

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SHEEL NAGU**

W.P. No.13382 of 2018

Between:-

**RAM NIHORE SONI,
S/O SHRI MANGAL PRASAD SONI,
AGED ABOUT 61 YEARS,
OCCUPATION-RETIRED EMPLOYEE,
R/O DURGA MANDIR, NEAR AMLAI
RAILWAY STATION, AMLAI,
DISTRICT SHAHDOL(M.P.)**

.....PETITIONER

(BY SHRI ADITYA AHIWASI, ADVOCATE)

AND

- 1. MINES MANAGER,
DHANPURI OCM, SECL,
POST SANJAY KOYLA NAGAR,
DISTRICT ANUPPUR(M.P.)**

- 2. APPELLATE AUTHORITY
UNDER THE PAYMENT OF GRATUITY
ACT-CUM-DEPUTY CHIEF LABOUR
COMMISSIONER(CENTRAL),
BLOCK 10 CIVIC CENTRE, MADHATAL,
JABALPUR(M.P.)**

**3. CONTROLLING AUTHORITY
UNDER THE PAYMENT OF GRATUITY
AC-CUM-ASSISTANT LABOUR
COMMISSIONER(CENTRAL),
SHAHDOL(M.P.)**

....RESPONDENTS

***(BY SHRI GREESHM JAIN, ADVOCATE
FOR RESPONDENT NO.1)***

Reserved on : 23.09.2022

Pronounced on : 31.10.2022

ORDER

This petition under Article 226 has been filed seeking writ of *certiorari* for quashing order dated 16.05.2018 (Annexure P/1) passed by appellate authority under the Payment of Gratuity Act, 1972 (for brevity “**the Act of 1972**”) by partly allowing the appeal of respondent-employer, the Appellate Authority has interfered with the order of Controlling Authority dated 13.12.2017 (Annexure P/10) to the extent of declining interest over the principal amount of gratuity for the period from 01.01.2017 to 31.10.2017.

2. Learned counsel for the rival parties are heard on the question of admission so also final disposal.

3. Bare facts giving rise to the present dispute are enumerated below in a chronological manner for convenience and ready reference:

Dates	Events
19.12.2016	The employer informed petitioner about his entitlement to Gratuity on the eve of his retirement.
31.12.2016	Petitioner retired on attaining the age of superannuation from the post of EP Fitter, Dhanpuri Opencast Mine, District Annuppur, South Coalfields Ltd. (SECL).
Little before the date of retirement	Petitioner had raised a dispute as regards date of birth.
27.02.2017	The Employer sent information to petitioner to come forward to collect the gratuity amount. However petitioner declined to accede to this request.
28-31.10.2017	The Employer deposited amount of gratuity with the controlling authority in terms of Section 7(2) of the Act of 1972.
13.12.2017	The Controlling Authority directed the employer vide Annexure P/10 to pay gratuity amount of Rs.10,00,000/- and interest @ 10% p.a. for the period from 01.01.2017 to 31.10.2017.
Appeal preferred by Employer	On following grounds: (a) Government Accommodation not vacated by the petitioner; (b) Date of birth dispute pending; (c) Petitioner failed to come forward to accept the principal amount of gratuity despite having been reminded by the employer more than once.
16.05.2018	Impugned order is passed by appellate authority under the Act of 1972 partly allowed appeal of the employer by declining interest of 10% granted by the Controlling Authority for the period from 01.01.2017 to 31.10.2017.

4. The sole question which begs for an answer herein is as to whether the employer can absolve itself of the statutory obligation of payment of interest u/S 7(3A) of the Act of 1972 on the ground of a dispute raised by the employee as regards date of birth pending, the employee not having vacated

the official accommodation and the employee not having come forward to accept the gratuity amount despite the employer asking the employee to do so ?

4.1 To properly appreciate the facts and circumstances prevailing in the instant case and to answer the aforesaid question, it is apt to reproduce Section 7 of the Act of 1972:-

“7. Determination of the amount of gratuity.--(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 of 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.]

(4)(a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person

entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

[(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit--

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the 5[nominee or, as the case may be, the guardian of such nominee or] heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:--

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses.

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days:

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellate authority such amount.

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority.”

4.2 Before adverting to the textual and contextual interpretation of Section 7 of the Act of 1972, it is appropriate for this Court to remind itself that the Act of 1972 is a beneficial piece of legislation and therefore, has to be construed liberally to forward the object for which the same has been enacted, which is to provide for a scheme for payment of gratuity to employees engaged in different establishments.

4.3 Section 7 of the Act of 1972 which is titled as “Determination of the amount of gratuity” deals with various aspects such as obligation of employer to pay gratuity within the period prescribed. It further provides for procedure to be followed by employer if the employee does not come forward to receive the amount of gratuity to avoid the rigors of interest over the principal amount

of gratuity. The said provision further stipulates that in case of any dispute about the gratuity amount or its admissibility or the person entitled to receive the same then the employer is obliged to deposit uncontroverted amount with the Controlling Authority and make adjustments later on determination of dispute.

4.4 Section 7(1) of the Act of 1972 obliges the person authorised to receive gratuity to make a written application to the employer within a certain period of time and in prescribed form, demanding the amount of gratuity payable. Section 7(2) of the Act of 1972 which is an independent provision and is not dependent upon Section 7(1) obliges the employer, irrespective as to whether the employee has made a written application u/S 7(1) or not, to determine the amount of gratuity and give notice to the employee concerned and also to the Controlling Authority detailing the amount of gratuity determined.

4.5 Thereafter, Section 7(3) of the Act of 1972 statutorily obliges the employer in mandatory terms to pay the amount of gratuity to the person concerned within 30 days of the date it becomes payable.

4.6 It would be appropriate to mention here that as per Section 4(1) of the Act of 1972, the amount of gratuity becomes payable to an employee on termination of his employment. Meaning thereby that on the day succeeding the day of retirement, the gratuity amount becomes payable to the employee concerned.

4.7 Thereafter, Section 7(3A) of the Act of 1972 which is the provision for interest on delayed payment of gratuity, provides that if the amount of gratuity payable is not paid within the period specified in Section 7(3) of the Act of

1972 then the employer shall be liable to pay simple interest at such rates as is notified by the Central Government from time to time, unless two contingencies are satisfied which are as follows:

(a) The delay in payment of gratuity amount is for the reasons attributed to the employee and;

(b) The employer has sought permission of the Controlling Authority in writing for the delayed payment.

4.8 The last sub-section of Section 7 of the Act of 1972 which is relevant to the present case is Section 7(4)(a). This provision permits the employer to deposit the uncontroverted amount of gratuity payable with the Controlling Authority in case there is any dispute regarding admissibility, quantum or the person to whom the amount of gratuity is liable to be paid.

4.9 The remaining sub-sections of Section 7 need not be discussed since they are not relevant to the facts and circumstances attending herein.

5. When the factual matrix attending the instant case is tested on the anvil of the provisions of Section 7 of the Act of 1972 what comes out loud and clear is as follows:-

(i) Indisputably, the amount of gratuity was deposited by the employer with the Controlling Authority on 31.10.2017 as against the date of superannuation being 31.12.2016.

(ii) Neither in the return of the respondents nor in oral arguments there is even a whisper that the employer has sought permission in writing from the Controlling Authority for delayed deposit of gratuity payable.

(iii) The facts further reveal that dispute of date of birth raised by the employee before his retirement was pending but that did not prevent the employer from depositing the uncontroverted amount of gratuity payable within the time prescribed u/S 7(3) of the Act of 1972. It is further not disputed by the counsel for the employer that the uncontroverted amount of gratuity was not deposited within 30 days as prescribed u/S 7(3) of the Act of 1972.

(iv) The pleadings also do not disclose that the reasons for delayed deposit of gratuity payable were attributed to the employee/petitioner.

(v) The contention of the employer that petitioner employee did not come forward to accept the amount of gratuity despite having been informed even prior to his date of superannuation, cannot absolve the employer of the statutory obligation to pay interest in terms of the mandatory provision of Section 7(2) and 7(3) of the Act of 1972.

5.1 Even if the employee did not come forward to receive the amount of gratuity, the employer was statutorily obliged to deposit the same within 30 days of the date of superannuation with the Controlling Authority, which was not done by the employer, thereby attracting interest.

6. The respondents placed reliance on a Single Bench decision of this Court rendered on 26.6.2012 in WP No.1141/2012 (*The General Manager vs. Balakram and others*). This judgment does not help the respondents employer since the scope and ambit of Section 7 of the Act of 1972 obliging the employer to pay gratuity and also to pay interest in case of delayed payment of gratuity, has not been discussed. The said Single Bench judgment has been

rendered without reference to the mandatory provisions of Section 7(2), 7(3) and 7(3A) of the Act of 1972 and thus is *per incurrium* the statutory provision, thereby loosing its precedential value. Further reliance is placed by the employer on decision of Apex Court passed in SLP(C) No.11025/2020 (*M/s Steel Authority of India Ltd. Vs Raghendra Singh and others*) which in turn is founded upon another Apex Court decision (2005) 5 SCC 245 (*Secretary, ONGC Ltd. Vs V.U. Warriar*). Bare perusal of the said decision in *V.U. Warriar* (Supra) reveals that in the said case Apex Court permitted withholding of gratuity on the ground of unpaid rent of government accommodation. In the instant case, the reply filed by the respondent No.1 employer does not disclose even a whisper about any dispute regarding petitioner having over stayed in the employer's accommodation or having not paid any house rent. Thus, the said decision of the Apex Court is of no avail to the respondents-employer.

7. In view of the above facts, circumstances and the discussion made above, it is luminous that the employer/respondents failed to discharge its statutory duty under the Act of 1972 by failing to deposit the amount of gratuity payable within 30 days of the same becoming due and thereby, exposing itself to the rigors of Section 7(3) of Act of 1972 becoming liable for payment of interest, which was rightly imposed by the Controlling Authority.

8. The Appellate Authority in the considered opinion of this Court travelled beyond its jurisdiction to interfere with the order of the Controlling

Authority by setting aside the direction regarding interest for the period from 01.01.2017 to 31.10.2017.

9. To the extent indicated above, the order of the Appellate Authority under the Act of 1972 cannot be sustained and therefore, has to be interfered with by exercising the power of judicial review.

10. Accordingly, this petition is **allowed** to the following extent:

(i) Impugned order dated 16.05.2018 passed by Appellate Authority in Appeal No.PGA-4/2018 to the extent it declines interest for the period from 01.01.2017 to 31.10.2017 is set aside, by issuance of writ of *certiorari*;

(ii) Respondent No.1 employer is directed to pay interest as directed by the Controlling Authority in its order dated 13.12.2017 passed in Case No.SH-48(80)/17.

(iii) Petitioner is entitled to cost of this litigation which is quantified at Rs.5,000/- which shall be paid by the respondents by crediting the same in the bank account of petitioner through digital transfer within a period of 30 days from today and a report of compliance be filed in Registry of this Court within further period of 30 days.

(iv) In case no report is filed latest by first week of January, 2023, Registry is directed to list this matter as PUD for execution qua cost.

(SHEEL NAGU)
JUDGE