

MHIC010014422022



Presented on : 29-09-2022

Registered on : 12-10-2022

Decided on : 18-01-2023

Duration : 0 years, 3 months, 6 days

BEFORE SHRI. M.R. DESHPANDE, APPELLATE AUTHORITY UNDER
THE PAYMENT OF GRATUITY ACT, 1972 & PRESIDENT,
INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

APPEAL (PGA) NO. 886 OF 2022INAPPLICATION (PGA) NO. 471 OF 2020

The BEST Undertaking,
BEST Bhavan,
BEST Marg, Colaba,
Mumbai - 400 001.

.... Appellant.
(Orig. Opponent)

V E R S U S

Ashok Pandurang Mhamunkar,
A/204, Building No.8,
Rajkamal CHS Ltd.,
J.K.Karmalkar Marg, Tilak Nagar,
Mumbai – 400 089.

.... Respondent.
(Orig. Applicant)

In the matter of appeal under Section 7(7) of The Payment of Gratuity Act, 1972 and Rule 18 of Payment of Gratuity (Maharashtra) Rules against the Judgment and Order dated 25.02.2022 passed by the Controlling Authority under the Payment of Gratuity Act & Judge, 5th Labour Court, Mumbai in Application(PGA)No. 471/2020.

CORAM :- Shri.M.R.Deshpande, Appellate Authority & President, Industrial Court, Maharashtra, Mumbai.

Appearances :- Shri. G.R. Naik, Advocate for the Appellant.
Shri. S.S. Nalawade, Union Representative for the Respondent.

J U D G M E N T
(Dated 18/01/2023)

1. This is an appeal under Section 7(7) of the Payment of Gratuity Act, 1972 and Rule 18 of the Payment of Gratuity (Maharashtra) Rules, 1972. The appellant has challenged the Judgment and Order dated 25.02.2022 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 & Judge, 5th Labour Court, Mumbai in Application(PGA)No. 471/2020. The rate of interest imposed by the Controlling Authority upon the delayed payment of gratuity amount is in dispute. Brief facts leading to the present appeal are as follows.

2. The respondent Ashok Pandurang Mhamunkar, Sr. T.O., Check No.212064, Traffic Department, Wadala Depot, was appointed in the appellant Undertaking on 05.05.1986. He retired from the services of the Undertaking w.e.f.01.08.2018. The respondent had claimed gratuity amount of Rs.22,51,945/- alongwith interest on delayed payment of gratuity amount from the appellant by making application and when the appellant defaulted Application(PGA)No.471/2020 was filed before the Controlling Authority, under the Payment of Gratuity Act, 1972. The Controlling Authority by the impugned Judgment and Order directed the appellant to pay to the respondent interest @10% p.a. on gratuity amount of Rs.21,82,963/- from 01.08.2019 to 06.08.2021 within one month.

3. While resisting the impugned Order, the appellant submitted that respondent was entitled to gratuity amount of

Rs.21,82,963/-. As per the appellant, due to several financial crisis, the Undertaking was unable to pay to respondent the gratuity amount in time. Further, due to financial crunches and crisis the quantum of rate of interest amount is disputed. The appellant while challenging the impugned Judgment and Order, has raised several grounds in this appeal. The impugned order is challenged on the ground that it is contrary to law, equity and good conscience. It is contended that the Ld. Controlling Authority has failed to consider the provisions of Section 7(3A) of the Payment of Gratuity Act, 1972 in its true letter and spirit. It is further contended that the Ld. Controlling Authority ought to have considered the prevailing rate of interest for long term deposit as prescribed by the Reserve Bank of India from time to time. It is contended that the Central Government issued the Notification in the year 1987 and at the relevant time the prevailing rate of interest on long term deposit was around 10% p.a. and at that relevant time the Central Government Notification was in conformity with the prevailing rate of interest on long term deposit. It is further contended that in the present scenario the simple interest on long term deposit declared by the Reserve Bank of India is about 5.5% p.a., hence, the Ld. Controlling Authority ought to have exercised judicial discretion while adjudicating the application of respondent.

4. I have heard Ld. Advocate Shri. G.R.Naik for the appellant and Union Representative Shri. S.S.Nalawade for the respondent. Following Points arise for determination and I have recorded my findings thereon for the reasons stated thereunder,

Sr.No.	<u>Points</u>	<u>Findings</u>
1)	Whether the Ld.Controlling Authority by imposing the rate of interest @ 10% p.a. on delayed payment of gratuity to the respondent has committed any illegality ?	No.
2)	What order ?	As per final order.

R E A S O N S

As to Point No.1.

5. Ld. Advocate Shri. G.R. Naik, for the appellant submitted that the judicial discretion ought to have been exercised by the Ld. Controlling Authority as the prevailing rate of interest declared on long term deposit by the Bank is around 5.5 %. He submitted that it has been held by various Hon'ble High Courts that pension and gratuity are no longer bounties 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 delay in settlement and disbursement thereof should be visited with the penalty of payment of interest at the current market rate till actual payment. He further submitted that the decision of the Controlling Authority to impose the rate of interest @ 10% p.a. on delayed payment of gratuity is prejudicial to the appellant Undertaking, hence prayed for interference in the impugned order with a request to modify the same to the extent of rate of interest @ 5.5 % p.a. In support, he relied on the following Judgments,

- i) Judgment of the Hon'ble Supreme Court in Special Leave to Appeal(C)No.1803/2018 dt.18.11.2021 in 'G.B.Pant University of Agriculture and Technology V/s. Sri Damodar Mathpal'.

- ii) Judgment of the Hon'ble High Court, Chhattisgarh in 'S.D. Dwivedi (Dr.) S/o Late H.R. Dwivedi, Rewa. M.P. V/s. State of Chhattisgarh, through the Secretary, Livestock Development Department, Secretariat & Anr.' reported in 2018 II CLR 240.
- iii) Judgment of the Hon'ble High Court, Gujarat in 'Manager Ashoka Cotsyn V/s. Bharatbhai Arvindlal Shah & Anr.' reported in 2015 II CLR 203.
- iv) Judgment of the Hon'ble High Court, Gauhati in 'Babul Ranjan Singha, S/o Late Rash Mohan Singha, Tripura V/s. Tripura Road Transport Corporation & Ors.' reported in 2013 II CLR 373.

6. On the other hand, Union Representative Shri.S.S. Nalawade, for the respondent submitted that the impugned order is absolutely legal as Section 7(3A) of the Payment of Gratuity Act, 1972 has left no discretion, but it is mandate that for the delayed payment of gratuity amount, interest @ 10% p.a. is to be imposed as per the Central Government Notification under Section 7(3A) of the Payment of Gratuity Act, 1972. In support, he relied on the following Judgments,

- a) Judgment of the Hon'ble Apex Court in Appeal (Civil) No. 1024/2003 dated 05.02.2003 in 'H. Gangahanume Gowda V/s. Karnataka Agro Industries'.
- b) Judgment of the Hon'ble Apex Court in Civil Appeal No. 3153 of 2022 dated 25.04.2022 in 'Maniben Maganbhai Bhariya V/s. District Development Officer Dahod & Ors.'

7. I have considered submission of both the sides. I have gone through the material on record. It would be useful to refer to Section 7(3A) of the Payment of Gratuity Act, 1972, which reads as under,

7. Determination of the amount of Gratuity:

(3-A) 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. A plain reading of Section 7(3A) of the Payment of Gratuity Act, 1972 makes it clear that it is a mandate of law that the employer shall pay from the date on which 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. Last Central Government Notification referring to this Section is vide S.O. 874(E) dt. 1/10/1987 by which the interest @ 10% p.a. is specified.

9. There is no dispute that respondent was in service of the appellant Undertaking since 05.05.1986 and he retired from the service of the Undertaking w.e.f. 01.08.2018. There is no dispute that respondent was entitled to the gratuity amount of Rs.21,82,963/-. As per the appellant, it has paid entire gratuity amount to the respondent on 06.08.2021. This fact is not disputed by the respondent. The dispute is regarding the rate of interest @ 10% p.a. awarded by the Controlling Authority on delayed payment of gratuity. In the above Judgments of the Hon'ble Apex Court in H. Gangahanume Gowda and Maniben Maganbhai Bhariya, it was held that the workers are entitled for the simple interest @ 10% p.a. from

the date specified under Sub Section 3A of Section 7 of the Payment of Gratuity Act, 1972.

10. In the above Judgment in G.B.Pant University of Agriculture and Technology, relied upon by the appellant, it appears that the point involved therein was regarding exercise of option by the employee to avail the benefits of extension of age of retirement and it was held that exercising of such an option would not deprive the employee to gratuity unless and until the establishment was exempt in strict compliance of Section 5 of the Payment of Gratuity Act, after prior approval of the State Government. In the above case in S.D. Dwivedi it appears that there was conflict between Hindi version and English version of Rule 9(4) of the Rules of 1976. In the above Judgment in Manager Ashoka Cotsyn it appears that the employer therein was willing and had offered amount of gratuity, but the same was refused by the employee. With due respect aforesaid case laws are not helpful to the appellant to advance its case, as the facts in the present case are different.

11. In the present case the amount of gratuity payable to respondent is not disputed. The only dispute raised is regarding rate of interest imposed on delayed payment. The Controlling Authority appears to have proceeded as per the mandate of Section 7(3A) of the Payment of Gratuity Act. Therefore, there is neither any failure nor any contrary view taken by the Controlling Authority. The contention is that prevailing rate of interest on long term deposits needs to be examined in view of the Central Government's Notification. When there is no change in Central Government

Notification over the period, there is no scope to consider for the Controlling Authority to reduce the rate of interest depending upon prevailing rate of interest on long term deposit.

12. The reason cited by the appellant is the financial crisis faced by the appellant Undertaking for delayed payment of gratuity amount. It must be noted that the payment of gratuity is statutory and requirement of the amount was within the knowledge of the appellant Undertaking based upon the date of retirement of its employees. The appellant Undertaking had sufficient time to make the provisions of such funds.

13. The better management and the resources are in the hands of the appellant Undertaking. They can certainly have better resources to manage the affairs to meet statutory deadlines. The purpose of mandate of law cannot be ignored by the appellant Undertaking. It is the duty of the management of the appellant Undertaking to save the rate of interest to be paid on delayed payment of gratuity amount to the employee. They must plan accordingly. Therefore, arguments advanced by the Advocate for the appellant about financial crisis of the appellant Undertaking cannot be accepted.

14. The Hon'ble Supreme Court in above referred Judgments has granted interest @ 10% p.a. It therefore cannot be said that the Ld. Controlling Authority committed any error in awarding interest @ 10% vide the impugned order. In this view, there is no merit in

the present appeal. The same is liable to be dismissed. Hence, I answer Point No.1 in the negative and pass the following order :

O R D E R

Appeal(PGA)No.886 of 2022 stands dismissed
without any order as to costs.

(M.R. Deshpande)

President,

Industrial Court, Mah., Mumbai

& Appellate Authority,

Under Payment of Gratuity Act, 1972

Place : Mumbai

Date : 18.01.2023

Dictated on : 18.01.2023

Transcribed on : 18.01.2023

Checked on : 18.01.2023

Signed on : 18.01.2023