

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.5/2019

Date of Order: 25.04.2019

Nathme A. Sangma	Vs.	Garo Hills Autonomous District Council & ors
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Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Chief Justice
Hon'ble Mr. Justice H.S. Thangkhiew, Judge

Appearance:

For the Petitioner(s)	: Mr. SA Sheikh, Adv
For the Respondent(s)	: Mr. S Dey, Adv

i) Whether approved for reporting in Law journals etc.:	Yes
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ii) Whether approved for publication in press:	No
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Per Mohammad Yaqoob Mir, 'CJ' (ORAL)

1. Deceased husband of the appellant on reaching superannuation retired as Lot Mondal, Land Reforms Branch of Garo Hills Autonomous District Council (GHADC) on 30.09.2011 then expired on 03.09.2016. During his lifetime, amount of gratuity and leave salary was not paid in full i.e. out of the total amount of gratuity plus leave salary (Rs.2,13,670/-+ Rs.6,41,010 = Rs.8,54,680/-) Rs.3,20,017/- were paid to the deceased employee in the year 2013 whereas, balance amount was paid to the petitioner on 28.12.2018 in compliance to the judgment dated 02.11.2018 passed in WP (C) No.31 of 2018 which is impugned in this appeal.

2. Petitioner has filed this instant appeal only on one ground that the learned Single Judge has not granted interest when in the writ petition a specific prayer is for grant of interest.

3. It is an admitted position that interest was not awarded by learned Single Judge when the same is awardable.

4. The claim for interest is a statutory right so cannot be denied. Section 7 (1), Clause (3) and (3A) of the Payment of Gratuity Act, 1972 (hereinafter referred to as the Act), are relevant to be quoted:-

“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 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.

²[(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.]

5. Plain language of Section 7 (3) of the Act mandates that the employer has to arrange so as to pay the amount of gratuity within 30 days from the date it becomes payable. Sub-section (3A) of Section 7 envisage that in case the gratuity is not paid on the date it becomes payable then simple interest has to be paid on such rate not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits as Government may, by notification specify.

6. Proviso to sub-section (3A) provide that no interest shall be payable if delay in payment of gratuity is due to the fault of the employee and employer has obtained permission in writing from the controlling authority for the delayed payment on that ground.

7. Admittedly no fault is attributed to the employee (writ petitioner) therefore there is no question for obtaining permission for delayed payment. All along respondents have projected that GHADC was faced with financial problem i.e. financial health was not so sound to pay gratuity and salary to its retired employees which in view of proviso to sub-section (3) of Section 7 of the Act does not constitute a ground for non-payment of interest.

Interest payable is statutory so is not within the domain of discretion of the Court except for rate of interest, which shall not exceed the maximum rate notified. Para 4 of the judgment rendered in the case of D.D. Tiwari (Dead) Through Legal Representatives v. Uttar Haryana Bijli Vitran Nigam Limited & ors: (2014) 8 SCC 894 in this behalf shall be advantageous to be quoted:-

“4. The learned Single Judge has allowed the writ petition vide order dated 25-8-2010² [CWP No 1048 of 2010, decided on 25-8-2010 (P&H)] after setting aside the action of the respondents in withholding the amount of gratuity and directing the respondents to release the withheld amount of gratuity within three months without awarding interest as claimed by the appellant. The High Court has adverted to the judgments of this Court particularly, in *State of Kerala v. M. Padmanabhan Nair*³: [(1985) 1 SCC 429: 1985 SCC (L&S) 278], wherein this Court reiterated its earlier view holding that: (SCC pp. 429-30, para 1).

“1. [the] pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment [to the employees].”

8. Para 7 of the judgment rendered in the case of H Gangahanume Gowda v. Karnataka Agro Industries Corpn. Ltd.: (2003) 3 SCC 40 is advantageous to be quoted:-

“7. 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(3-A), 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. v. M. Padmanabhan Nair*¹: [(1985) 50 FLR 145]. Earlier there was no provision for payment of interest on the delayed payment of gratuity. Sub-section (3-A) was added to Section 7 by an amendment, which came into force with effect from 1-10-1987. In the case of *Charan Singh v. Birla Textiles*²: [(1988) 57 FLR 543] this aspect was noticed in the following words: (SCC pp. 214-15, para 4)

“4. 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.”

9. Now the question is as to what is the rate of interest awardable, in terms of sub-section (3A) of Section 7 of the Act, it has to be simple interest on such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-terms deposits, as Government may, by notification specify.

10. Rate of interest awardable has to be up to maximum because after all an employee who retired could not be asked to wait indefinitely so as to subject him to unforeseen circumstances. It is in the same background that employer has to arrange and to pay the gratuity amount within thirty days from the date it becomes due. It is a statutory obligation and breach whereof entails penalty of interest as envisaged by sub-section (3A) of Section 7 of the Act.

11. Submission of learned counsel for the respondents that GHADC was not averse to the payment of gratuity and leave salary but for its bad

financial health payment got delayed therefore, interest may not be awarded. Non-awarding of interest is to violate the statutory provisions therefore impossible. However, keeping in view the financial health as projected in our view, instead of awarding prevalent maximum rate of interest, simple interest at rate of 6% per annum, from the date the amount of gratuity and leave salary had become due up to the time it has been paid i.e. as follows:-

- (a) Due date of payment is 30.10.2011;
- (b) Part amount of Rs.3,20,017/- paid in the year 2013;
- (c) Balance amount paid on 28.12.2018;
- (d) Interest payable for the entire amount w.e.f. 01.01.2011 till the first installment of Rs.3,20,017/- and;
- (e) Thereafter on the balance amount up to 28.12.2018.

12. The respondents shall calculate and work out the amount of interest and be paid to the petitioner within a period of three months.

13. Appeal succeeds order impugned to the extent indicated is modified i.e. interest @6% is also awarded on the aforesaid terms.

(H.S. Thangkhiew)
Judge

(Mohammad Yaqoob Mir)
Chief Justice

Meghalaya
25.04.2019
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