

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.39/2023

Date of Order: 29.02.2024

Hillarton Sangma & anr	Vs.	State of Meghalaya & ors
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Coram:

Hon'ble Mr. Justice S. Vaidyanathan, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellants	: Mr. A.G. Momin, Adv
For the Respondents	: Mr. N.D. Chullai, AAG with Ms. Z.E. Nongkynrih, GA Mr. P. Yobin, Adv for R/4

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| i) | Whether approved for reporting in Law journals etc.: | Yes |
| ii) | Whether approved for publication in press: | Yes |
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ORDER

(Made by Hon'ble Chief Justice)

The present Writ Appeal has been preferred against the order of the learned Single Judge dated 21.09.2023 passed in WP (C) No.59 of 2022, whereby the plea of the writ petitioner for grant of gratuity and other benefits have been rejected.

2. Learned counsel for the writ petitioners, who are appellants herein submitted that the appellants have been deprived of gratuity for the services rendered and also leave encashment.

3. Learned counsel for the respondent No.4 has vehemently contended that the appellants had accepted the Golden Handshake / VR Scheme and due to genuine reasons, the establishment could not be continued. After negotiation with Workmen / Union, it has been decided to enter into a scheme by which all the employees have been paid the benefits in terms of Golden Handshake / VR Scheme. He further contended that it is true that some of the employees had already knocked at the doors of the Court and obtained some relief. But in the present case on hand, the appellants / writ petitioners have approached this Court after a lapse of 21 years of the cessation of employer & employee relationship and at this point of time, it is very difficult to have access to the scheme, based on which the benefits have been extended to all the employees. He also contended that there is no chance of getting those documents at this stage to ascertain about the genuineness of the claim made by the appellants.

4. It is an accepted position that Gratuity and pension are not the bounties. The amount of gratuity to be received by an employee is a property within the meaning of Article 300-A of the Constitution of India and the statutory right to property cannot be taken away without following due process of law. The concern expressed by the Hon'ble

Supreme Court impressing that the retirement dues must be paid in time, is reflected, in the case of ***Dr. Uma Agarwal vs. State of U.P.***, reported in ***(1999) 3 SCC 438***, and the observation needs as under:-

“....grant of pension is not a bounty but a right of the government servant. The Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. ***Delay in settlement of retiral benefits is frustrating and must be avoided at all costs.*** Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. ***In cases where a retired government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the Rules/Instructions apart from other relevant factors applicable to each case.***”

5. In this case, the employer has not disputed the actual years of service and the last drawn pay of Rs.2000/ per month. However, there is no evidence adduced on the side of the appellants to establish that they are entitled for leave encashment. The writ petitioners/appellants cannot convert this Court as an adjudicating Court and compel this Court to decide about the amount which they are entitled to.

6. Insofar as gratuity is concerned, the factum of years of service and last drawn pay is not in dispute. Considering the fact that there was a golden handshake scheme, by which the employees have been disengaged from service, the employees have to be paid gratuity. It

is pertinent to state here that the employees have approached this Court without going before the appropriate authority, claiming gratuity and that there is also delay of 21 years in seeking the relief.

7. Before proceeding with the issue involved herein, for better appreciation, Sections 7 and 8 of the Payment of Gratuity Act, 1972 are extracted hereunder:

“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 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.”

"Notification under Section 7(3-A) of the Payment of Gratuity Act: S.O. 874--In exercise of the powers conferred by subsection (3A) of Section 7 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies ten percent per annum at the rate of simple interest payable or the time being by the employer to his employees in cases where the gratuity is not paid within the specified period. This Notification shall come into force on the date of its publication in the Official Gazetter (vide the Gazette of India, Extraordinary, P.II, Section 3(i) dated 1st October, 1987 at p.2)"

“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.”

"Notification under Section 8 of the Payment of Gratuity Act:- S.O.1032(E). - In exercise of the powers conferred by Section 8 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies 15 per

cent per annum as the rate of compound interest, recoverable by the Collector for the time being, along with the amount of gratuity and payable to the person entitled thereto. This notification shall come into force on the date of its publication in the Official Gazette."

8. A reading of Section 7(3)(A) of the Payment of Gratuity Act, 1972 (in short 'the Act, 1972') makes it clear that, the employer will have to pay interest @ 10% p.a., in case the amount is not paid within the time stipulated. In the event of non-payment of gratuity even after the orders of the Controlling Authority, which has been confirmed by the Appellate Authority, such non-payment of gratuity would attract interest @ 15% p.a. in terms of Section 8 thereof. In any event, interest cannot be more than the principal amount demanded as per the proviso to Section 8 of the Act (extracted supra)

9. In this case, there is an enormous delay and in our view, in case we relegate the matter to the Controlling Authority, the authority, at the first instance, will have to decide the delay and in that event, there can be no end to the litigation. Therefore, in order to give quietus to the issue on hand and shorten the life of litigation, we are of the view that the payment of gratuity shall be payable to the appellants for the actual years of service rendered, by taking into account the last drawn pay of Rs.2,000/- divided by 26, multiplied by 15 and multiplied by the actual

years of service to the appellants within a period of two months from the date of receipt of this judgment. It is made clear that the appellants will not be entitled to any interest in terms of Section 7(3) A and Section 8 mentioned supra. It is further made clear that the judgment rendered in this case is applicable only to the appellants concerned in this appeal and this cannot be treated as a precedent for others to come up with similar demand. In case any other employees approaches this Court for the similar relief, it will be open to the respondents to take a defence of laches, which shall be considered in accordance with law.

10. With the above observation, W.A.No.39 of 2023 stands disposed of.

(W.Diengdoh)
Judge

(S.Vaidyanathan)
Chief Justice

Meghalaya
29.02.2024
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