IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**
and
THE HONOURABLE MR.JUSTICE **G.ARUL MURUGAN**

WA No.37 of 2024

K.Chandrasekaran ... Appellant

versus

1.The Executive Director,
Bharat Heavy Electricals Limited (BHEL),
Tiruchirapalli-620 014.

2.Appellate Authority under the Payment
of Gratuity Act and Deputy Chief Labour
Commissioner (Central)
No.26, A Wing, 5th Floor,
Shastri Bhavan, Haddow's Road,
Nungambakkam, Chennai-600 006.

3.The Authority under the Payment of
Gratuity Act and Assistant Labour Commissioner (Central)
Chennai, No.04,
Haddow's Road,
Shastri Bhavan, Chennai -600 006 ...Respondents

PRAYER: Writ Appeal filed against the order of the learned Single Judge in WP No.7299 of 2024 dated 22.11.2024.

For the Appellant : Mr.K.V.Kartik Subramanian

For the Respondents : Mr.A.V.Arun
for Ms.M.Abinu Monisha
for R1

Mr.Venkataswamy Babu
Senior Panel Counsel
for R2 and R3

JUDGMENT

(Delivered by *R. SUBRAMANIAN, J.*)

The appellant is aggrieved by the order made in W.P.No.7299 of 2024, challenge in which was to the order of the second respondent dated 14.02.2022 made in Gratuity Appeal No.30 of 2023 insofar as it relates to the direction to pay 10% interest on the gratuity payable to the appellant.

2. The appellant who was working with the first respondent, retired from service on 24.02.2011. He was convicted for offences under various provisions of the India Penal Code on 08.09.2006. The said conviction was confirmed by this Court on 17.09.2010. The appellant challenged the said confirmation before the Hon'ble Supreme Court in Criminal Appeal No.2417 of 2010. Since the Criminal Appeal was pending before the

Hon'ble Supreme Court at the time of the retirement of the appellant, the gratuity payable to the appellant was withheld by the first respondent employer. Unfortunately for the employer and fortunately for the appellant, the conviction was set aside by the Hon'ble Supreme Court vide judgment dated 15.06.2023.

3. Upon being acquitted of the criminal charges, the appellant moved the Controlling Authority under the Payment of Gratuity Act, 1972 seeking payment of gratuity with interest. The Controlling Authority allowed the application and directed payment of gratuity with 10% simple interest. This order was challenged by the employer in payment of gratuity appeal in GA No.30 of 2023 before the Appellate Authority under the Payment of Gratuity Act, 1972. The Appellant Authority dismissed the appeal confirming the order of the Controlling Authority. Aggrieved, the employer filed W.P.No.7299 of 2024 before this Court. The learned Single Judge, by the order impugned, allowed the writ petition and held that the employer is not bound to pay interest. Hence, this appeal by the employee.

4. We have heard Mr.Kartik Subramanian, learned counsel

appearing for the appellant. Mr.A.V.Arun, learned counsel appearing for the first respondent employee and Mr.Venkataswamy Babu, learned Senior Panel Counsel for the authorities viz., R2 and R3.

5. Mr.Kartik Subramanian, learned counsel appearing for the appellant inviting our attention to the provisions of Section 4(6) and Section 7(3) and 7(3A) of the Payment of Gratuity Act, would contend that once the gratuity becomes payable, the employer is bound to pay within 30 days of the retirement and in the event of the gratuity is withheld, it has to be paid with interest at 10%. According to the learned counsel, the provisions of the Payment of Gratuity Act, 1972 being mandatory, the employer cannot escape the liability to pay interest.

6. Contending contra, Mr.A.V.Arun, learned counsel appearing for the first respondent employer would invite our attention to the Employer's Gratuity Fund Rules titled as BHEL Gratuity Fund Rules as well as the BHEL Conduct, Discipline and Appeal Rules to contend that the employer has got a right to withhold the gratuity, if there is any judicial proceedings pending against the employee, at the time of retirement.

7. Mr.Arun would also invite us to the proviso to Section 7(3A) to contend that if the withholding of the gratuity is as a result of the mistake of the employee then the liability to pay interest will not arise.

8. We have considered the rival submissions advanced by the learned counsel for the parties. For the purpose of convenience, we deem it fit to extract the relevant provisions of the Payment of Gratuity Act, BHEL Gratuity Fund Rules, and BHEL Conduct, Discipline and Appeal Rules.

i) Section 4(6) of the Act of 1972 reads as follows:

> *"4(6) Notwithstanding anything contained in sub-section (1), -*
>
> *(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.*
>
> *(b) the gratuity payable to an employee may be wholly or partially forfeited:-*
>
> *(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or*
>
> *(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."*

ii) The relevant portion of Section 7 of the Act of 1972 viz., Section 7(1), (2), (3) and (3A) read as follows:

> *"(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.*
>
> *(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, 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 gratuity so determined.*
>
> *(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."*

The other provisions of sub-section of Section 7 are not very relevant for our purpose.

iii) Rule 9.3(b) of the BHEL Gratuity Fund Rules, which relates to deferment of payment of gratuity reads as follows:

> *"During the pendency of the disciplinary proceeding or the judicial proceeding on the date of separation of an employee, the disciplinary authority may defer payment of gratuity beyond the statutory limit of thirty days from it becoming due for payment, as the last pay particulars of the employee are uncertain looking to the punishment that may be imposed on the employee are uncertain looking to the punishment that may be imposed on the employee on conclusion of the disciplinary proceedings or as a result of prosecution proceedings."*

iv) Rule 30A of the BHEL Conduct, Discipline and Appeal Rules reads as follows:

> *30A (i) Disciplinary proceedings, if instituted while the employee was in service whether before his retirement or during his re-employment, shall, after the final retirement of the employee, be deemed to be proceeding and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service.*
>
> *(ii) During the pendency of the*

> *disciplinary proceeding or the judicial proceeding, the disciplinary authority may withhold payment of gratuity, for ordering the recovery from gratuity of the whole or part of any pecuniary loss caused to the Company if the employee is found in a disciplinary proceeding or judicial proceeding to have been guilty of offences/misconduct as mentioned in sub-section (6) of Section 4 of the Payment of Gratuity Act, 1972 or to have caused pecuniary loss to the Company by misconduct or negligence, during his service including service rendered on deputation or on re-employment after retirement. However, the provision of Section 7(3) and 29 7(3A) of the Payment of Gratuity Act, 1972 should be kept in view in the event of delayed payment, in case the employee is fully exonerated.*

9. A reading of the above provisions, particularly, Section 4 of the Act makes it clear that the gratuity is payable notwithstanding the fact that an employee has either applied or not. sub-section 6 of Section 4 of the Act enumerates the circumstances under which the gratuity can be withheld by the employee. Section 7 of the Act deals with determination and payment of gratuity and it also fixes the time limit.

10. Section 7(3A) of the Act imposes an obligation on the part of the employer to pay interest. Of course, there is a proviso to the said provision, which we have already extracted, it relieves the employer of the

obligations to pay interest if the conditions stipulated therein are complied with. The Service Rules are not in any manner materially different from the provisions of the Act. In fact, the Service Rules themselves provide that the payment of interest will be governed by the relevant Section of the payment of Gratuity Act, 1972. As we have already pointed out the employee retired on 24.02.2011. Gratuity is payable within 30 days as per sub-section 3 of Section 7 of the Act of 1972. Admittedly, the gratuity was not paid. It is also not shown that the required permission from the authority was obtained as per the proviso to sub-section (3A) of Section 7.

11. Of course, the employee has suffered a conviction and he was a convict on the day he retired. Therefore, there was a justification for the employer to withhold the gratuity. Upon the conviction being set aside by the Hon'ble Supreme Court, the employee was relieved of all the charges and he was acquitted of the charges. The effect of the acquittal by the Hon'ble Supreme Court is that the employee is deemed to have been innocent throughout. The very basis on which the gratuity was withheld stood effaced. If the basis goes, the consequence also disappears. Therefore, the ineligibility of the employee also ceases. Once the ineligibility ceases, the employee would be entitled to the gratuity as if

there was no conviction at all. In fact, the employer had foreseen such an event and a provision has been made in the Gratuity Rules itself, which provides that if the employee is not guilty of the charges against him, the gratuity is so withheld shall be released along with simple interest thereon as is specified. Therefore, the employer was bound to pay interest on the gratuity that is withheld. It is not in dispute that the gratuity amount is deposited before the authority and the same was withdrawn by the appellant. The dispute in this appeal is only with reference to the interest portion.

12. In the light of the reasoning and in the light of the effect of the provisions of Act, we are unable to concur with the conclusion of the learned Single Judge to the effect that the interest is not payable and the conclusion of the learned Single Judge that entitlement to gratuity would commence from the date of acquittal by the Hon'ble Supreme Court. This conclusion of the learned Single Judge, in our considered opinion, completely overlooks the position in criminal law relating to the effect of an acquittal made by a Court. It is settled position of criminal jurisprudence that once an acquittal is made, the person accused is cleared of all the charges and it is equivalent to him having undergone baptism.

We therefore, allow the appeal, set aside the order of the learned Single Judge and restore the orders of the authorities under the payment of Gratuity Act.

13. The appellant is entitled to withdraw the interest amount viz., Rs.10 Lakhs deposited by the first respondent with the Controlling Authority under the Payment of Gratuity Act. There shall be no order as to costs.

(R.S.M., J.) **(G.A.M., J.)**
16.04.2025

Index : Yes/No
Neutral Citation : Yes/No
mrn

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