She submits that amount of HRA and conveyance allowance cannot be part of the basic salary. She relies upon Section 2(s) of Payment of Gratuity Act, 1972, which reads as under:

“xxx xxx xxx

2. Definitions.-In this Act unless the context otherwise requires,-

(a).....

(b).....

.....

*(s) “wages” means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance **but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.***



xxx xxx xxx”

(Emphasis Supplied)

7. Perusal of the definition of the wages in the aforesaid Act, clearly shows that wages means all emoluments which are earned by an employee. However, the definition of wages does not include bonus, House Rent Allowance and other allowances. Thus, it is clear that HRA and conveyance allowance cannot be added to be part of the basic salary, as has been done by the petitioner.

8. Learned counsel appearing for the respondent had drawn the attention of this Court to the compliance affidavit filed on behalf of respondent, which reads as under:

“xxx xxx xxx

*4. I state that as per my knowledge and the records obtained by the Company, there is no outstanding amount towards salary along with interest to be paid by the Company to the Petitioner. The Company has in fact paid an excess amount of Rs. 7,049/- (Rupees Seven Thousand Forty Nine only) to the Petitioner herein. A computation table depicting salary and interest paid to the Petitioner is annexed herewith as **EXHIBIT-A**.*

5. Further, as per the records of the company, the gratuity payable to the Petitioner is Rs. 5,41,641/- (Rupees Five Lakhs Forty One Thousand Six Hundred Forty One only), which has been already paid to the Petitioner on 12.09.2022 vide Demand Draft No. 581013 drawn on Punjab National Bank. The same has also been recorded by this Hon'ble Court vide order dated 12.09.2022. The interest on the aforesaid amount is Rs.3,37,507/- (Rupees Three Lakhs Thirty Seven Thousand Five Hundred and Seven only).

*6. Hence, the balance amount after adjusting the amount paid on 12.09.2022 towards principal amount of gratuity and the excess amount paid towards salary is Rs.3,30,454/- (Rupees Three Lakhs Thirty Thousand Four Hundred Fifty Four only). A computation table of gratuity is annexed herewith as **EXHIBIT- B**.*

7. It is stated that the above amount and the computations attached herewith with respect to the outstanding amount and the amount towards gratuity payable to the Petitioner herein is true and correct to the best of my knowledge derived from the Company records and nothing material has been omitted or concealed therefrom.



xxx xxx xxx”

9. Attention of this Court has also been drawn to the computation filed on behalf of the respondent, which shows that interest at the rate of 9% per annum has also been given to the petitioner for the delayed payments. However, the petitioner has calculated the interest of 9% per annum on the full amount of Rs. 12,26,796/-.

10. The computation table filed as *Exhibit-A* filed by respondent is reproduced as hereunder:

EXHIBIT-A
COMPUTATION TABLE DEPICTING SALARY AND INTEREST
PAID TO THE PETITIONER

<i>Payment Dates</i>	<i>Amount Paid (INR)</i>	<i>Balance Remaining (INR)</i>	<i>Delay (No. of days) Calculated from date of last payment)</i>	<i>Interest Accrued on balance (INR) @9%p.a.</i>
23.07.2019	250000	976796	0	
27.08.2019	200000	776796	3	723
05.10.2019	200000	576796	39	7470
09.05.2022	150000	426796	947	134686
27.07.2022	276595	150201	79	8314
28.08.2022	309591	-159390	31	1148
				152341
Total Amount Paid (INR)	(A)	1386186		
Total Amount Payable (INR)		1226796		
Total Interest Payable (INR)		152341		
Total Payable (INR)	(B)	1379137		
Balance (INR)	(B) -(A)	-7049		

11. Learned counsel appearing for the respondent has also drawn the attention of this Court to the computation of Gratuity, which has filed as



Exhibit-B along with the affidavit, which reads as under:

“EXHIBIT – B

COMPUTATION OF GRATUITY ALONG WITH INTEREST

<i>PARTICULARS</i>	<i>AMOUNT (Rs.)</i>
<i>Gratuity Payable:</i> <i>Last Drawn Salary by Petitioner as on 30.11.2014: Rs. 25,374/- *</i> <i>Gratuity would be calculated as:</i> $\frac{15 \times (\text{last drawn salary}) \times \text{No. of years of service}}{26}$ <i>Thus, gratuity payable to the Petitioner:</i> $\frac{15 \times 25374 \times 37}{26}$ $= \text{Rs. } 541637/-$ <i>Hence, the total gratuity payable to the Petitioner (A) =</i>	<i>541637/-</i>
<i>Interest on Gratuity Payable as provided under Section 7(3A) of Payment of Gratuity Act, 1972:</i> <i>Rate of Interest: 8% p.a.</i> <i>Period of Interest: 30.11.2014 (Date of Superannuation) to 12.09.2022 (Payment towards Gratuity)</i> <i>Interest on gratuity payable= 8% x 541637 x 2843 days</i> $= \text{Rs. } 337507/-$ <i>Thus, the total interest payable to the Petitioner (B) =</i>	<i>337507/-</i>
<i>Amount already paid by Respondent towards principal amount of Gratuity vide DD No. 581013 on 12.09.2022 (C):</i>	<i>541641/-</i>
<i>Amount paid in excess towards arrears of salary (D):</i>	<i>7049/-</i>
<i>Hence, total outstanding amount payable to the Petitioner</i> <i>[(A+B)-C-D]</i>	<i>330454/-</i>

- *The said last drawn salary is the Basic Pay, excluding HRA and Conveyance Allowances as per the definition of wages provided under Section 2(s) of Payment of Gratuity Act, 1972.”*

12. This Court also notes that computation of the last drawn salary done by the respondent for Gratuity, which as per the respondent is as under:



conveyance allowance. Secondly, this Court also notes the contention made by learned counsel that the interest of 9% per annum, calculated by the petitioner is on the full amount of Rs. 12,26,796/-.

16. This Court is of the view that in terms of the definition of wages as given in Section 2(s) of the Payment of Gratuity Act, 1972, the component of conveyance allowance and HRA could not have been added by the petitioner while calculating her basic salary. Similarly, the petitioner could not have calculated interest @ 9% per annum, on the full amount of Rs. 12,26,796/-, as the same had to be calculated only on the balance amount payable.

17. Accordingly, this Court holds that substantive compliance of the order dated 13th September, 2019 passed in *W.P.(C) No. 2456/2019*, has been made by the respondent.

18. Consequently, no further orders are required to be passed in the present petition.

19. Accordingly, the present petition is disposed of.

MINI PUSHKARNA, J

FEBRUARY 14, 2024

ak