

(2008) 05 BOM CK 0007

In the Bombay High Court

Case No : Writ Petition No. 3107 of 2008

Hindustan Antibiotics Ltd.

APPELLANT

Vs

Pramodini Rohidas Sutar and Others

RESPONDENT

Date of Decision : 02-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Oil and Natural Gas Commission (Death, Retirement and Terminal Gratuity)
Regulations, 1969 — Regulation 5
Oil and Natural Gas Commission Act, 1959 — Section 32(1)
Payment of Gratuity Act, 1972 — Section 13, 14, 4(1), 4(6), 7(2)

Citation : (2008) 6 BomCR 908 : (2008) 119 FLR 649 : (2009) 2 LLJ 84 :
(2008) 5 MhLj 949

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : Vijay D. Patil, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

D.Y. Chandrachud, J.—The controlling authority has directed the petitioner to pay an amount of Rs. 1,30,823/- towards the dues on account of gratuity together with interest at the rate of 7% per annum with effect from 1st February, 1997. The order of the controlling authority has been confirmed by the Appellate Authority on 5th February, 2008.

1A. The submission which has been urged on behalf of the petitioner is that the first respondent opted for voluntary retirement with effect from 31st January, 1997 and during the course of her employment she was provided with residential quarters. Since the first respondent did not vacate the residential quarters, proceedings were instituted under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. An order was passed by the Estate Officer on 26th May, 2005 against the first respondent against which an appeal filed before the competent Court at Pune was dismissed. The first respondent vacated the quarters on 16th June, 2005. The petitioner has urged in these proceedings

through learned Counsel that since the first respondent had failed to vacate the quarters within a period of three months, the petitioner was justified in adjusting the amount of gratuity as against the over dues for the retention of the service quarters beyond the prescribed term. The controlling authority before whom a similar submission was urged rejected the submissions of the petitioner and directed payment of gratuity with interest.

2. The Payment of Gratuity Act, 1972 provides in Section 4(1) that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on superannuation, retirement or resignation or death or disablement, as the case may be. Sub-section (6) of Section 4 contains a non-obstante provision and provides for the circumstances in which gratuity may be forfeited wholly or in part. Sub-section (6) of Section 4 is to the following effect:

(6) Notwithstanding anything contained in Sub-section (1),:

(a) the gratuity of an employee, whose services have been terminated for any act, wilful 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.

3. Under Sub-section (2) of Section 7 the employer is statutorily under an obligation whether an application for the payment of gratuity is made or not, to determine the amount of gratuity, and furnish a notice to the person to whom it is payable and to the controlling authority specifying the amount so determined. Under Sub-section (3) of Section 7 the employer is under a statutory obligation to arrange for the payment of gratuity within 30 days from the date on which it becomes payable. In the event that the payment is not effected within the period specified in Sub-section (3) then Sub-section (3A) of Section 7 prescribes for the payment of interest from the date on which the gratuity becomes payable after the date on which it is payable at the rate notified by the Central Government for the repayment of long term deposits. Section 13 provides that gratuity payable under the Act shall not be liable to attachment in execution of any decree of a civil, revenue or criminal Court. u/s 14 the Act has overriding force and effect, notwithstanding anything contained in any other Act, instrument or contract. The controlling authority appointed by the appropriate government is a creature of the statute and so is the Appellate Authority designated under the Act. Neither the controlling authority nor the appellate authority possess a discretion not to

order or direct the payment of gratuity where the conditions prescribed by the Act have been otherwise fulfilled. This needs emphasis, because the present case is not a case where the employee had approached this Court in the exercise of its constitutional jurisdiction under Article 226. In such a case this Court will be justified in declining to exercise the jurisdiction under Article 226 for valid reasons based on the exercise of judicial discretion. On the contrary, it was the employee who had approached the controlling authority which has duly enforced the provisions of the Act by directing the payment of gratuity. Where the Payment of Gratuity Act, 1972 prescribes those circumstances in which gratuity can be forfeited, it would not be open to the controlling authority to expand those circumstances or to permit the employer to withhold gratuity in circumstances which are not provided by the legislature. Hence, the controlling authority was not in error in directing the petitioner to pay gratuity together with interest. Insofar as the liability to pay interest is concerned, Section 7(2) confers an obligation on the employer to determine the gratuity whether or not an application is made and under Sub-section (3) a period of thirty days is given to the employer to effect payment of gratuity. In the absence of payment within the stipulated period, Sub-section (3A) provides a liability to pay interest. Therefore, the direction in regard to the payment of interest cannot be faulted.

4. Counsel appearing for the petitioner relied upon the decision of the Supreme Court in *Secretary, O.N.G.C. Ltd. and Another Vs. V.U. Warriar*, . That was a case where an employee had failed to vacate the residential accommodation allowed to him within the prescribed period. The employer was the ONGC and there was a statutory regulation, more particularly Regulation 5 of the Oil and Natural Gas Commission (Death, Retirement and Terminal Gratuity) Regulations, 1969 which held the field. Regulation 5 empowered the authority to recover the dues payable to the Commissioner before making payment of the death- cum retirement gratuity and was in the following terms:

Recovery of Dues : The appointing authority, or any other authority empowered by the Commission in this behalf shall have the right to make recovery of Commission's dues before the payment of the death-cum retirement gratuity due in respect of an officer even without obtaining his consent or without obtaining the consent of the members of his family in the case of the deceased officer as the case may be.

The Supreme Court, while holding that gratuity is not a bounty and therefore ordinarily, the payment of gratuity could not be withheld by the employer, noted that it was the contention of the ONGC that having a statutory status, the employer is entitled to enforce the regulations which were framed in the exercise of power conferred by Section 32(1) of the Oil and Natural Gas Commission Act, 1959. The Supreme Court held that Regulation 5 leaves no room for doubt that the Commission had a right to effect recovery of its dues from any officer without his consent from gratuity. The judgment of the Supreme Court therefore arises in a situation where the statutory regulations empower the employer to recover

dues payable to the employer from the gratuity payable to an employee. The judgment in ONGC's case has also adverted to the earlier judgment in Wazir Chand v. Union of India AIR 2001 SCW 5098. Such is not the case in the present case. It is an admitted position here that there are no rules which would empower the petitioner to withhold the payment of gratuity. Consequently the order passed by the authorities below cannot be regarded as suffering from any error apparent on the face of the record.

5. No case for the interference of this Court in the exercise of the writ jurisdiction is therefore made out. The Writ Petition accordingly stands dismissed.