

CASE NO.:
Appeal (civil) 1024 of 2003

PETITIONER:
H. Gangahanume Gowda

RESPONDENT:
Karnataka Agro Industries Corpn.Ltd.

DATE OF JUDGMENT: 05/02/2003

BENCH:
SHIVARAJ V. PATIL & ARIJIT PASAYAT

JUDGMENT:

J U D G M E N T
(Arising out of Special Leave Petition (C) No.4114 /2002)

SHIVARAJ V. PATIL J.

Leave granted.

A limited point that arises for consideration and decision in this appeal is whether Division Bench of the High Court having found the appellant entitled to interest on belated payment of gratuity was right in denying the same holding that the discretion exercised by the learned Single Judge in that regard was not arbitrary.

While in service, the appellant and few other officials were kept under suspension in March, 1999. Aggrieved by the same, the appellant and others filed writ petition Nos. 11893-11898 of 1999 inter alia contending that order of suspension passed was one without authority of law and without application of mind. After service of notice in the writ petitions, the respondent-Corporation realizing that it was not possible to support the said order of suspension, withdrew the same by an order dated 21.5.1999. Taking note of the order dated 21.5.1999 revoking the suspension, the High Court disposed of the writ petitions as having become infructuous, however, reserving liberty to the writ petitioner to approach the High Court for seeking appropriate relief, if necessary. The appellant reached the age of superannuation on 1.1.2000 and retired. The respondent-Corporation did not pass any order regarding regularization of the suspension period and settlement of salary and allowances payable to him on retirement. In this situation, the appellant was constrained to approach the High Court again in Writ Petition No. 26980 of 2000 seeking payment of full salary and allowances for the period of suspension, gratuity, cash equivalent of earned leave together with interest thereon @ 18% per annum and settlement of provident fund dues. During the pendency of the writ petition, however, the respondent settled the provident fund dues. The High Court disposed of the writ petition on 18.6.2001 holding that since the appellant had retired from service, the enquiry contemplated earlier could

not have been proceeded with in the absence of enabling provision in the service rules of the respondent-Corporation and consequently granted reliefs to the appellant except interest on belated payment of gratuity. The appellant, aggrieved by the order of the learned Single Judge, to the extent of denial of interest on the belated payment of gratuity, filed Appeal No. 4177 of 2001. The Division Bench in the appeal found that the appellant was entitled to payment of interest on the belated payment of gratuity, but, however, held that the discretion exercised by the learned Single Judge in denying interest was not arbitrary. In that view, the writ appeal was dismissed.

The learned counsel for the appellant urged that claim for interest on belated payment of gratuity is a statutory right as envisaged under Sections 7 and 8 of the Act; the High Court committed an error in denying the same to the appellant on the ground of discretion on the facts and circumstances of the case. According to the learned counsel, when the appellant on fact was found to be entitled to interest, he should not have been denied the same.

The learned counsel for the respondent-Corporation argued in support and justification of the impugned order.

In order to appreciate the above contentions urged, it is necessary to notice the provisions of the Payment of Gratuity Act, 1972 (for short 'the Act') to the extent they are relevant. They are extracted below:-

"7. Determination of the amount of gratuity

(1) A person who is eligible for payment of gratuity under this Act or any person authorized, 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.

.....

(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.

8. Recovery of gratuity If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify, from the date of expiry of the prescribed time as arrears of land revenue and pay the same to the person entitled thereto;

Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate.

Provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act."

It is evident from Section 7(2) that as soon as gratuity becomes payable, the employer, whether any application has been made or not, is obliged to 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. Under Section 7(3), the employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable. Under sub-section 3(A) of Section 7, if the amount of gratuity is not paid by the employer within the period specified in sub-section (3), he 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; 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 that ground. From the provisions made in Section 7, a clear command can be seen mandating the employer to pay the gratuity within the specified time and to pay interest on the delayed payment of gratuity. No discretion is available to exempt or relieve the employer from payment of gratuity with or without interest as the case may be. However, under the proviso to Section 7(3A), no interest shall be payable if delay in payment of gratuity is due to the fault of the employee and further condition that the employer has obtained permission in writing from the controlling authority for the delayed payment on that ground. Under Section 8, provision is made for recovery of gratuity payable under the Act, if not paid by the employer within the prescribed time. The Collector shall recover the amount of gratuity with compound interest thereon as arrears of land revenue and pay the same to the person entitled. A penal provision is also made in Section 9 for non-payment of gratuity. Payment of gratuity with or without interest as the case may be does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with the penalty of payment of interest was the view taken in *State of Kerala & Ors. vs. M. Padmanabhan Nayar* [1985 (50) FLR 145]. Earlier there was no provision for payment of interest on the delayed payment of gratuity. Sub-section (3A) was added to Section 7 by an amendment, which came into force with effect from 1st October, 1987. In the case of *Charan Singh vs. M/s. Birla Textiles and Another* [1988 (57) FLR 543 SC], this aspect was noticed in the following words:

"There was no provision in the Act for payment of interest when the same was quantified by the Controlling Authority and before the Collector was approached for its realization. In fact, it is on the acceptance of the position that there was a lacuna in the law that Act 22 of 1987 brought about the incorporation of sub-section 3(A) in Section 7. That provision has prospective application."

In the background of this legal position, now we turn to the facts of the present case. The appellant was under suspension from 15.3.1999 to 21.5.1999. On attaining the age of superannuation, he retired from services of the respondent-Corporation on 1.1.2000. The learned Single Judge, after considering the rival contentions, disposed of the writ petition issuing directions to the respondent-Corporation to settle the full salary and allowances for the period of suspension, gratuity, cash equivalent to leave salary, deferred leave, concession amount etc. As regards the claim of interest on gratuity, the learned Single Judge held as under:-

"Since there was a doubt as to whether the petitioner is entitled to the gratuity, cash equivalent of leave salary etc., in view of the divergent opinion of the Courts during the pendency of an enquiry proceeding of a retired employee, in my view, the petitioner is not entitled to the relief of interest for the belated payment of gratuity and other amounts."

It is clear from what is extracted above from the order of learned Single Judge that interest on delayed payment of gratuity was denied only on the ground that there was doubt whether the appellant was entitled to gratuity, cash equivalent to leave etc., in view of divergent opinion of the courts during the pendency of enquiry. The learned Single Judge having held that the appellant was entitled for payment of gratuity was not right in denying the interest on the delayed payment of gratuity having due regard to Section 7(3A) of the Act. It was not the case of the respondent that the delay in the payment of gratuity was due to the fault of the employee and that it had obtained permission in writing from the controlling authority for the delayed payment on that ground. As noticed above, there is a clear mandate in the provisions of Section 7 to the employer for payment of gratuity within time and to pay interest on the delayed payment of gratuity. There is also provision to recover the amount of gratuity with compound interest in case amount of gratuity payable was not paid by the employer in terms of Section 8 of the Act. 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. The appeal is allowed accordingly with cost quantified at Rs. 10,000/-.