IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

RESERVED ON : 24.04.2025
PRONOUNCED ON : 29.05.2025

PRESENT:

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P.No. 17145 of 2021

The Employer,
M/s. KLU Industries
M/s. KSM Industries
R.S.No.22/3, Mangalam Road,
Uruvaiyar, Villanur,
Puducherry – 605 110. ….Petitioner

Vs.

1.The Controlling Authority under the
Payment of Gratuity Act 1972 cum
Labour Officer (Enforcement)
Puducherry.

2. B.Murugan,
No.2, Balaji Street, Selva Nagar,
Uruvaiyar, Villianur,
Puducherry – 605 110. …. Respondents

Prayer:

To issue appropriate orders or directions more particularly Writ of Certiorari calling for the file relating to the impugned order in G.A.No.54 of 2018 dated 14/08/2019 passed by the 1st respondent and quash the same and to pass such further or other orders as this Hon'ble Court may deem fit and proper under the circumstances of the case.

Appearance of Parties:

For Petitioner : Mr. N.Murali, Advocate

For Respondents: M/s.V.J.Latha and K.Saranya, Advocates. (No appearance).

JUDGMENT

Heard.

2.The petitioner is the management of an establishment. In the present writ petition, they have challenged the order passed by the first respondent, the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the *P.G. Act*), by which the petitioner was directed to pay a sum of Rs. 1,06,615/- towards gratuity to the second respondent, along with interest at the rate of 10% per annum from 23.06.2017 until the date of payment or deposit with the authority.

3.The writ petition was admitted on 17.08.2021. Pending its disposal, this Court passed the following interim order: –

> "In view of the prima facie case, there shall be an order of interim stay, on condition that the petitioner deposits the entire sum of Rs.1,06,615/- along with interest at the rate of 10% calculated from 23.06.2017, before the first respondent herein, as expeditiously as possible.

It is made clear that the order of interim stay shall come into force only from the date on which the petitioner makes the deposit.

Notice to the respondents, returnable by 21.09.2021. Private notice is also permitted.

Post this matter on 21.09.2021”

4.Subsequently, when the matter was listed on 30.09.2021, this Court modified the earlier order and issued the following direction: –

“In the earlier order of this Court dated 17.08.2021, an error had crept in the first paragraph of the order, wherein the second respondent herein has been referred to as the petitioner herein. The said error is rectified and accordingly, the first paragraph of the order dated 17.08.2021 shall read as follows:

"One of the grounds raised by the learned counsel for the petitioner is on the jurisdiction of the authorities in maintaining the application, since the second respondent herein had not made an application to the employer seeking for payment of gratuity, which is a condition precedent under Section 7(1) of the Payment of Gratuity Act, 1972. This aspect requires further deliberation."

2. In continuation of the earlier order of this Court dated 17.08.2021, the learned counsel for the petitioner would submit that, though they had raised grounds challenging the payment made under the impugned order, they are willing to pay the principle amount to the second respondent herein and the remaining claim

with regard to the interest can be adjudicated later.

3. Recording the submission of the learned counsel for the petitioner, there shall be a direction to the petitioner herein to pay a sum of Rs.1,06,615/- either to the second respondent herein or the counsel representing the second respondent, within a period of two weeks from today.

4. The learned counsel for the second respondent seeks time to file a counter.

5. Post the matter on 29.11.2021. The interim order already granted by this Court is made absolute."

5.Counsel for the management, by letter dated 30.09.2021 addressed to the counsel for the respondent, enclosed a cheque for Rs. 1,06,615/- drawn in favour of the 2nd respondent, which was duly acknowledged. The records reveal that the order of the 1st respondent was dated 14.08.2019, and a direction to comply was also issued on the same date. If the petitioner intended to challenge the said order, they ought to have filed an appeal within the prescribed period of 60 days under Section 7(7) of the P.G. Act, which also mandates a pre-deposit of the awarded amount as a condition precedent for the appeal to be entertained.

6.The petitioner received the order passed by the first respondent in G.A.

No. 54/2018 dated 14.08.2019. However, instead of availing the statutory remedy of appeal, the petitioner chose to file the present writ petition only on 12.08.2021—after a delay of nearly two years. The reason for not filing the statutory appeal has been stated in paragraph 11 of the affidavit, which reads as follows: –

> "Due to financial constrain of my industry and Covid-19 I could not challenge the impugned order immediately, and at present I am filing this Writ petition challenging the impugned order before this Hon'ble High Court."

7.The reason stated cannot be accepted as a valid ground for not filing a statutory appeal before the Appellate Authority, as required under law—particularly when the petitioner has instead chosen to invoke the writ jurisdiction of this Court. Moreover, in compliance with the interim orders of this Court, the petitioner has already paid the principal amount of gratuity, and only the interest component remains outstanding.

8.In **State of Punjab v. Labour Court, Jullundur, reported in (1980) 1 SCC 4**, the Hon'ble Supreme Court held that the provisions of the Payment of Gratuity Act constitute a special law which not only creates the right to gratuity but also provides a specific forum for its enforcement. As such, aggrieved persons cannot bypass the designated forum and seek relief before general forums like the Labour Court. The same principle applies to the present case. The petitioner, having failed to avail the statutory remedy of appeal under Section 7(7) of the Act within the prescribed time, cannot now, after a substantial delay, invoke the extraordinary jurisdiction of this Court under Article 226.

9.Since the petitioner has already paid the principal amount, the only issue that remains for consideration is whether the interest at the rate of 10% per annum, as ordered by the Controlling Authority, is legally sustainable. Section 7(3A) of the Payment of Gratuity Act mandates the payment of interest in cases of delayed gratuity disbursement. The legal position has been authoritatively settled by the Supreme Court in **H. Gangahanume Gowda v. Karnataka Agro Industries Corporation Ltd., reported in (2003) 3 SCC 40**. The relevant portion of the judgment is extracted below: –

> "… Since the employer did not satisfy the mandatory requirements of the proviso to Section 7(3A), no discretion was left to deny the interest to the appellant on belated payment of gratuity. Unfortunately, the Division Bench of the High Court, having found that the appellant was entitled for interest, declined to interfere

with the order of the learned Single Judge as regards the claim of interest on delayed payment of gratuity only on the ground that the discretion exercised by the learned Single Judge could not be said to be arbitrary. In the first place in the light of what is stated above, the learned Single Judge could not refuse the grant of interest exercising discretion as against the mandatory provisions contained in Section 7 of the Act. The Division Bench, in our opinion, committed an error in assuming that the learned Single Judge could exercise the discretion in the matter of awarding interest and that such a discretion exercised was not arbitrary.

In the light of the facts stated and for the reasons aforementioned, the impugned order cannot be sustained. Consequently, it is set aside. The respondent is directed to pay interest @ 10% on the amount of gratuity to which the appellant is entitled from the date it became payable till the date of payment of the gratuity amount."

10.In light of the above, W.P. No. 17145 of 2021 stands dismissed. However, there shall be no order as to costs. It is open to the 2nd respondent to work out his remedies for recovery of the interest component as directed in the impugned order.

29.05.2025

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NCC : Yes / No

Index : Yes / No

Speaking Order / Non-speaking Order

To

The Controlling Authority under the
Payment of Gratuity Act 1972 cum
Labour Officer (Enforcement)
Puducherry.

DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
W.P.No. 17145 of 2021

29.05.2025