



* IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment reserved on: 01 August 2024
Judgment pronounced on: 14 August 2024

+ CO.APP. 28/2023

JYOTIRMAY NANDI

.....Appellant

Through: Dr. Amit George and Mr.
Dushyant Kishan Kaul, Advs.

versus

R.K. ARORA OFFICIAL LIQUIDATOR

.....Respondent

Through: Ms. Meenakshi Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

YASHWANT VARMA, J.

1. The appellant who was working as a Senior Production Manager with M/s Kapri International Private Limited, the company in liquidation, impugns the order of the learned Company Judge dated 29 August 2023 and in terms of which a challenge to a rejection of his claims by the **Official Liquidator**¹ has come to be disposed of. The order of the OL disposing of the various claims of the appellant formed the subject matter of **Company Application**² 762/2018 in Co. Pet. 59/1994.

2. As would be evident from the record, the appellant principally raised the following claims before the learned Company Judge:-

¹OL

²Co. Appl.



S. No.	Nature of Claim	Amount [in INR]
1.	Claim of Gratuity	32,44,769.31/-
2.	Retrenchment Damage of 15 days per year u/s 25F/b of the Industrial Disputes Act, 1947	42,450.00/-
3.	Due Bonus - – 1998 to 1995 [Seven Years] at 8.33%	29,715.00/-
4.	Salary and wages [cumulatively]	22,25,977.44 [8,15,040.00/- +21,225.00/- +1,65,555.00/- +10,93,087.00 +1,31,070.44]
5.	Notice pay u/s 25FFF of the Industrial Disputes Act, 1947	12,735.00/-
	GRAND TOTAL	44,69,053.75/-

3. In terms of the judgment rendered and impugned before us, those claims have been disposed of in the following manner:-

S. No.	Nature of Claim	Status
1.	Release of interest on gratuity at 10% simple interest per annum from 8.07.1992 till 1.05.1995 and at 4% from 2.05.1995 till 31.08.2023.	Allowed
2.	Retrenchment compensation	Rejected
3.	Bonus	Rejected
4.	Release of salary amount from January 1992	Allowed
	Release of salary amount from May, 1995	Rejected
5.	Release of interest on unpaid wages/salary at 10% simple interest per annum till 01.05.1995 and thereafter at 4%.	Allowed
6.	Notice pay u/s 25FFF of the Industrial Disputes Act, 1947	Rejected

4. From the facts which emerge from the record, it would appear



that the company in question was directed to be wound up in terms of an order dated 01 May 1995. The OL was thereafter directed to invite claims from eligible entities on 08 May 1995. It is pursuant to the aforesaid notice that the appellant is stated to have submitted claims before the OL. Aggrieved by the rejection of some of the claims and the manner in which others came to be disposed of, the appellant moved the learned Company Judge by initially filing Co. Appl. 983/2011. The said application came to be allowed on 29 April 2011 with a direction to the OL to reconsider the claims of the appellant. According to the appellant, a majority of those claims when resubmitted, again came to be rejected by the OL on 13 November 2017 and an amount of INR 1,90,868.73/- was adjudicated as being payable. Before us, it is admitted that the aforesaid sum has been released. It is in the aforesaid backdrop that Co. Appl. 762/2018 came to be preferred before the learned Company Judge.

5. It becomes pertinent to note that insofar as salary and wages for the period post the passing of the winding up order in May 1995 is concerned, the learned Company Judge has in our opinion rightly come to the conclusion that the same was wholly untenable. This since an order of winding up would undoubtedly amount to a discharge. The OL appears to have also rejected the claim for unpaid salary for the month of January 1992 holding that no proof had been submitted of emoluments for that month being due. The learned Company Judge has set aside this part of the order of the OL.

6. Proceeding then to rule on the claim for retrenchment compensation under Section 25F of the **Industrial Disputes Act**,



1947³, the learned Company Judge has correctly negated the same bearing in mind the fact that the appellant was working as a Senior Production Manager and would thus not be entitled to be viewed as a 'workman'. Insofar as compensation under Section 25FFF of the 1947 Act is concerned, the learned Judge has recorded that since the company had already been admitted to winding up in terms of an order dated 01 May 1995 and much prior thereto the **Board for Industrial and Financial Reconstruction**⁴ had recommended similar action, it cannot be held that there was an illegal closure of the factory. We find no justification to interfere with the aforesaid view as expressed by the learned Company Judge.

7. The principal issues, however, which merit due consideration are the rate of interest that would be payable in respect of gratuity as well as the entitlement of the appellant to bonus.

8. Insofar as the latter is concerned, the learned Company Judge appears to have accepted the report of the OL that since the salary drawn by the appellant was above INR 2500/-, he would be disentitled to benefits under the **Payment of Bonus Act, 1965**⁵.

9. Dealing with the issue of interest on gratuity, although the learned Company Judge has directed release of interest @ 10% per annum from 08 July 1972 to 01 May 1995, the appellant has been awarded interest @ 4% for the period 02 May 1995 till 31 August 2023. The award of interest @ 4% appears to have been guided by the provisions made in Rule 179 of the **Companies (Court) Rules, 1959**⁶.

³1947 Act

⁴BIFR

⁵Bonus Act

⁶1959 Rules



10. The eligibility of the appellant to benefits under the Bonus Act clearly proceeds on a failure to bear in mind the following statutory scheme which prevails. Before us, it was not disputed that the last drawn salary of the appellant was INR 4245/-. Section 2(13) of the Bonus Act while defining the expression ‘employee’ had at the relevant time provided that it would cover a person employed on a salary or wage not exceeding INR 3500/-. Section 12 of the Bonus Act as it stood at the relevant time embodied a limit of INR 2500/-.

11. For purposes of clarity, we deem it appropriate to place a Table below and which captures how Section 2(13) of the Bonus Act came to be amended from time to time:-

Section 2(13) (The Payment of Bonus Act, 1965)	Amendment, 1985	Amendment, 1995	Amendment, 2015
“employee” means any person (other than an apprentice) employed on a salary or wage not exceeding [twenty-one thousand rupees] per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied;	In Section 2 of the principal Act, in clause (13), for the words “ <i>one thousand and six hundred rupees</i> ”, the words “ <i>two thousand and five hundred rupees</i> ” shall be substituted.	<u>In Section 2 of the Payment of Bonus Act, 1965 (hereinafter referred to as the principal Act) in clause (13), for the words “two thousand and five hundred rupees”, the words “three thousand and five hundred rupees” shall be substituted.</u>	In Section 2 of the Payment of Bonus Act, 1965 (hereinafter referred to as the principal Act), in clause (13), for the words “ <i>ten thousand rupees</i> ”, the words “ <i>twenty-one thousand rupees</i> ” shall be substituted.

12. The various amendments introduced in Section 12 from time to time and which too would have a bearing on the issues which arise in



this appeal are placed in a tabular form hereinbelow:-

Section 12 (The Payment of Bonus Act, 1965)	Amendment of 1985	2nd Amendment Act, 1985	Amendment Act, 1995	Amendment Act, 2015
Where the salary or wage of an employee exceeds [seven thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher] per mensem, the bonus payable to such employee under section 10 or, as the case may be, under section 11, shall be calculated as if his salary or wage were [seven thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher] per mensem.] [Explanation.— For the	The omission of Section 12 of the Payment of Bonus Act, 1965 (21 of 1965) (hereinafter referred to as the principal Act) by Section 2 of the Payment of Bonus (Amendment) Act, 1985 (30 of 1985) shall have effect and shall be deemed always to have had effect in respect of bonus payable to any employee under Section 10 or Section 11 of the principal Act for the accounting year commencing on any day in the year 1984 and every subsequent accounting year. <i>Explanation.</i> —For the purposes of this section, the expressions “employee” and “accounting year” shall have the same meanings as in the principal Act. (Section 12 to	“Calculation of bonus with respect to certain employees.— Where the salary or wage of an employee exceeds one thousand and six hundred rupees per mensem, the bonus payable to such employee under Section 10 or, as the case may be, under Section 11, shall be calculated as if his salary or wage were one thousand and six hundred rupees per mensem”. (Insertion of new Section 12)	In Section 12 of the principal Act, for the words “one thousand and six hundred rupees” at both the places where they occur, the words “two thousand and five hundred rupees” shall be substituted.	(i) for the words “three thousand and five hundred rupees” at both the places where they occur, the words “seven thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher” shall respectively be substituted; (ii) the following Explanation shall be inserted at the end, namely— ‘Explanation.— For the purposes of this section, the expression “scheduled employment” shall have the same meaning as assigned to it in clause (g) of Section 2 of the Minimum Wages Act, 1948



2024/DHC/16482-DB



purposes of this section, the expression “scheduled employment” shall have the same meaning as assigned to it in clause (g) of section 2 of the Minimum Wages Act, 1948 (11 of 1948).	be omitted)			
---	-------------	--	--	--

13. Section 10 of the Bonus Act as it exists on the statute book presently and which has seen no significant amendments reads as follows: -

“10. Payment of minimum bonus.—Subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year:

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this section shall have effect in relation to such employee as if for the words “one hundred rupees”, the words “sixty rupees” were *substituted*.”

14. As noticed hereinabove, Section 12 in its present form reads thus: -

“12. Calculation of bonus with respect to certain employees. Where the salary or wage of an employee exceeds [seven thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher] per mensem, the bonus payable to such employee under Section 10 or, as the case may be, under Section 11, shall be calculated as if his salary or wage were [seven thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government,



whichever is higher] per mensem.]

[*Explanation.*—For the purposes of this section, the expression “scheduled employment” shall have the same meaning as assigned to it in clause (g) of Section 2 of the Minimum Wages Act, 1948 (11 of 1948).]

15. We additionally clarify that undisputedly the figure reflected in the text of Section 12 at the relevant time read as INR 2500/- as opposed to the expression *“seven thousand rupees or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher”* which exists today.

16. A conjoint reading of Sections 10 and 12 of the Bonus Act leads us to the inevitable conclusion that while the former speaks of minimum bonus which is liable to be paid to every employee, the latter clearly deals with cases where the salary or wage of an employee may exceed the limits prescribed in Section 2(13). It becomes pertinent to note that Section 10 deals with the subject of payment of minimum bonus to every employee. The word ‘employee’ appearing in that provision would have to be necessarily construed in light of Section 2(13) which defines that expression. The payment of minimum bonus in terms of Section 10 would have thus covered all employees whose salary or wages had not exceeded INR 2500/-.

17. Section 12, on the other hand, proceeds on the basis of the salary or wages of an employee exceeding the monetary limits which may otherwise appear in the Bonus Act. It is pertinent to note that the said provision proceeds on the premise that the salary or wages of an employee exceeded INR 2500/- which was the applicable limit at the relevant time. However, the learned Company Judge clearly appears to have ignored the legal fiction which stands embodied in Section 12



when it employs the phrase “*shall be calculated as if his/her salary or wage were.....*”. The appellant would have thus been entitled to bonus notwithstanding his last drawn salary exceeding the monetary benchmark prescribed in Section 2(13). This since, Section 12 proceeds on the basis that the salary of the employee exceeds the maximum prescribed by virtue of Section 2(13) and in which case while the employee would not be entitled to minimum bonus as per Section 10, the salary of that employee would be deemed to be that stipulated in Section 12 and a minimum bonus payment computed accordingly. Therefore, and in our considered opinion, the learned Company Judge has clearly erred in depriving the appellant of the benefits which would flow from the Bonus Act.

18. Insofar as the issue of interest on gratuity is concerned, the learned Company Judge appears to have rested her decision to restrict interest @ 4% in light of Rule 179 of the 1959 Rules. That Rule reads as under:-

“Payment of subsequent interest-In the event of there being a surplus after payment in full of all the claims admitted to proof, creditors whose proofs have been admitted shall be paid interest from the date of the winding up order or of the resolution as the case may be, up to the date of the declaration of the final dividend, at a rate not exceeding 4 per cent per annum, on the admitted amount of the claim, after adjusting against the said amount the dividends declared as on the date of the declaration of each dividend. ”

19. As is manifest from the above, Rule 179 firstly deals with the payment of interest where the OL be left with “*surplus*” and “*after payment in full of all the claims admitted to proof*”. It in that contingency that additional interest may be paid for the period between the date of passing of the winding up order and the declaration of final dividend. We note at the outset that the claim of the appellant was



clearly not one relating to the payment of additional interest on sums still held by the OL after declaration of final dividend and settlement of claims in full.

20. More importantly, the learned Company Judge has evidently failed to notice the following significant provisions which are made in Rule 156. Rule 156 is reproduced hereinbelow:-

“**Interest** - On any debt or certain sum payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the winding-up order, or the resolution as the case may be, the creditor may prove for interest at a rate not exceeding four per cent per annum up to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of demand until the time of payment. ”

21. The said provision while capping interest @ 4% per annum is subject to the exception where interest “*is not reserved or agreed for*”. It is thus apparent that the prescription of interest not exceeding 4% per annum would be applicable only in cases where an interest in respect of a debt or any other sum is either not prescribed or had not been agreed upon. When Rule 156 speaks of a rate of interest reserved or agreed upon, it is clearly intended to encompass not merely a contractually agreed rate of interest but any other rate that may be stipulated and may govern. In our considered opinion, therefore, the cap of 4% would clearly not be applicable to a claim of gratuity and which would have to follow and abide by Section 7(3A) and 14 of the **Payment of Gratuity Act, 1972**⁷. This since the rate of interest prescribed therein would be deemed to be “reserved”.

⁷Gratuity Act



22. We were informed that the Union Government in terms of Section 7(3A) of the Gratuity Act had by a Notification dated 01 October 1987 declared the interest rate to be 10% simple interest per annum on delayed payment of gratuity.

23. The respondents did not question the assertion of the appellant that gratuity amounting to INR 46,531.73/- which was admittedly due and payable to the appellant was released with undue delay. The learned Company Judge had in fact awarded interest on delayed payment of gratuity @ 10% up to the date of the winding up order. That rate, however, was denied for the period post the company being admitted to winding up. The aforesaid view as taken is clearly rendered unsustainable when one bears in mind the special and distinct interest regime which stands protected and preserved by virtue of Rule 156.

24. In our considered opinion, the statutory rate of interest which stands reserved in terms of the Gratuity Act would clearly have overriding effect over any contrary prescription that may appear in the 1959 Rules. We do so hold bearing in mind the legislative philosophy underlining the Gratuity Act and other cognate legislations and which was lucidly explained by the Supreme Court in **Sudhir Chandra Sarkar vs. Tata Iron and Steel Co. Ltd. and Ors**⁸ as follows: -

“ 15. One more difficulty the High Court experienced in the way of the plaintiff maintaining the suit and recovering the amount of gratuity was that under Rule 10 gratuity was payable at the absolute discretion of the Company and cannot be claimed as a matter of right. Undoubtedly, Rule 10 confers discretion on the Company to pay the gratuity even if the same is earned by satisfying the conditions subject to which gratuity becomes payable. Rule 10 provides that “all retiring gratuities granted under the rules shall be at the absolute discretion of the Company irrespective of whether an employee has or has not performed all or any of the conditions set

⁸(1984) 3 SCC 369



out in the rules and no employee howsoever otherwise eligible shall be deemed to be entitled as of right to any payment under the rules”. Such absolute discretion is wholly destructive of the character of gratuity as a retiral benefit. It is satisfactorily established and the High Court has so ruled that payment of gratuity was a condition of service albeit implied condition of service which part does not stand scrutiny. 1946 Act was amended specifically in 1956 by Amending Act 36 of 1956 by which power was conferred upon the Certifying Officer or Appellate Authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders. It is not clear whether the Rule 10 which appears to have been framed in the heyday of laissez faire has been recast, modified or amended to bring the same in conformity with the modern notions of social justice and Part IV of the Constitution. Assuming it is not done, the Court while interpreting and enforcing the relevant rules will have to bear in mind the concept of gratuity. The fundamental principle underlying gratuity is that it is a retirement benefit for long service as a provision for old age. Demands of social security and social justice made it necessary to provide for payment of gratuity. On the enactment of Payment of Gratuity Act, 1972 a statutory liability was cast on the employer to pay gratuity.

16. Pension and gratuity coupled with contributory provident fund are well-recognised retiral benefits. These retiral benefits are now governed by various statutes such as the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, the Payment of Gratuity Act, 1972. These statutes were legislative responses to the developing notions of fair and humane conditions of work, being the promise of Part IV of the Constitution. Article 37 provides that “the provisions contained in Part IV — Directive Principles of State Policy, shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws”. Article 41 provides that “the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want”. Article 43 obligates the State “to secure, by suitable legislation to all workers, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure. . .”. The State discharged its obligation by enacting these laws. But much before the State enacted relevant legislation, the trade unions either by collective bargaining or by statutory adjudication acquired certain benefits, gratuity being one of them. Pension and gratuity are both retiral benefits ensuring that the workman who has spent his useful span of life in rendering service and who never got a living wage, which would have enabled him to save for a rainy day, should not be reduced to destitution and penury in his old age. As a return of long service he should be assured social



security to some extent in the form of either pension, gratuity or provident fund whichever retiral benefit is operative in the industrial establishment. It must not be forgotten that it is not a gratuitous payment, it has to be earned by long and continuous service.

17. Can such social security measure be denuded of its efficacy and enforcement by so interpreting the relevant rules that the workman could be denied the same at the absolute discretion of the employer notwithstanding the fact that he or she has earned the same by long continuous service? If Rule 10 is interpreted as has been done by the High Court, such would be the stark albeit unpalatable outcome. It is therefore necessary to take a leaf out of history bearing on the question of retiral benefits like pension to which gratuity is equated. In *Burhanpur Tapti Mills Ltd. v. Burhanpur Tapti Mills Mazdoor Sangh* [AIR 1965 SC 839 : (1965) 1 LLJ 453 : 27 FJR 147] this Court observed that: "a scheme of gratuity and a scheme of pension have much in common. Gratuity is a lump sum payment while pension is a period payment of a stated sum". Undoubtedly both have to be earned by long and continuous service."

25. On an overall conspectus of the aforesaid, we find ourselves unable to sustain the order impugned insofar as it rules against the appellant on the claims flowing from the Bonus Act as well as the aspect of interest and which would be governed by the provisions of the Gratuity Act as explained hereinabove.

26. We consequently allow the present appeal and set aside the judgment and order dated 29 August 2023 to the aforesaid extent. The OL is called upon to re-compute the claim of the appellant bearing in mind the observations appearing hereinabove with due expedition.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST, 14 2024/RW