(1994) 10 BOM CK 0022

In the Bombay High Court

Case No : Writ Petition No. 1715 of 1992

Hindustan Petroleum Corporation Ltd. APPELLANT

Vs

P.T. Vijayan and Others RESPONDENT

Date of Decision : 21-10-1994

Acts Referred:

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

Citation : (1995) 2 LLJ 954

Hon'ble Judges : B.P. Saraf, J

Bench : Single Bench

Advocate : P.K. Rele and S.G. Pakle, for the Appellant;

Final Decision : Dismissed

Judgement

B.P. Saraf, J.—The petitioner is aggrieved by the order of the Controlling Authority dated July 25, 1990 under the Payment of Gratuity Act, 1972 directing payment of simple interest '' 10 per cent on the amount of gratuity payable under Sub-section (3A) of Section 3 of the Payment of Gratuity Act, 1972 ("The Act") with effect from July 1, 1977 till the end of May, 1988 for a period of 10 years, 10 months and 29 days amounting to Rs. 7,615.00 and the order of the Appellate Authority under the said Act dated June 1, 1992 on appeal against the said order under Sub-section (7) of Section 7 of the Act, confirming the above order and dismissing the appeal.

2. The facts of the case, briefly stated, are as under:

The respondent, P.T.Vijayan was working with the petitioner from July 26, 1954. He superannuated from service on June 30, 1977. On superannuation, he was entitled to gratuity under the provisions of the Payment of Gratuity Act. A sum of Rs. 6,923.07 was paid to him by way of gratuity in the month of May, 1988 against his claim of Rs.7,500/- which was preferred before the Controlling Authority vide his petition dated February 12, 1988. In addition to the amount of gratuity, the Controlling Authority also awarded a sum of Rs.7,615.30 as interest for delayed payment of gratuity under Sub-section(7) of Section 7 of the Act. The interest was calculated with effect from July 1, 1977 till May, 1988 at the rat of 10 per cent per annum.

Aggrieved by the order of the Controlling Authority, insofar as it related to the levy of interest u/s 7(3A) of the Act, the Regional Labour Commissioner(C), Bombay, who is Appellate Authority under the Payment of Gratuity Act, 1972 u/s 7(7) of the Act. The Appellate Authority held that the petitioner was liable to pay the gratuity within one month of the date of superannuation i.e. July 30, 1977 whereas it was paid in the month of May, 1988. The Appellate Authority, therefore, held that the petitioner was liable to pay interest u/s 7(3A) of the Act as amended by Act 22 of 1987. The petitioner has challenged the above order by this writ petition.

3. The main contention of the learned counsel for the petitioner Mr.Rele is that the provision of Sub-section (3A) of Section 7 which came into operation for the first time with effect from August 12, 1987 cannot be applied to gratuity payable for period anterior to that date. According to him, this Section being prospective in application, its benefit can be availed of only in regard to the gratuity that falls due after that date. In the alternative, it is submitted that even if this provision is held to be applicable to cases where the amounts relating to period prior to the date of enforcement of the new provision relating to interest if the amount is paid after such date, interest under this Section cannot be paid for any period anterior to that date of coming into operation of this Section. Reliance is placed in this connection on the decision of the Supreme Court in Charan Singh Vs. Birla Textiles and Another, and the decision of this Court in Bombay Gas Public Ltd. Co. Vs. Papa Akbar and another, .

4. I have carefully considered the submissions of the learned counsel and perused the decisions referred to above. Section 7 of the Payment of Gratuity Act deals with procedure of determination of the amount of gratuity. Sub-section (1) provides for making an application in writing by the person eligible for gratuity to the employer for payment of gratuity. Sub-section (2) puts an obligation on the employer to determine the amount of gratuity as soon as it becomes payable and given notice in writing to the person to whom it is payable and also to the Controlling Authority specifying the amount of gratuity so determined whether an application referred to in Sub-section (1) has been made or not. Sub-section (3) provides for payment of gratuity within the prescribed time. If read:

"(3) 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."

By Act 22 of 1987, this sub-section was substituted and a new Sub-section (3A) was added with effect from August 12, 1987. The substituted Sub-section (3) and newly inserted Sub-section (3A) read as beiow:

"(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, for repayment of long term deposits, as the Government may, by notification specify.."

The newly inserted Sub-section (3A) provides for payment of simple interest if the amount of gratuity payable under Sub-section (3) is not paid by the employer within the specified date. The interest is to be paid from the date on which the gratuity becomes payable to the date on which it is paid.

5. The contention of the petitioner is that in the instant case gratuity was payable in the year 1977. The newly added Sub-section (3A) which provides for payment of interest came into force with effect from August 12, 1987. It is not retrospective. As such, it cannot apply to amounts payable earlier to the date of coming into force of that amendment. According to the learned counsel, the interest under this sub-section would be payable only in cases where the amount becomes payable after coming into force of the said sub-section. In the alternative, it is submitted that even if interest is held to be payable under the provisions of the said Section on amounts due but paid after the coming into force of Sub-section (3A), it would be payable only for the period commencing from the date of application of the said sub- section to the date of payment.

6. I have carefully considered these submissions. I however find it difficult to accept the same. There is no controversy about the fact that Sub-section (3A) of Section 7 is prospective in operation. It is not retrospective. But the only effect of its not being retrospective is that interest under this provision cannot be claimed in respect of payments which have been determined before coming into force of the said subsection. It will, however be applicable to all cases where the application for payment of gratuity has been made by the person concerned under Sub-section (1) of Section 7 after the coming into force of the said amendment or in cases where the amount of gratuity has been determined and notice given to the person to whom the gratuity is payable after coming into force of Sub-section (3A). In the instant case, the admitted position was that the application for payment of gratuity was made on November 16, 1987 and the payment of gratuity was made on May, 31, 1988. Evidently, the application itself was made after the coming into force of Sub-section (3A) of Section 7 of the Act. That being so, the benefit of that Sub-section (3A) would be available and interest will have to be granted to the person concerned on the amount of gratuity in accordance with the said provisions.

7. I have considered the decision of this Court in Bombay Gas Company Ltd. v. Papa Akbar (supra) wherein interest was held to be not payable. The rejection of the claim for interest in that case was based on the fact that the application for payment of gratuity was made before the coming into operation of Sub-section (3A) of Section 7 of the Act. It was on that account that it was held that the

benefit of Sub-section (3A)cannot be given. The facts of the present case are just the reverse. Here the application was made after coming into operation of Subsection (3A) of the Act and the payment was also made after that. Evidently on the date of the application as well as at the time of computation of amount of gratuity, Sub-section (3A) was in the statute book and the benefit of the same therefore has to be given to the person entitled to gratuity.

8. In view of the foregoing discussion, I am of the clear opinion that interest under Sub-section (3A) of Section 7 of the Act would be payable in all cases where the application for determination of the amount of gratuity is made after the coming into force of Sub-section (3A) or where the amount of gratuity is determined under Sub-section (2) of Section 7 of the Act after that date.

9. Having regard to the above legal position I do not find any merit in this writ petition and it is therefore dismissed.

10. Under the facts and circumstances of the case, there shall be no order as to costs.

11. Issuance certified copy is expedited.

