

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 20826 of 2019

M/s. Garden Reach Shipbuilders & Engineers Ltd.
Vs.
Deputy Chief Labour Commissioner (Central) & Ors.

For the Petitioner : Mr. Ranjay De, Sr. Adv.
Mr. Basabjit Banerjee,
Mr. Adityajit Abel Bose.

For the Respondent Nos. : Mr. Rajkumar Gaurisaria.
1, 2 & 3

Hearing concluded on : 27.02.2025

Judgment on : 21.03.2025

SHAMPA DUTT (PAUL), J. :

1. The present writ application has been preferred praying for setting aside of an order dated 31.07.2019 forwarded vide memo dated 26.09.2019 passed by the Respondent No.1/

Deputy Chief Labour Commissioner (Central), Kolkata and Appellate Authority under Payment of Gratuity Act, 1972.

2. The petitioner's case is that it is a Government of India undertaking.
3. The Respondent No. 4 herein **joined** the petitioner company on **15.05.1981** and he retired from the service of the company with effect from **31.08.2017** on reaching the age of **superannuation**.
4. At the time of superannuation, his designation was Manager and he retired after serving the company for **a period of 36 years 3 months 17 days**.
5. As per Sub-Section 3 of Section 4 of the Payment of Gratuity Act, 1972 (hereinafter referred to as the said Act of 1972), the maximum statutory limit of gratuity at the relevant point of time was Rs. 10,00,000/- (Rupees ten lakhs) only. Accordingly, a sum of Rs. 10,00,000/- (Rupees ten lakhs) only was transferred to his account through NEFT.
6. The Government of India, Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises issued an Office Memorandum No. W-02/0028/2017-DPE(WC)-GL-XIII/17 dated 03.08.2017 for "Pay Revision of Board level and below Board level Executives and Non-Unionized Supervisors of Central Public Sector Enterprises (CPSEs) w.e.f. 01.01.2017".

7. In the 345th Meeting of the Board of Directors of the Petitioner Company held on **14.11.2017**, the **approval** was obtained for implementation of pay revision for the Officers in terms of the said Office Memorandum dated 03.08.2017.
8. By an order dated **09.01.2018**, the Deputy Secretary to the Government of India, Ministry of Defense, Department of Defense Production informed the petitioner company that the Hon'ble President of India has been pleased to direct the implementation of the pay revision in accordance with the said Office Memorandum dated 03.08.2017 in connection with the petitioner company.
9. **By a Circular being No. HR/P & RR/30/18 dated 30.01.2018, the management of the petitioner company announced the implementation of the pay revision for the payment with salary for the month of January, 2018.** It was informed in the said Circular that the arrears would be disbursed subsequently with due notice.
10. It is further stated by the petitioner that although the pay revision as per the Office Memorandum dated 03.08.2017 as indicated hereinabove was to be implemented with effect from 01.01.2017 but there was no provision for paying interest on the arrears to be receivable by the beneficiaries on any account in any manner what so ever. Therefore, in the circular dated

30.01.2018, there was no provision for payment of interest on any amount to be received by the officers of the Petitioner Company.

11. After issuance of the said Circular dated 30.01.2018, the management of the petitioner company started giving effect to the pay revision from the month of January, 2018 but the arrear payments on any account were yet to be disbursed. In the mean time on 29.03.2018 Ministry of Law and Justice, Government of India published that the Payment of Gratuity (Amendment) Act, 2018 (No. 12 of 2018), being an Act of Parliament which received the assent of the President of India on 28.03.2018.
12. The Ministry of Labour & Employment by a Gazette Notification being No. S.O.1419(E) dated 29.03.2018 made it known to the Citizen of India that the Central Government had appointed **29.03.2018** as the date on which the said Payment of Gratuity (Amendment) Act, 2018 shall come into force.
13. By virtue of the said amendment [Notification being No. S.O. 1420(E) dated 29.03.2018], the ceiling for gratuity payment has been increased to Rs. 20,00,000/- (Rupees twenty lakhs) only from Rs. 10,00,000/- (Rupees ten lakhs) only.
14. The petitioner further states that after the increase in the amount to be paid as gratuity under the Payment of Gratuity

Act, 1972, Government of India, Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises issued another Office Memorandum dated **10.07.2018** in connection with the pay revision vide the said Office Memorandum dated 03.08.2017 vis-à-vis the implementation of **the increase in gratuity amount with a retrospective effect from 01.01.2017**. The aspect of implementation of the amendment in the Payment of Gratuity Act, 1972 with a retrospective effect from 01.01.2017 has been clarified to the following effect:-

“2. This Department has received various representations from different stakeholders seeking clarification on the effective date of the enhancement of ceiling of Gratuity. Accordingly, the issue has been considered & clarified as follows:-

*a) The payment of Gratuity under DPE guidelines dated 03.08.2017, **is subject to affordability** of the CPSEs concerned effective for the period from 01.01.2017 till 28.03.2018, in respect of Executives and Non-Unionized Supervisors of CPSES on IDA pay pattern, where, pay has been revised w.e.f. 01.01.2017.*

b) Whereas, on and after 29.03.2018, the payment of gratuity up to the ceiling amount of Rs. 20 lakhs is mandatory for all the CPSEs irrespective of their affordability as it is a statutory provision in light of the amendment in the Payment of Gratuity

Act, 1972. This provision is applicable to all employee of all CPSES.

c) Further, the Government decision on the basis of the recommendations of the 7th Central Pay commission (CPC), regarding raising the Gratuity ceiling from Rs. 10 lakhs to Rs. 20 lakhs w.e.f. 01.01.2016 is not applicable to the employees of CPSEs.”

- 15.** The Board of Directors of the petitioner company in its 349th meeting held on **22.06.2018** resolved to implement the amendment of Payment of Gratuity Act, 1972 to all employees **with effect from 01.01.2017.**
- 16.** In view of the decision taken by the Board of Directors of the Petitioner Company in its 349th meeting dated 22.06.2018, the management of the company on **31.07.2018 issued a Circular about implementation of increase in ceiling of gratuity** to the tune of Rs. 20,00,000/- (Rupees twenty lakhs) only with effect from 01.01.2017.
- 17.** By a circular No. HR/P & RR/181/18 dated **19.09.2018**, the management of the petitioner company **notified about part payment of arrear amount** on account of revision of scale of pay to all the employees effective from 01.01.2017.
- 18.** **On 28.09.2018**, the Respondent No. 4 along with other 22 ex-officers of the petitioner company retired/resigned/separated in

between 01.01.2017 and 31.12.2017 were **paid arrear amount of gratuity** effective from 01.01.2017. So far as the Respondent No.4 is concerned, an amount of Rs. 8,87,320/- was transferred to his bank account after statutory deductions on account of arrear payment of gratuity effective from 01.01.2017.

19. That all on a sudden the Respondent No. 4 prior to implementation of the decision of the Board of Directors dated 22.06.2018 regarding balance portion of gratuity payment with a retrospective effect from 01.01.2017, applied for "Rs. 10 lakh + interest (10%) since 02 Mar, 2018" before the management in FORM-I under the Payment of Gratuity (Central) Rules. The said FORM-I was dated 17.07.2018.
20. It is further stated that the management received a notice dated 27.08.2018 from the Respondent No. 2 in connection with the claim preferred by Sri Amarnath De, being the Respondent No. 4 under the Payment of Gratuity Act, 1972 **regarding payment of interest** alleging so called delay in making payment of balance portion of gratuity with effect from 01.01.2017. The case was registered as 48(33)/2018-E-2.
21. The petitioner company by a letter dated 13.11.2018 denied any intentional delay or laches on the part of the petitioner in payment of the gratuity.

- 22.** The respondent no. 2 by an order dated 29.11.2018 rejected the claim of the respondent no. 4 held as follows:-

"The Opposite Party has been paid of gratuity of Rs. 10 lakhs at the time of retirement and again further has been paid another of Rs. 10 lakhs in the month of Sept. 2018. The applicant made a claim for payment of interest as per law for delay in the payment of said amount. w.e.f. 1st February 2018 to 28th Sept. 2018.

After considering all the averment and arguments of the parties, I have arrived at a conclusion that the applicant is not entitled interest for delay payment of gratuity from 01.02.2018 to 28.09.2018."

- 23.** The respondent no. 4 then filed an appeal challenging the said order. The appellate authority vide the order dated 31.07.2019 and Memo dated 26.09.2019 both under challenge allowed the prayer of the respondent no. 4 regarding the interest, on the findings :-

"In view of the above discussions, I set aside the order passed by the Controlling Authority and allow this appeal filed by the appellant. The respondent employer is directed to make payment of interest @8% from 01.03.2018 i.e. one month from the date of issue of circular for purpose of preparing the documents for calculation of gratuity etc. to 28.09.2018 when gratuity enhancement of Rs. 10 lakhs was actually disbursed in revised ceiling. The amount shall be paid within one month of from the date of receipt of this order failing which the respondent employer shall pay interest thereafter till it is actually disbursed."

24. The relevant findings of the appellate authority is as follows:-

*“.....The said circular clearly envisages that an employee serving entitled to receive gratuity at a revised ceiling of Rs. 20 Lakhs **w.e.f. 01.01.2017**. Interestingly, the management has disbursed the gratuity immediately **after his retirement on 31.08.2017** to the amount of Rs. 10 lakhs. **Later, on the management revised his payment as per the circular dt. 30.01.2018** for which the appellant was supposed to receive his arrear salary alongwith arrear gratuity in revised ceiling. But it seems the respondent employer did not disburse the balance gratuity of Rs 10 Lakhs till 28th September 2018 and it was paid on 28.9.2018. The employee claimed interest from the date of implementation of gratuity on revised ceiling *w.e.f.* 31.1.2018 to 28.9.2018. The Respondent employer vehemently opposed the claim for payment of interest on the ground that the revision of payment of gratuity ceiling has been made under the Payment of Gratuity Act *w.e.f.* 29.3.2018 and thereafter they have disbursed the gratuity after following due official procedure as such the delay has occurred due to no lapse on their part.....”*

25. Learned counsel for the petitioner has filed a short note of argument along with the following judgments relied upon:-

- i. *Ananta Barui vs The State of West Bengal & Ors., 2014 SCC OnLine Cal 22767.*
- ii. *State of Odisha & Anr. vs Satish Kumar Ishwardas Gajbhiye & Ors., (2021) 17 SCC 90.*

26. It is seen that the orders of the controlling authority and the appellate authority are not reasoned orders. They are also without any findings.

27. From the materials on record, it is evident that:-

- i. The private respondent retired from service on 01.09.2017 and duly received gratuity as applicable.
- ii. The Payment of Gratuity (Amendment) Act, 2018 increased the gratuity limit from Rs.10 lakhs to Rs. 20 lakhs.
- iii. Vide office memorandum dated 03.08.2017, there was pay revision of CPSEs which also provided for raising the gratuity amount w.e.f. 01.01.2017, which was also accepted by Board resolution of company dated 22.06.2018/Gazette notification dated 29.03.2018. The management vide circular dated **31.07.2018 gave effect to the implementation of increase in ceiling of gratuity w.e.f. 01.01.2017.**
- iv. **The private respondent then received the arrear of gratuity as per circular dated 30.01.2018, which gave effect to the pay revision from the month of January, 2018, with a retrospective effect from 01.01.2017.**
- v. The amendment came into effect on 29.03.2018 and the DPE guidelines on 03.08.2017.

- vi. Resolution of the Board of Directors was taken on 22.06.2018 and the connected circular was issued on 31.07.2018 extending the benefit with retrospective effect.
 - vii. On 19.09.2018 part payment of arrears was notified vide a circular.
 - viii. The arrear of gratuity was paid to the private respondent on 28th September, 2018.
- 28.** Thus the claim for interest by the private respondent from 01.02.2018 to 28.09.2018 is without any basis, as there was no wilful and/or intentional delay on the part of the petitioners herein, who on following the due process/rules by issuing necessary circulars, resolutions etc. paid the arrears to the private respondent at the earliest.
- 29.** Accordingly, the order challenged dated 31.07.2019 passed by the Respondent No.1/Deputy Chief Labour Commissioner (Central), Kolkata and Appellate Authority herein being not in accordance with law and against the principle of natural justice **is set aside.**
- 30.** The order dated 29.11.2018 passed by the Controlling Authority/Respondent No. 2 **is hereby affirmed.**
- 31.** The private respondent is thus not entitled to any interest as claimed.

- 32. WPA 20826 of 2019 is accordingly disposed of.**
- 33.** All connected applications, if any, stand disposed of.
- 34.** Interim order, if any, stands vacated.
- 35.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]