(2007) 02 DEL CK 0108

In the Delhi High Court

Case No : Writ Petition (C) No. 1317 of 1991

DCM Ltd. APPELLANT

Vs

Shri Ram Swaroop and Another RESPONDENT

Date of Decision : 05-02-2007

Acts Referred:

Payment of Gratuity (Amendment) Act, 1987 — Section 7, 7(3A)
Payment of Gratuity Act, 1972 — Section 7, 8

Citation : (2007) 139 DLT 114 : (2007) 113 FLR 858 : (2007) 2 LLJ 938

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Harvinder Singh and Mohit Gupta, for the Appellant; Nemo, for the Respondent

Judgement

Hima Kohli, J.—This writ petition has been filed by the petitioner management against the order dated 21st February, 1990 passed by the

Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as `the Act''), holding that the petitioner management is liable

to pay to respondent No. 1, 10% simple interest on the gratuity amount, from the date the gratuity became payable, to the date on which the

amount was deposited with the Controlling Authority. Aggrieved by the said order, the petitioner management has preferred the present writ

petition.

2. The brief facts relevant to decide the present writ petition are that the petitioner management is a limited company registered under the

Companies Act and the owner of Textile Mills known as Delhi Cloth Mills situated at Bara Hindu Rao, Delhi. Respondent No. 1 joined the

services of the petitioner management in the year 1947 and retired from service on 23rd October, 1983. The petitioner states that respondent No.

1 was paid a sum of Rs. 16,274/- being the gratuity amount payable to him on 16th October, 1984. Respondent No. 1 filed an application before

the Controlling Authority in November, 1984 claiming, inter alia, that he was entitled to receive gratuity to the tune of Rs. 19,980/- and not Rs.

16,274/- as paid to him by the petitioner management. Thus, he claimed an additional sum of Rs. 3,706/- along with interest @ 14-1/2% on the

above mentioned additional amount of gratuity claimed by him.

3. The petitioner management contested the claim of respondent No. 1 and filed a written statement before the Controlling Authority, wherein

various preliminary objections were raised by the petitioner management. The petitioner management also disputed the fact that the last drawn

wages of respondent No. 1 was Rs. 962/- as claimed by him in his application. It was stated that the last drawn wages of respondent No. 1 was

Rs. 904/-. It was further stated that no amount of interest whatsoever, was payable by the petitioner management to respondent No. 1.

4. Vide order dated 4th August, 1986, the Controlling Authority awarded a sum of Rs. 3,706/- in favor of respondent No. 1 along with interest

@9% p.a.. Aggrieved by the said order, the petitioner management filed an appeal before the Appellate Authority. Along with the appeal, the

petitioner management deposited a sum of Rs. 2,504/- with the Appellate Authority. In the appeal filed by the petitioner management, various

pleas were raised for assailing the order of the Controlling Authority, one of them being that the Controlling Authority had no power under the Act

to grant any amount by way of interest and that the Controlling Authority could only issue a certificate for the amount of gratuity payable under the

Act but not paid by the employer, within the prescribed time to the person entitled thereto as provided for u/s 8 of the Act and that it is only the

Collector who can recover the amount of gratuity payable, together with compound interest @ 9% p.a. from the date of the expiry of the

prescribed time as arrears of land revenue and pay the same to the person entitled to them, if the gratuity amount is not paid till then. It was further

submitted that the order of the Controlling Authority granting interest @ 9% p.a. was Therefore, totally illegally.

5. By the impugned order dated 21st February, 1990, while dealing with the

aforesaid plea taken by the petitioner management to the effect that

Controlling Authority had no jurisdiction to allow 9% compound interest, the Appellate Authority referred to the provisions of Section 7 of the Act

in the context of a judgment rendered by the Supreme Court and relied on by the petitioner, in the case of Charan Singh Vs. Birla Textiles and

Another, and arrived at the conclusion that simple interest @ 10% p.a. had to be paid by the petitioner management from the date the gratuity

amount became due and payable to respondent No. 1, till the date the same was paid.

6. Aggrieved by the aforesaid order, the petitioner management has preferred the present writ petition. In the course of arguments, learned

Counsel for the petitioner management stated that he is limiting his challenge to the aforesaid order, only to the issue as to whether any interest

could have been directed to be paid by the petitioner management to respondent No. 1 on the gratuity amount deposited with the Controlling

Authority, while giving up all other grounds for challenging the impugned order. He submitted that the Appellate Authority completely misread the

aforesaid judgment of the Supreme Court, which in fact squarely covers the case of the petitioner management.

7. For the purpose of appreciating and understanding the judgment rendered by the Supreme Court in the case of Charan Singh (supra) and its

relevance to the case in hand, it would be material to extract the relevant portions of Section 7 of the Act. It may be noted that Section 7 of the

Act has been amended twice, first by Act 25 of 1984 with effect from 1st July, 1984 and on the second occasion, by Act 22 of 1987 with effect

from 1st October, 1987. By the amendment of 1987, Sub-section (3) of Section 7 has been substituted and Sub-section (3A) has been added to

Section 7. Section 7 as it stood prior to amendment, is reproduced hereinbelow:

7: Determination of the amount of gratuity:

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.

(i) 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;

(ii)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;

(iii) (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.

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).

(c) ....

(d) ....

(5) ...

(6) ...

(7) ....

8. Post amendment, Sub-section (3) and added Sub-section (3A) to Section 7 are 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....

9. The Supreme Court has held in the case of Charan Singh (supra) as below:

Para 4: 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.

10. Coming to the facts of the case in hand, on the date when the Controlling Authority passed the order i.e. on 4th August, 1986, 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. As observed by the Supreme Court, it is in fact on the acceptance of the said position that there was a lacuna in the law, that the

Act 22 of 1987 was brought about to incorporate Sub-section (3A) in Section 7. It has been categorically held by the Supreme Court that the

provisions of the said Section have prospective application. As a result, on 4th August, 1986, the Controlling Authority who determined the

amount of gratuity payable by the petitioner to respondent No. 1, could not have ordered the said payment along with interest of 9% p.a..

11. Admittedly, the stage for action u/s 8 had not been reached inasmuch as respondent No. 1 had not applied for recovery of gratuity to the

Collector. Thus the finding of the Appellate Authority in not only upholding the order of the Controlling Authority, but directing the petitioner

management to pay 10% simple interest to respondent No. 1 on the gratuity amount payable to him from the date gratuity became payable to the

date on which it was paid, is liable to be set aside and quashed. While the Appellate Authority has referred to the provisions of Section 7 of the

Act and has also adverted to the judgment of the Supreme Court in the case of Charan Singh (supra), the conclusions arrived at by the Appellate

Authority to the effect that the amendments made to said provision, which were made only on 1st October, 1987, were retrospective in nature and

thus the petitioner management was liable to pay simple interest @ 10% in terms of the Government of India Notification dated 1st October,

1987, is misconceived and untenable. The judgment rendered by the Supreme Court is clear and unequivocal. The amendments made to Section 7

by incorporation of Sub-section (3A) does not have retrospective application but has prospective application. On the date when the Controlling

Authority determined the amount of gratuity payable to respondent No. 1, i.e. on 4th August, 1986, Sub-section (3A) had not been incorporated

in Section 7 and thus interest was not payable on the amount of gratuity determined to be paid to respondent No. 1.

12. In view of the aforesaid facts and circumstances, the impugned order is set aside to the extent that the petitioner management is not liable to

pay simple interest @ 10% p.a. on the amount of gratuity determined by the Controlling Authority to be paid to respondent No. 1. The writ

petition is disposed of.

13. No order as to costs.

