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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK JAIN
ON THE 8th OF DECEMBER, 2023
WRIT PETITION No. 15186 of 2017**

BETWEEN:-

1. SMT. SOHAGVATI (DEAD) THR. LRS CHANDRA PRAKASH S/O LATE SHRI RAJ MANI SHARMA, AGED ABOUT 45 YEARS, R/O GRAM TIVRAIYA, POST OFFICE DHARSEEVA THANA DHARSEEVA, DISTT RAIPUR (CHHATTISGARH)
2. REETA TIWARI D/O SHRI LT. RAJMANI SHARMA, AGED ABOUT 43 YEARS, GRAM CHITRANGI POST OFFICE THANA CHINTRANGI, SINGRAULI (MADHYA PRADESH)
3. GAYTRI TIWARI D/O SHRI LT. RAJMANI SHARMA, AGED ABOUT 38 YEARS, GRAM MORVA POST OFFICE MORVA THANA MORVA, SINGRAULI, (MADHYA PRADESH)
4. OM PRAKASH S/O SHRI LT. RAJMANI SHARMA, AGED ABOUT 37 YEARS, GRAM POST OFFICE JHEEMAR THANA RAMNAGAR, ANNUPPUR (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI MS. SULEKHA SHARMA - ADVOCATE)

AND

1. UPKSHETRIYA PRABANDHAK SOUTH ESTERN KOL FIELDS LIMITED. RAM NAGAR UPKSHETRA P.O. JHIMAR, THANA RAMNAGAR, DIST. ANUPPUR (MADHYA PRADESH)
2. ASST. CHIEF LABOUR COMMISSIONER CENTRAL AND GRAJUTI PAYMENT OFFICER CIVIC CENTER, JABALPUR (MADHYA PRADESH)
3. ASSISTANT LABOUR COMMISSIONER CENTRAL AND GRAJUTI PAYMENT OFFICER NEAR GAYATRI MANDIR, SHAHDOLE (MADHYA

PRADESH)

.....RESPONDENTS

**(BY SHRI A.K. DUBEY - ADVOCATE FOR THE RESPONDENT NO.1 AND
SHRI DEVESH BHOJNE - ADVOCATE FOR THE RESPONDENT NOS.2 AND
3)**

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*This This petition coming on for admission this day, the court passed
the following:*

ORDER

The present petition has been filed by the petitioner, who is widow of deceased employee of respondent No.1 – South Eastern Coal Fields Ltd. During pendency of the present petition, even the widow has expired and the petition has been contested by her legal representatives.

2. The facts in brief of the case are that the deceased husband (Rajmani Sharma) of the petitioner was employed with the respondent No.1 on a blue-collared post of Driver. He is alleged to have committed some disorderly and riotous conduct while in service on 20.05.1987 with an officer holding the post of Deputy CME/Sub Area Manager. Within four days of the alleged misbehavior with the officer, the same officer passed an order of termination of services of the deceased husband of the petitioner on 24.5.1987. The termination order was put to challenge before the CGIT, Jabalpur and vide award dated 18.8.2008, the CGIT has upheld the termination. The said termination/dismissal order was further confirmed by this Court in writ petition filed by the deceased husband of the petitioner vide order dated 23.04.2003 passed in W.P. No.448/2008.

3. The management did not pay gratuity to the deceased husband of the petitioner, nor passed any order forfeiting the gratuity. In the meantime, the husband of the petitioner expired on 14.12.2008. The petitioner submitted an

application in Form – N of Payment of Gratuity Central Rules on 31.07.2013 before the Controlling Authority. The Controlling Authority held that since termination of service of husband of the petitioner has been upheld, he is not entitled for any consequential benefit and thus, he is not entitled for payment of gratuity, which is part of consequential benefits.

4. The Controlling Authority further held that the claim of the petitioner to be barred by limitation. The petitioner thereafter preferred an appeal before to the Appellate Authority and the appeal was decided vide order dated 15.09.2014 (Annexure P/14). The appellate authority held that there is no order of forfeiture of gratuity in terms of Section 4(6) of the Payment of Gratuity Act. Therefore, the appellate authority directed the respondent No.1 to take a decision on the matter on legal merits as per the Scheme of Payment of Gratuity Act. The respondent No.1 thereafter took a decision dated 21.01.2015 (Annexure P/9) and held that the order of the Controlling Authority dated 31.07.2013 has already held the claim to be barred by time. It was further mentioned that the quarter was unauthorizedly occupied by the deceased husband of the petitioner and the penal charges for the said occupation are more than gratuity and should be recovered.

5. The petitioner then approached the Controlling Authority once again in the year 2016 and the Controlling Authority rejected the claim of the petitioner on the principle of res-judicata because the earlier order of the Controlling Authority was not set aside on the merits by the appellate authority in the first round.

6. The petitioner again approached the appellate authority for a second time and now by order Annexure P/26 her claim has been rejected by the appellate authority for the second time on the following grounds:-

- (i) The petitioner could not have approached the authority under the Act, 1972 for the second time.
- (ii) The petitioner is not entitled for Payment of Gratuity.
- (iii) The order of appellate authority in the first round was bad in law.
- (iv) The order of the Controlling Authority in the second round is perfectly legal and valid.

7. The present case presents a very short state of affairs, where a widow is still fighting for gratuity and the deceased husband of the petitioner expired while awaiting gratuity and even 15 years after death of her husband, the petitioner has been made to approach again and again before the authorities and the authorities have relied on intricacies of civil law to deny the legitimate claim of the petitioner, which is made out under specific provisions of Payment of Gratuity Act, which is a beneficial piece of legislation enacted with objective of social security.

8. This Court expresses anguish with the manner in which the authorities under the Payment of Gratuity Act have dealt with the matter and have not dealt with the matter from prospective the authorities dealing with claims of employees and widows in the evening of their life should be dealt with in the spirit and in terms with the provisions of such social security legislation.

9. The authorities below have held that the claim of the petitioner was time barred being barred by limitation. The said finding is contrary to Section 7(2) of Payment of Gratuity Act 1972. The said provision is as under:-

"7(2) As soon as gratuity become 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 of gratuity so determined."

(Emphasis supplied)

10. As per Section 7(2), it is mandatory provision that as soon as gratuity becomes payable, the employer shall, whether application has been made or not, determine the amount of gratuity and give notice to the person to whom gratuity is payable and also to the Controlling Authority specifying the amount of gratuity so determined.

11. It is further provided in Section 7(3) that employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable to the person to whom gratuity is payable. As per Section 7(3-A) it is further provided that employer has liable to pay interest on the gratuity, if he does not make the payment within the aforesaid period of 30 days.

12. The above scheme of Section 7 clearly shows that Payment of Gratuity Act is not dependent on claim of the employee, but it the duty of the employer himself to pay the gratuity and in default of payment he has to pay interest after expiry of 30 days.

13. It is further provided in Section 4(a) that in case of dispute as to admissibility of claim to gratuity, the employer shall deposit the amount of gratuity with the Controlling Authority of the quantum, which the employer admits.

14. In the present case, the authorities below have in a mechanically manner held the claim of the petitioner to be time barred, which is totally contrary to scheme of Section 7 of the Payment of Gratuity Act. The Act is framed for benefit of destitute, retired persons, widows, etc. in the evening of their life. The Act does not provide any limitation. If the rules framed under the Act provide for any time limit to submit the claim, that would not over-ride the provisions of the Act, which make it mandatory for the employer to deposit the

gratuity within 30 days of retirement/dismissal/death of the employees. The time limit for submitting claim is only procedural in nature and it does not extinguish the rights of the employees to claim Gratuity.

15. The assumption as to time limit has been inferred from Rule-7 of the Payment of Gratuity Central Rules 1972, that reads as under :-

7. Application for gratuity.—

(1) An employee who is eligible for payment of gratuity under the Act, or any person authorised, in writing, to act on his behalf, shall apply, ordinarily within thirty days from the date the gratuity became payable, in Form 'I' to the employer: Provided that where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before thirty days of the date of superannuation or retirement.

(2) A nominee of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of section 4 shall apply, ordinarily within thirty days from the date of gratuity became payable to him, in Form 'J' to the employer: The Payment of Gratuity (General) Rules, 1972 Provided that an application in plain paper with relevant particulars shall also be accepted. The employer may obtain such other particulars as may be deemed necessary by him.

(3) A legal heir of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of section 4 shall apply, ordinarily within one year from the date of gratuity became payable to him, in Form 'K' to the employer.

(4) Where gratuity becomes payable under the Act before the commencement of these rules, the periods of limitation specified in sub-rules (1), (2) and (3) shall be deemed to be operative from the date of such commencement.

(5) An application for payment of gratuity filed after the expiry of the periods specified in this rule shall also be entertained by the employer, if the applicant adduces sufficient cause for the delay in preferring his claim, and **no**

claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the specified period. Any dispute in this regard shall be referred to the controlling authority for his decision.

(6) An application under this rule shall be presented to the employer either by personal service or by registered post acknowledgement due.

(Emphasis supplied)

The similar provision is there in Madhya Pradesh Rules also, that reads as under :-

7. Application for gratuity. -

(1) An employee who is eligible for payment of gratuity under the Act, or any person authorised, in writing, to act on his behalf, shall apply ordinarily within thirty days from the date the gratuity became payable, in Form I to the employer :

Provided that where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before thirty days of the date of superannuation or retirement.

(2) A nominee of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of Section 4 shall apply ordinarily within thirty days from the date gratuity became payable to him, in Form 'J' to the employer :

Provided that an application in plain paper with relevant particulars shall also be accepted. The employer may obtain such other particulars as may be deemed necessary by him.

(3) A legal heir of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of Section 4 shall apply, ordinarily within one year from the date of gratuity became payable to him, in Form 'K' to the employer.

(4) Where gratuity becomes payable under the Act, before the commencement of these rules, the period of limitation

specified in sub-rules (1), (2) and (3) shall be deemed to be operative from the date of such commencement.

(5) An application for payment of gratuity filed after the expiry of the periods specified in this rule shall also be entertained by the employer, if the applicant adduces sufficient cause for the delay in preferring his claim, and **no claim for gratuity under the Act, shall be invalid merely because the claimant failed to present his application within the specified period.** Any dispute in this regard shall be referred to the controlling authority of the area for his decision.

(6) An application under this rule shall be presented to the employer either by personal service or by registered post acknowledgement due.

(Emphasis supplied)

16. This issue has already been dealt by this Court while interpreting pari-materia provisions in Madhya Pradesh Rules in the case of *Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited Vs. D.D. Singh, reported in 2014 (3) MPLJ 641*. The aforesaid judgement has been affirmed in writ appeal. The following has been held therein :-

“12. So far the question of delay in approaching the Authority is concerned, the Rule 7 of Payment of Gratuity (M.P.) Rules, 1973 prescribes the method of submission of application. Rule 7(5) provides that no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within specified period.

17. This is settled in law that amount of retiral dues, including gratuity, are not bounty. It is deferred payment to the employee for the long services rendered by him to the Department. This payment is made to the employees in December of their life with a view to provide them a security. They can use this amount for their own settlement, discharge of social obligations etc. The retiral dues are also recognized as property under the Article 300-A of the

Constitution. A person can be deprived from the property only in accordance with law made in this regard. In *Bhaskar Ramchandra Joshi v. State of M.P.*, reported in 2013 (4) MPLJ 35, this Court has considered this aspect and opined as under:—

“10. The Apex Court on different occasions had considered the scope and ambit of property. In *Madhav Rao Scindia v. Union of India*, (1971) 1 SCC 85 : AIR 1971 SC 530 opined that Prievy Purse payable to ex-rulers is property. In *Nagraj, K. v. State of A.P.*, AIR 1985 SC 553, Apex Court opined that right of person to his livelihood is property which is subject to rules of retirement. In *State of Kerala v. Padmanabhan*, (1985) 1 SCC 429 : AIR 1985 SC 356 the Apex Court opined that right of pension is property under the Government service Rules, In *Madhav Rao Scindia v. State of M.P.*, AIR 1961 SC 298 and *State of M.P. v. Ranojirao*, AIR 1968 SC 1053, the Apex Court opined that property in the context of Article 300-A includes ‘money’, salary which has accrued pension, and cash grants annually payable by the Government; pension due under Government Service Rules; a right to bonus and other sums due to employees under statute. This view was also taken in (1971) 2 SCC 330 : AIR 1971 SC 1409, *Deokinandan v. State of Bihar*. Bombay High Court in the case reported in (2012) 3 Mah. L.J. 126, *Shapoor M. Mehra v. Allahabad Bank* opined that retiral benefits including pension and gratuity constitute a valuable right in property. In *Deokinandan* (supra) Apex Court opined as under :-

“(i) The right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no powers to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order denying the petitioner right to receive pension affects the fundamental right of the petitioner under Article 19(1)(f) and 31(1) of the Constitution and as such the writ petition under Article 32 is maintainable.

11. In the light of aforesaid legal position, it is crystal clear that right to get the aforesaid benefits is constitutional right. Gratuity or retiral dues can be withheld or reduced only as

per provision made under M.P. Civil Services (Pension) Rules, 1976. In the present case, there is no material on record to show that respondents have taken any action in invoking the said rules to stop or withhold gratuity or other dues.”

18. The Apex Court in the case of **State of Jharkhand v. Jitendra Kumar Shrivastava**, reported in **2013 AIR SCW 4749** opined as under:—

“14. Article 300A of the Constitution of India reads as under: -

“300A. Persons not to be deprived of property save by authority of law-No person shall be deprived of this property save by authority of law.”

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced”.

19. No enabling provision is brought to the notice of this Court which permits the employer to deprive the employees from the right of gratuity. In absence of any enabling provision, in my view, employees cannot be deprived from their right of gratuity which is flowing from Article 300-A of the Constitution. Thus, ground of delay is of no help to the petitioners. Thus, the ground of delay taken by the authorities below is totally contrary to the provisions of the Act and the Rules.

20. The second issue that has been dealt with and was under consideration of the authorities below was that in terms of Section 4(6), the husband of the petitioner was terminated for riotous and disorderly conduct on his part. Thus, in terms of Section 4(6)(b) the gratuity payable to such an

employee states automatically forfeited.

21. Aforesaid interpretation made by the authority of Section 4(b) is contrary to plain language of Section 4(6) in The Payment of Gratuity Act, 1972 reproduces reads as:-

(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 17 [**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.

सत्यमेव जयते **(Emphasis supplied)**

22. Section 4(6) has two clauses (a) and (b). Under Clause (a) the word used is that gratuity "shall" be forfeited. This Clause (a) applies in case of termination of service of employee for act of willful omission or negligence causing damage or loss to property of the employer.

23. Clause (b) relates to the position wherein services of the employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part and the empowering provision is "may" be forfeited.

24. The use of word "may" in Clause (b) makes it clear that discretion is cast on the employer and the employer is bound pass a specific order of

forfeiture of gratuity because the legislature has used the word "may be wholly or partially forfeited". Thus, a discretion is caused on the employer and employer has to discharge the discretion while passing a specific order. There cannot be any automatic forfeiture of gratuity in terms of Section 4 (6) (b). This important aspect of Payment of Gratuity Act, 1972 has been overlooked by both the authorities below.

25. In the present case, it is undisputed that the employer has till date not passed any specific order of forfeiture of gratuity in terms of Section 4(6)(b) of Act, 1972. In such circumstances, the right of the petitioner to receive gratuity stands fully matured.

26. Resultantly, the petition stands allowed. The orders passed by the Controlling Authority and the Appellate Authority are quashed. The respondent No.1 is directed to calculate gratuity payable to deceased husband of the petitioner on the date of his termination and pay the same to the petitioners along with interest as per Section 7(3-A) of Payment of Gratuity Act within a period of two months from the date of production of certified copy of this order.

27. There is no such order of ascertainment of penal rent for quarter placed on record by the respondent No.1, nor Payment of Gratuity Act 1972 contains any provision for deduction of any amount payable to the employer by the employee under the Act, 1972. The employee was a blue-collared worker holding the post of Driver and it has been almost 36 years since he had been dismissed from service. In the case of *Gorakhpur University v. Shitla Prasad Nagendra (Dr)*, (2001) 6 SCC 591, it has been held as under :-

"5. We have carefully considered the submission on behalf of the respective parties before us. The earlier decision

pertaining to this very University, reported in S.N. Mathur [(1996) 2 ESC 211 (All)] is that of a Division Bench, rendered after considering the principles laid down and also placing reliance upon the decisions of this Court reported in R. Kapur [(1994) 6 SCC 589 : 1995 SCC (L&S) 13 : (1994) 28 ATC 516] which, in turn, relied upon earlier decisions in State of Kerala v. M. Padmanabhan Nair [(1985) 1 SCC 429 : 1985 SCC (L&S) 278] and Som Prakash [(1981) 1 SCC 449 : 1981 SCC (L&S) 200 : AIR 1981 SC 212] . This Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by the Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest. Withholding of quarters allotted, while in service, even after retirement without vacating the same has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits. Such is the position with reference to amounts due towards provident fund, which is rendered immune from attachment and deduction or adjustment as against any other dues from the employee. In the context of this, mere reliance on behalf of the appellant upon yet another decision of a different Division Bench of the very High Court rendered without taking note of any of the earlier decisions of this Court but merely proceeding to decide the issue upon equitable considerations of balancing conflicting claims of respective parties before it does not improve the case of the appellant any further. Reliance placed for the appellant University on the decision reported in Wazir Chand [(2001) 6 SCC 596 : JT 2000 Supp (1) SC 515] does not also sound well on the facts and circumstances of this case. It is not clear from the facts relating to the said decision as to whether the person concerned was allowed to remain in occupation on receipt of the normal rent as in the present case. As noticed earlier, the case of the contesting respondent in this case is that the university authorities regularly accepted the rent at normal rates every month from the petitioner till the quarters were vacated and that in spite of request made for the allotment of the said quarters in favour of the son of the respondent,

who is in the service of the University, no decision seems to have been taken and communicated though it is now claimed in the court proceedings that he is not entitled to this type of accommodation. Further, the facts disclosed such as the resolutions of the University resolving to waive penal rent from all Teachers as well as that of the Executive Council dated 18-7-1994 and the actual such waiver made in the case of several others cannot be easily ignored. The lethargy shown by the authorities in not taking any action according to law to enforce their right to recover possession of the quarters from the respondent or fix liability or determine the so-called penal rent after giving prior show-cause notice or any opportunity to him before ever even proceeding to recover the same from the respondent renders the claim for penal rent not only a seriously disputed or contested claim but the University cannot be allowed to recover summarily the alleged dues according to its whims in a vindictive manner by adopting different and discriminatory standards. The facts disclosed also show that it is almost one year after the vacation of the quarters and that too on the basis of certain subsequent orders increasing the rates of penal rent, the applicability of which to the respondent itself was again seriously disputed and to some extent justifiably too, the appellant cannot be held to be entitled to recover by way of adjustment such disputed sums or claims against the pension, gratuity and provident fund amounts indisputably due and unquestionably payable to the respondent before us. The claims of the University cannot be said to be in respect of an admitted or conceded claim or sum due. Therefore, we are of the view that no infirmity or illegality could be said to have vitiated the order, under challenge in this appeal, to call for our interference, apart from the further reason that the disbursements have already been said to have been made in this case as per the decision of the High Court.

28. Hence, the employer will not be entitled to make any deduction of penal rent or penal occupation charges for the quarter. The employer would be at liberty to get the quarter vacated and recover penal rent, etc. by resorting to other proceedings as maintainable under law, against the legal heirs to the extent

of property inherited, except gratuity.

29. The petition stands **allowed** in the above terms.

(VIVEK JAIN)
JUDGE

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