

CHARAN SINGH

v.

BIRLA TEXTILES & ANR.

AUGUST 31, 1988

B [RANGANATH MISRA AND M.N. VENKATACHALIAH, JJ.]

Payment of Gratuity Act, 1972—Sections 7 and 8—Payment of interest on gratuity—When and in what circumstances admissible.

C The appellant was in the service of Respondent firm from April, 1944 till he resigned on 24.5.83. The employer did not determine the amount of gratuity payable to the appellant. Appellant furnished the necessary application for payment of gratuity and since no action was taken by the employer, the appellant approached the statutory controlling authority for gratuity and interest thereon. The employer contested. The controlling authority determined the amount of gratuity at Rs.16,380 and directed the employer to pay the same along with compound interest at 9%.

On appeal by the employer, the appellate authority confirmed the determination of gratuity but set aside the order for payment of interest.

E This appeal by special leave is in regard to payability of interest on gratuity. The appellant relied on the provisions of the Interest Act and section 34 of the Code of Civil Procedure, also.

Dismissing the appeal,

F HELD: 1.1 It is only when the Collector issue a certificate for recovery of the dues as a public demand that interest as provided under Section 8 is admissible. [745H]

G 1.2 In the instant case the appellant is not entitled to interest on the amount of gratuity found due to him. The controlling authority had directed interest as provided in Section 8 to be paid, which the Appellate Authority had vacated. From the facts of this case, it is clear that the stage for action under section 8 had not been reached inasmuch the appellant had not applied for recovery of gratuity to the Collector. [745G-H]

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2. 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 realisation. In fact, it is on the acceptance of the lacuna in the law that Act 22 of 1987 brought about the incorporation of sub-section (3A) in Section 7. But that provision has prospective, and not retrospective application. [746A-B]

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3. The provisions of the Interest Act and the provisions of Section 34 of the Code of Civil Procedure would be of no avail to the appellant since no notice was given demanding interest and the controlling authority is not a court for falling back on section 34 of the Code. [746C]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2659 of 1986.

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From the Judgment and Order dated 14.6.1985 of the Appellate Authority Delhi in Appeal No. 2 of 1985.

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Anil Kumar Gupta and B.N. Singhvi for the Appellant.

Raja Ram Agarwal, Parveen Kumar and Vivek Gambhir for the Respondents.

D

The Judgment of the Court was delivered by

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RANGANATH MISRA, J. The short question in this appeal by special leave is whether the appellant-workman was entitled to interest on the gratuity due to him under the provisions of the Payment of Gratuity Act, 1972 (39 of 1972).

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Appellant joined service under Respondent No. 1 in April 1944 and was relieved from service on his resignation with effect from 24.5.1983. The employer did not determine the amount of gratuity payable to the appellant as required under Section 7(2) of the Act. On 7.6.1983, the appellant furnished an application in Form-1 for payment of gratuity but no action was taken by the employer; then appellant approached the statutory controlling authority for determination of the amount of gratuity and requested that on the sum due interest may be paid. The employer contested the claim both in regard to gratuity as also interest. On 3.12.1984, the controlling authority determined the amount of gratuity at Rs. 16,380 and directed the Respondent No. 1 to pay the same along with compound interest of 9 per cent. Thereupon

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A Respondent No. 1 challenged the order before the appellate Authority. The appellate Authority affirmed the determination of gratuity but set aside the order for payment of interest.

We have heard learned counsel for both parties in regard to payability of interest. Relevant portions of section 7 of the Act, as it **B** stood in 1983, when the cause of action arose, may now be extracted:

“7: Determination of the amount of gratuity:

C (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.

D (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;

E (3) The employer shall arrange to pay the amount of gratuity, within such time as may be prescribed, to the person to whom the gratuity is payable;

F (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, 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.

G *Explanation:* Where there is a dispute with regard to any matter specified in this clause the employee may make an application to the controlling authority for taking such action as is specified in clause (b).

(b)

H (c)

(5) A

(6) B

(7) C

Sec. 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 the rate of nine per cent per annum, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto.”

The provisions of Section 7 have been amended twice, first by Act 25 of 1984 with effect from 1.7.1984 and again by Act 22 of 1987. The 1987 Amendment has substituted sub-section (3) and added sub-section (3A) in Section 7 to the following effect:

“(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, repayment of long term deposits, as that Government may, by notification specify

The controlling authority had directed interest as provided in Section 8 to be paid which the Appellate Authority had vacated. From the facts of the case, it is clear that the stage for action under section 8 had not been reached inasmuch the appellant had not applied for recovery of gratuity to the Collector. It is only when the Collector issues a certificate for recovery of the dues as a public demand that interest as provided under Section 8 is admissible.

A 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 realisation. 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 (3A) in Section 7. That provision has prospective application.

B Learned counsel for the appellant tried to rely upon the provisions of the Interest Act and the provisions of Section 34 of the Code of Civil Procedure. We do not find any support for the appellant's stand from either of the provisions. Admittedly, no notice was given demanding interest and the controlling authority is not a court for falling back on Section 34 of the Code. We are satisfied in the facts of the case that the appellant was not entitled to interest on the amount of gratuity found due to him. Since that was the only matter agitated in the appeal with the conclusion indicated, this appeal has to fail and is dismissed.

D There would be no order for costs.

G.N.

Appeal dismissed.