
(2013) 03 GAU CK 0044
In the Gauhati High Court
Case No : WP (C) No. 4318 of 2008

Anil Ch. Choudhury

APPELLANT

Vs

Assam State Electricity Board and Others

RESPONDENT

Date of Decision : 13-03-2013

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4, 7, 7(3)

Citation : (2013) 5 GLT 418 : (2013) 3 GLT 183

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : S.D. Choudhury, Md. A.J. Atia, Mr. J. Uddin and Mr. S. Haque, for the Appellant;

Final Decision : Disposed Off

Judgement

Ujjal Bhuyan, J.—Heard Mr. S. Haque, learned counsel for the petitioner and Mr. B.D. Das, learned senior counsel assisted by Mr. D. Bhattacharjee, learned counsel for the respondents. Case of the petitioner is that he had joined the Assam State Electricity Board (ASEB) on 1.4.1963 as Lower Division Assistant (LDA). After more than 33 years, petitioner retired from service as Upper Division Assistant (UDA) on 30.12.2000 on attaining the age of superannuation. Though pension was paid to the petitioner, he was not paid the gratuity. Petitioner submitted representation before the authorities but there was no response. Aggrieved, petitioner has filed the present writ petition seeking a direction to the respondents to release the admissible gratuity with interest for withholding of the same.

2. This Court by order dated 26.9.2008 had issued notice. Subsequently, on 7.8.2009, this Court recorded that in the meanwhile, the gratuity amount was paid to the petitioner and the issue to be adjudicated was the claim of interest on the amount of gratuity paid to the petitioner which was unjustifiably withheld for 8 years.

3. Mr. Das, learned senior counsel submits on the basis of written instructions that because of unbundling of ASEB into 5 successor companies, the related file was misplaced. Moreover, because of the aforesaid development, necessary information relating to outstanding liabilities towards house building allowance of the petitioner was not received which also contributed to the delay in release of gratuity. Ultimately, the gratuity amount of Rs. 1,92,226.00 was released to the petitioner on 17.2.2009.

4. Payment of gratuity is a statutory right governed by the provisions of Payment of Gratuity Act, 1972. No amount of gratuity can be withheld or forfeited except for the reasons indicated and in the manner provided under sub-section (6) of section 4 of the aforesaid Act. The said provision reads as under:--

(6) Notwithstanding anything contained in sub-section (1),--

(a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee [may be wholly or partially forfeited]--

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

5. Admittedly, the present case does not come within the ambit of the aforesaid provision. The explanation given by Mr. Das, learned senior counsel as noticed above, cannot be accepted in view of the statutory prescription. Thus, there is no justification for withholding of due gratuity amount payable to the petitioner.

6. Section 7 of the Act deals with determination of the amount of gratuity. As per sub-section (2), as soon as gratuity becomes payable, the employer shall 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. Under sub-section (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. Again, sub-section (3-A) provides that if the gratuity amount is not paid within thirty days, simple interest at such rate not exceeding the rate notified by the Central Government for repayment of long-term deposits, shall be paid. However, no such interest shall be payable if the delay in payment of gratuity is attributable to the fault of the employee.

7. Respondents have not been able to show that the delay in payment of gratuity is on account of any fault of the petitioner. On the contrary, it is admitted that

delay in payment of gratuity was because of administrative reasons. Admittedly, there is considerable delay in payment of gratuity to the petitioner. From the scheme of the Payment of Gratuity Act, 1972, it is clearly evident that the employees right to interest on delayed payment of gratuity is statutory since the Act itself envisages grant of interest on delayed payment of gratuity.

8. In view of above, Assam State Grid Corporation Limited, which is one of the successor entities of ASEB and the authority who is to pay the gratuity amount to the petitioner, shall pay simple interest @ 6% per annum to the petitioner on the amount of gratuity paid to him for the period when it became due in terms of section 7(3) of the Payment of Gratuity Act, 1972 upto 17.2.2009 when the gratuity amount was paid. The interest amount shall be paid within a period of 8(eight) weeks from the date of receipt of a certified copy of this order. This disposes of the writ petition.