

(2014) 03 AP CK 0077

In the Andhra Pradesh High Court

Case No : W.P. Nos. 1932 and 11114 of 2006

A. Abraham

APPELLANT

Vs

Cement Corporation of India Ltd.

RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 215, 226
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 18(8)

Citation : (2014) 6 ALD 150 : (2014) 5 ALT 109

Hon'ble Judges : D. Seshadri Naidu, J

Bench : Single Bench

Advocate : M. Panduranga Rao, Advocate for the Appellant; N. Narasimha Rao, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Dama Seshadri Naidu, J.—These two Writ Petitions concern themselves with the issue of non-payment of certain terminal and other service benefits to the petitioners by their employer namely the Cement Corporation of India Limited ("C.C.I.L." for brevity), despite this Court declaring, in its Order dated 6th July, 1999 in W.P. No. 10228 of 1998 and batch, that the transferring of the petitioner and other employees to another company i.e., India Cement Limited ("I.C.L." for brevity), was illegal and void. The petitioners, having attained the age of superannuation in the meanwhile, claimed terminal benefits, as if they had continued in the parent company i.e., Cement Corporation of India Limited.

2. Both the Writ Petitions are disposed of through this Common Order since the same question of law and fact arises involving the same respondent and its erstwhile employees, who are similarly placed in service in all respects.

3. To appreciate the issue in the factual context, the facts as obtained in W.P. No. 11114 of 2006 are extracted herein below.

4. The petitioner, having joined the Cement Corporation of India Limited

(C.C.I.L.), a Government of India Corporation, in October, 1978, and later having been promoted as Manager, had been working in the said capacity in C.C.I.L., Yerraguntla Cement Factory. In course of time, when the unit of Yerraguntla became sick, proceedings are said to have been initiated before the Board for Industrial and Financial Re-construction (B.I.F.R.), which eventually culminated in a decision to sell the said unit to India Cements Limited ("I.C.L." for brevity), a private Corporation. "In the wake of the proceedings before B.I.F.R., after 01.12.1997, many employees i.e., staff/workman, totalling to 448, were transferred from C.C.I.L. to I.C.L. Certain employees filed Writ Petitions in W.P. No. 22122 of 1998 and batch. Eventually, this Court through Judgment dated 06.07.1999 held the transfer of the workmen without their consent to be illegal and further directed that they should be continued in C.C.I.L.. In the interregnum, the petitioner is said to have worked in I.C.L. from 21.01.1998 to 22.07.1999. Before the petitioner could be taken back into the fold of C.C.I.L., especially based on the judgment of this Court in W.P. No. 22122 of 1998, he was, however, made to retire on the ground that he had attained the age of superannuation. Though the respondent Corporation took the matter in intra-Court appeal, it was dismissed on 02.11.1999, and later even the SLP filed before the Supreme Court was dismissed on 07.09.2001.

5. In the light of the Judgment dated 06.07.1999 in W.P. No. 22122 of 1998 and batch declaring that the transfer of the employees was illegal and void, the petitioner, contending that the petitioner is deemed to have been in service of C.C.I.L. continuously till his retirement, made representations to the respondent Corporation seeking payment of difference in wages. The demand was made on the premise that the transferee Private Company paid lesser wages than what the petitioner had been drawing in the respondent Corporation i.e., the principal employer. When no response was forthcoming from the respondent Corporation, the petitioner and other similarly placed employees invoked the contempt jurisdiction of this Court and filed C.C. No. 182 of 2002 and batch."

6. When the Contempt Petition was pending, the respondents reported before the Court that the demands of the employees had been substantially complied with, and in proof thereof, deposited an amount of Rs. 1,17,03,452/-. On such deposit, the learned Single Judge through a Common Order, dated 10.03.2005, observed that insofar as the difference of wages and other statutory benefits are concerned, the workmen are at liberty to make proper representations to the respondent authorities and pursue the remedies. Having made numerous representations, the petitioner approached this Court by filing the present Writ Petition complaining against the total inaction on the part of the respondent Corporation in settling his terminal benefits in full, despite the earlier direction of this Court while disposing of the Contempt Proceedings.

7. In the above factual backdrop, Sri M. Panduranga Rao, the learned counsel for the petitioner, has submitted that the petitioner was made to superannuate way back in 2002, and to this day, the respondent Corporation has not paid his

terminal benefits in full, including the interest thereof, to which the petitioner is statutorily entitled. It is contended that the respondent Corporation, despite being an instrumentality of the State, has been driving the petitioner from pillar to post to have his terminal benefits. Though now the petitioner is a septuagenarian, even after dragging the matter up to the Hon'ble Supreme Court and after having met with consistent rejection, the respondent Corporation has been unyielding in its approach.

8. The learned counsel has pointed out that the petitioner has made numerous representations after the disposal of the contempt case, based on the express undertaking by the respondent Corporation before this Court in the Contempt Proceedings that any application submitted by the petitioner or any other affected employee regarding the arrears of terminal benefits or other benefits should be considered in accordance with law. The learned counsel has specifically pointed out that through an Office Order dated 31.12.2002, the respondent Corporation has expressly agreed to settle all the claims of the petitioner. Accordingly, the petitioner made his representation dated 25.01.2003 setting out all the details of the arrears of terminal benefits he is entitled to. The said representation was followed by another one dated 21.02.2003 and another one dated 19.09.2004. The learned counsel has submitted that on such repeated representations, the respondent Corporation paid an amount of Rs. 1,61,560/- on 25.01.2005 towards balance amount of P.F. dues and interest. In fact, making a grievance out of the fact that the amount was not paid in full and that the petitioner was entitled to other benefits, the petitioner filed the Contempt case before this Court.

9. The learned counsel has further contended that in view of the observations made by this Court while disposing of the Contempt Case, the petitioner made another representation dated 05.07.2005 to the respondent Corporation setting out all the details concerning the amounts that are due to the petitioner. Later, he sent a reminder on 27.08.2005 and finally another reminder on 27.01.2006. The respondent authorities, contends the learned counsel, have not even deemed it appropriate to respond to the representations made by the petitioner either by accepting the same or by rejecting them in the least.

10. Per contra, the learned Standing Counsel for the respondent Corporation, in tune with the pleadings set out in the Counter Affidavit filed by the respondent Corporation, has submitted that the petitioner is no more an employee of the Corporation and that all his dues had already been settled in compliance with the Judgment of this Court in W.P. No. 22122 of 1998 and also the Orders dated 10.03.2005 in C.C. No. 182 of 2002. The learned Standing Counsel has stated that when the S.L.P filed by the Corporation was dismissed by the Supreme Court, it acted promptly and issued Proceedings dated 31.12.2002 re-transferring the petitioner from I.C.L. to its own unit. In any event, since the petitioner attained the age of superannuation by 30th April, 2002, the question of his continuation even after re-induction into the respondent Corporation does

not arise. The learned Standing Counsel has strenuously contended that, on appreciation of the pleas of the respondent Corporation, apart from the material placed before it, earlier this Court was pleased to close the contempt proceedings. According to the learned Standing Counsel the petitioner could not derive any advantage from the closure of the contempt proceedings, in which no substantive, much less positive, directions were given in favour of the petitioner or others. It is further contended that since the petitioner and other employees rendered their services in I.C.L. from 20th June, 1998 to 23rd July, 1999, for the said period, there is no obligation on the part of the respondent Corporation to pay any arrears of salary or any other benefits computing the said period as part of their service in the respondent Corporation.

11. The learned Standing Counsel has emphatically stated that whatever the liability that arose could only be from the date of re-transfer of the petitioner and other employees; and that in any event, the petitioner stood superannuated by the date of such re-transfer, Thus, if at all the petitioner has any remedy, it would be obtained from I.C.L. for the period he had worked in it. The learned Standing Counsel has also stated that the issue with regard to the arrears of salary and other terminal benefits, including alleged interest accrued thereof, is a disputed question of fact, for the resolution of which, this Court is hardly a forum. Eventually, the learned Standing Counsel has urged this Court to dismiss the Writ Petition as being without merits.

FACTS IN W.P. No. 1932 of 2006

12. The petitioner, being an Engineering Graduate, was initially appointed in respondent Corporation on 31.12.1984 and worked all through at Yerraguntla Cement Factory, Cuddapah. The petitioner is one of the numerous employees, who filed a batch of Writ Petitions questioning the transferring of their services from respondent Corporation to a Private entity (I.C.L.). In the wake of the Judgment dated 20th July, 1999, the petitioner is said to have been relieved from I.C.L. on 06.07.1999. The respondent Corporation, however, chose to take the matter in appeal. Since the petitioner was not re-admitted into the fold of the principal employer, to tide over his financial exigencies, the petitioner accepted a temporary job in Nigeria and left the country on 30th December, 2001. Thereafter, through Office Order dated 18.12.2002, the respondent Corporation directed the petitioner to report to duty in its factory at Bokajan. As the petitioner was in Nigeria, he requested the respondent Corporation to give him some more time to join at Bokajan Cement Factory. The respondent Corporation, however, has refused to accede to the request of the petitioner.

13. Under those circumstances, the petitioner lays claim to the difference in wages from January, 1998 to 22.07,1999 and also full salary from 23.07.1999 to 29.12.2001, apart from the provident fund and gratuity in terms of the statutory provisions thereof.

14. Addressing the claim of the petitioner in W.P. No. 1932 of 2005, the learned

Sanding Counsel has stated that the petitioner voluntarily left the service of the respondent Corporation and got gainfully employed abroad - Nigeria. Since the petitioner left the employment without leave of the employer, it was a voluntary abandonment. As such, the petitioner is not entitled to any benefits, including the difference in wages. The learned Standing Counsel has contended that as regards the payment of gratuity, it was clearly mentioned in the transfer notice issued by the respondent Corporation on 20.06.1998 that I.C.L. would discharge all its statutory liabilities in respect of the transferred employees on the basis of continuity of their employment in the transferee entity. The learned Standing Counsel has thus contended that the respondent Corporation has no obligation towards the petitioner. As regard the Provident Fund, the learned Standing Counsel has stated that there is a C.P.F. Trust, which is an independent body. Whatever contribution that has been made by the petitioner is in the trust and the petitioner is at liberty to make necessary application to withdraw those funds, if they have not already been withdrawn.

15. Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondent Corporation, apart from perusing the record.

16. A perusal of the record amply indicates that both the petitioners were initially the employees of the respondent Corporation. Their subsequent transfer to I.C.L. was declared illegal by this Court through Judgment dated 06.07.1999 in W.P. No. 22122 of 1998 and batch. In view of the subsequent dismissal of the Writ Appeal and also the SLP the Judgment dated 06.07.1999 attained finality. Since the said judgment remains undisturbed either in the Writ Appeal or in the SLP the question of merger need not be considered. It is the specific case of the petitioners that since the very transferring of their services to an outside entity has been declared illegal and void, by way of legal fiction it is deemed that all along the petitioners had been in service of the respondent Corporation, the principal employer. In other words, the petitioners had never left the respondent Corporation till their superannuation. In this regard, it is relevant to appreciate the observations of this Court in its Judgment dated 06.07.1999 in W.P. No. 22122 of 1998 and batch, which are as follows:

Under these circumstances, I have to necessarily hold that the transfer of the petitioners to the fold of the I.C.L. is illegal and arbitrary offending Article 14 of the Constitution of India. Accordingly, the writ petitions are allowed. The petitioners shall be treated as if they are the employees of the C.C.I. until the C.C.I. takes a decision with regard to the transfer of the petitioners in accordance with the service rules applicable to them prior to their transfer to the fold of I.C.L.

(emphasis added)

17. This Court has made a specific observation that the petitioners shall be treated as if they were the employees of C.C.I. until the C.C.I. would take a decision with regard to the transfer of the petitioners in accordance with service

rules applicable to them prior to their transfer to the fold of I.C.L. If this legal fiction is given full effect, as it ought to be, the natural corollary is that the period from 20.01.1998 to 23.07.1999 shall be treated as the period of their services if C.C.I.L. only. It has not been seriously disputed that there was a difference in the wages paid to the petitioners when they were working in C.C.I.L. and later when they were transferred to I.C.L.

18. Illustratively, the petitioner in W.P. No. 1114 of 2006 was paid a total salary of Rs. 2,32,866/- by I.C.L.. Had he continued in C.C.I.L., for the same period, he would have been paid Rs. 3,33,532/-, the wage difference being Rs. 99,666/-.

19. It is further not in dispute that the 5th Pay Commission recommended revised pay from 01.01.1996 and the respondent Corporation refused to pay the revised pay scales to its employees. Accordingly, without much hesitation, it is to be held that both the petitioners are entitled to the wage difference for the period from 21.01.1998 to 22.07.1999.

20. It would be relevant to examine the specific contention of the respondent Corporation that once the petitioners were transferred to some other entity, until they were brought back, the respondent Corporation has no obligation to pay either the difference in wages or the statutory benefits, which are the concern of the transferee entity. In this regard, we require to examine the earliest Communication issued by the respondent Corporation in the form of Notice to all the employees through Proceedings No. D(O)/YRO/7/98, dt. 20.01.1998. In that, it has been specifically averred that despite the transfer of the employees to I.C.L., their services will not be interrupted and that their service conditions in the transferee entity shall not be in any way less favourable than those then applicable to them. It is profitable to extract a part of the said Notice dated 20.01.1998, which is as follows:

i) Your employment and service with C.C.I. would stand transferred and be taken over by the India Cements Limited, Chennai.

ii) Your service will not be interrupted by such take over and your service after takeover shall be treated as continuous from the date of your joining with C.C.I.

iii) the terms and conditions of your services on such take over shall not in any way be less favourable than those presently applicable to you.

iv) In respect of the period commencing from 21.01.1998, I.C.L. will discharge all statutory liabilities in respect of your service on the basis of continuity of your employment and service reckoned from the date of your joining in C.C.I. as if it is not interrupted by such takeover of service.

21. Indeed, there is a specific assurance, rather an undertaking, on the part of the respondent Corporation that the terms and conditions of the services of those employees, who are transferred to the Private Corporation shall not be in any way less favourable than those presently applicable to those employees in the respondent Corporation. Immediately thereafter, the Corporation has also stated

that in respect of the period commencing from 21.01.1998, I.C.L. would discharge all statutory liabilities in respect of the transferred employees. Be that as it may, the fact remains that it is a unilateral communication from the respondent Corporation. Further, there is no privity of contract between the petitioners - for that matter, any of the transferred employees - and I.C.L., against which the petitioner cannot enforce any of the rights.

22. It remains to be appreciated that this Court, in its Judgment dated 06.07.1999 in W.P. No. 22122 of 1998, rendered a specific finding that at the time of transferring the services, the respondent Corporation did not enter into any understanding, agreement or MOU with the employees or its union. Coupled with this is the finding of this Court that the services of the transferred employees are deemed to have continued with the respondent Corporation without any break, A fortiori, the petitioners are entitled to have the difference in the wages they were paid from 21.01.1998 to 22.07.1999. To sub-serve the interest of justice, they shall be paid interest at 6% on the said sum until the same is paid to the petitioners.

23. It is further necessary to examine another submission of the respondent Corporation that this Court closed the Contempt Proceedings through its Order dated 10.03.2005 in C.C. No. 182 of 2002 and batch, only after having been satisfied with the company's representation that all the statutory dues required to be paid to the transferred employees had been paid. In this regard, it is appropriate to extract the observation of this Court in the Common Order dated 10.03.2005, it is as follows:

Learned counsel for the respondents submitted that insofar as difference of wages for the period from 20.01.1988 to 23.07.1989 is concerned, if the petitioners make any representation, the respondents would consider the same as per law. He also submitted with regard to Provident Fund that there is a separate trust available and if the petitioners approach the same, they will be paid the Provident Fund amounts.

24. This Court has specifically observed insofar as the difference of wages is concerned, if the petitioners make any representation, the respondents should consider the same as per law. Even with regard to the Provident Fund, the submission of the respondents that there is a trust for the said purpose has been recorded. As such, the submission of the learned Standing Counsel for the respondent Corporation that there has been complete satisfaction of all the issues raised by the transferred employees and that for that reason, the Contempt case came to be closed cannot be countenanced.

25. On the part of the petitioners, they made their submissions laying much stress on the Contempt Proceedings as if they were execution proceedings for the enforcement of the Judgment dated 06.07.1999 in W.P. No. 22122 of 1998 and the batch. On the other hand, with equal force, the respondent Corporation has contended that the Court initially identified the Corporation's obligations

arising out of the said Judgment and later closed the contempt case as the respondent Corporation fulfilled them.

26. It is imperative to clear the misgivings in this regard since both parties proceeded on the premise that the Order dated 10.03.2005 of this Court in the contempt proceedings provided certain substantial benefits, that they were sought to be enforced and that, as per the respondent Corporation, they stood fulfilled in the contempt proceedings.

27. The elementary aspect of Contempt jurisprudence should not escape our attention. The Contempt Proceedings are not adversarial in nature and ipso facto no rights are declared or negated thereby. The very nature of the proceedings is that they are sue generis with constitutional imprimatur under Article 215 of Constitution of India. Though they have been codified statutorily under the Contempt of Courts Act, 1971, since this Court is a Court of Record, with inherent power to punish for contemptuous conduct of a person or authority bound by its directive, the said enactment has not conferred any new powers on this Court. It has only statutorily acknowledged those powers.

28. In R.L. Kapur Vs. State of Madras, the Hon''ble Supreme Court has pointed out that such inherent power or jurisdiction was not derived from the statutory right relating to Contempt, nor such statutory law affects such inherent power, nor confer a power of jurisdiction, In other words, the power to punish for Contempt, partakes the character of constitutional power and consequently no law made by legislature would take away the jurisdiction conferred on the Courts of Record.

29. It is settled law that the High Courts, even while exercising their powers under Article 215 of the Constitution to punish for contempt, are required to follow the procedure prescribed by law, as has been held by the Supreme Court in Dr. L.P. Misra Vs. State of U.P., and Pallav Sheth Vs. Custodian and Others, . In Biman Basu Vs. Kallol Guha Thakurta and Another, , the Hon''ble Supreme Court has held as follows:

25. It is true that any person may move the High Court for initiating proceedings for criminal contempt by placing the facts constituting the commission of criminal contempt to the notice of the Court. But once those facts are placed before the Court, it becomes a matter between the Court and the contemner. But such person filing an application or petition does not become a complainant or petitioner in the proceeding. His duty ends with the facts being placed before the Court. The Court may in appropriate cases in its discretion require the private party or litigant moving the Court to render assistance during the course of the proceedings. In D.N. Taneja Vs. Bhajan Lal, this Court observed that:

12. ...A contempt is a matter between the court and the alleged contemner. Any person who moves the machinery of the court for contempt only brings to the notice of the court certain facts constituting contempt of court. After furnishing such information he may still assist the court, but it must always be borne in

mind that in a contempt proceeding there are only two parties, namely, the court and the contemner.

Thus, the person bringing the facts constituting contempt to the notice of the Court can never be a party to the lis nor can join the proceedings as a petitioner. Similar is the view taken by this Court in *State of Maharashtra Vs. Mahboob S. Allibhoy and another*, .

(emphasis added)

30. In the first place, in the Judgment dated 06.07.1999 in W.P. No. 22122 of 1998 and batch, this Court has only invalidated the transfer of employees from one entity to another without their consent, in the absence of any approved scheme u/s 18(8) of the Sick Industrial Companies (Special Provisions Act). On the declaration of their continued status vis-a-vis the principal employer, if the petitioners were not paid the service benefits, which they were otherwise entitled to, or if the said employer refused to recompense the petitioners the pecuniary loss they suffered in the interregnum, i.e., during their stint in the new entity (I.C.I.), the petitioners could only have a fresh cause. In fact, they rightly made representations to the authorities concerned ventilating their grievance. Once the management has not acted on their representations, in the considered opinion of this Court, it provides them with a new cause of action - to seek public law remedy by invoking Article 226 of the Constitution against any instrumentality of the State, which the respondent Corporation is. Accordingly, the scope of the batch of Writ Petitions does not cover the alleged failure of the respondent Corporation to extend to the petitioners or the transferred employees each and every benefit they are said to have been entitled to as evidenced from the relief the petitioner sought in the batch of Writ Petitions, which is extracted herein below.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction particularly one in the nature of writ of mandamus declaring the action of the respondent in issuing notice No. D(0)YRO/7/98, dt. 20.01.1998 seeking to transfer the services of the petitioners to a private employer as illegal, arbitrary and directly contrary to the well settled position of law as was held by the High Court of Delhi in Civil Writ No. 532 of 1996.

31. In the light of the above discussion, it can safely be held that the specific observations or the lack of them in Order dated 10.03.2005 in C.C. No. 812 of 2002 and batch does not have any impact on the present proceedings; nor is it correct on the part of the respondent Corporation to contend that their plea that they have complied with the statutory mandate of providing the terminal benefits to the petitioners has been accepted by this Court in the Contempt Proceedings. It does not commend itself to any judicial acceptance.

32. Both the petitioners initially staked claim to the following benefits:

- i) Wage difference for the period from 21.01.1998 to 22.07.1999;
- ii) Interest on Gratuity;
- iii) (i) Final P.F. Amount
- (ii) Interest on P.F. amount.
- iv) Interest on delayed payment of salary;
- v) H.R.A. from 23.09.1992 to 31.04.2002;
- vi) T.A. bills amounting to Rs. 26,000/-;
- vii) L.T.C.;
- viii) Conveyance Allowance for 33 months.

33. During the course of their submissions, the petitioners confined their relief"s to wage difference and interest on Gratuity.

34. In fact, the learned counsel for the petitioners referring to the case of the petitioner in W.P. No. 1114 of 2006 and has stated that the PF Trust has held Provident Fund amount of Rs. 2,53,480/- from May, 2004 onwards with a view to adjusting the same in the housing -loan obtained by the petitioner in I.C.L.. Whereas, I.C.L. had adjusted his P.F. Amount with them against the loan payment and asked him to pay Rs. 1,01,901/- towards clearance of the entire loan. Accordingly, the petitioner has issued a Letter authorising PF trust to pay the I.C.L. the said amount from his account and to pay the balance amount to him. The PF Trust is said to have paid to the petitioner a total of Rs. 1,61,560/- inclusive of employees contribution on 25.01.2005, along with interest of Rs. 870/-. The petitioner, accordingly, claims yearly interest to be calculated for the entire period from January, 1997 onwards up to January, 2005. In this regard, he has placed reliance on Y.K. Singla Vs. Punjab National Bank and Others, .

35. It may have to be appreciated that section-7 of Gratuity Act deals with the aspect of determination of the amount of Gratuity. Sub-section 3-A of the said section states that 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. A proviso has been added to the effect that such interest shall not 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. In this regard in the above case, the Hon"ble Supreme Court has observed as follows:

Sub-Section (3A) of Section 7 of the Gratuity Act is the most relevant provision for the determination of the present controversy. A perusal of the sub-Section (3A) leaves no room for any doubt, that in case gratuity is not released to an

employee within 30 days from the date the same become payable under sub-Section (3) of Section 7, the employee in question would be entitled to "...simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term loans, as the Government may, by notification specify..." There is, however, one exception to the payment of interest envisaged under sub- Section (3) of Section 7 of the Gratuity Act. The aforesaid exception is provided for in the proviso under sub-Section (3A) of Section 7. A perusal of the said proviso reveals, that no interest would 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..." The exception contemplated in the proviso under sub-Section (3A) of Section 7 of the Gratuity Act,-incorporates two ingredients. Where the two ingredients contemplated in the proviso under sub-Section (3A) are fulfilled, the concerned employee can be denied interest despite delayed payment of gratuity. Having carefully examined the proviso under sub-Section (3A) of Section 7 of the Gratuity Act, we are of the view, that the first ingredient is, that payment of gratuity to the employee was delayed because of some fault of the employee himself. The second ingredient is, that the controlling authority should have approved, such withholding of gratuity (of the concerned employee) on the basis of the alleged fault of the employee himself. None of the other sub-sections of Section 7 of the Gratuity Act, would have the effect of negating the conclusion drawn hereinabove.

36. It is very evident that under the Gratuity Act, the employee would be entitled to the interest on account of delayed payment of Gratuity. Accordingly, to subserve the interest of justice, the respondent Corporation is required to pay interest to the petitioner on the amounts of Gratuity withheld. It is, therefore, held that the petitioners are entitled to interest on account of delayed payment inconsonance with sub-section 3-A of Section 7 of Gratuity Act.

37. In this regard, if there is any dispute that still remains as to the amount of gratuity payable to the petitioner or as to the admissibility of the claim including the component of interest, the respondent Corporation or the petitioner, as the case may be, may make an application to the authority concerned for deciding the dispute in terms of Section 4 of Gratuity Act.

38. Insofar as the petitioner in W.P. No. 1932 of 2005 is concerned, admittedly, he was relieved from I.C.L. on 20.07.1999. On 18.12.2002, he was asked by the respondent Corporation to join its unit at Bokajan. By then, the petitioner, however, was gainfully employed in Nigeria with effect from 30.12.2001. The reason offered by the petitioner is that though he was relieved by I.C.L. on 20.07.1999, the respondent Corporation did not allow him to join at Yerraguntla, his parent unit where he had worked all through. Under those circumstances, to avoid "starving" he secured a temporary alternative appointment in Nigeria. In any event, from 30.12.2001, the petitioner was gainfully employed. As such, all the benefits that are required to be paid to the petitioner shall be paid reckoning

30.12.2001 as the terminal date of his service.

39. To the extent stated above, the writ petitions are allowed. No order as to costs.

40. The miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.