(2018) 08 P&H CK 0219

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5026, 5027, 5028, 5029, 5030, 5032, 5172 of 2016

HMT Machine Tools Ltd — APPELLANT

Vs

ppellate Authority under the payment of Gratuity Act, 1972 and others — RESPONDENT

Date of Decision : 20-08-2018

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 22, 22(1), 25, 32
Gratuity Act, 1972 — Section 7, 9, 13, 14
Constitution of India, 1950 — Article 226, 227

Citation : (2018) 08 P&H CK 0219

Hon'ble Judges : SHEKHER DHAWAN, J

Bench : Single Bench

Advocate : Anand Chhibbar, Piyush Khanna, V.S. Mahal

Final Decision : Disposed off

Judgement

1. As common questions of law and facts are involved in these above titled 15 writ petitions and the matter in controversy relates to the payment on

account of interest on the gratuity to the employees of the petitioner-Company, with the consent of learned counsel for the parties, all these writ

petitions are taken up together for disposal.

2. For facility of reference, facts are being taken from CWP No.5026 of 2016 - HMT Machine Tools Ltd . vs. The Appellate Authority under the

Payment of Gratuity Act 1972 and others H.M.T. Machine Tools Ltd., (hereinafter referred to as 'the petitioner- Company') has filed this writ petition

under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned order dated 31.08.2015

(Annexure P/5) passed by the Appellate Authority, respondent no.1 and order dated 30.5.2014 (Annexure P/3) passed by the Controlling Authority,

respondent no. 2, whereby the petitioner-Company was directed to pay Rs. 42,627/- towards interest on gratuity amount of Rs.3,19,701/- for the

period from 1.4.2011 to 7.8.2012.

3. Facts relevant for the purpose of decision of this writ petition; that Gurbaksh Ram (respondent No.3) and other employees were working in H.M.T.

Machine Tools Ltd. After serving the petitioner-Company, on their retirement/ superannuation, they were entitled to for payment on account of

gratuity. Though, the payment on account of gratuity was made by the petitioner, yet payment on account of interest thereon was not made to

respondent-claimants, rather the same was deposited by the petitioner-Company with the Appellate Authority under the Payment of Gratuity Act 1972

(for short, â??the Gratuity Actâ??).

4. Learned Senior counsel representing the petitioner-Company contended that the petitioner company has not been able to make the payment

towards Leave Travelling Concession (LTC), Dearness Allowance, Assured Career Progression and other statutory benefits as well as arrears of

salary to its employees due to the fact that the petitioner-company has been suffering huge loss and was declared a 'Sick Company' under the Sick

Industrial Companies (Special Provisions) Act, 1985 (for short, â??the SIC Actâ?) by the Board for Industrial and Financial Reconstruction (for short,

â??the BIFRâ??). For that purpose, a reference was made under Section

15 of the SIC Act before BIFR.

5. Learned Senior counsel for the petitioner-Company further contended that since the petitioner company has been registered with BIFR, as per

Section 22 of the SIC Act, no coercive measure can be initiated against it in order to effect the forceful recovery of dues as SIC Act prohibits

proceeding of such nature. For ready reference, relevant provisions of Sections 22, 25 and 32 of the SIC Act are extracted below:-

â??22(1) â??Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under

preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section 25 relating to an industrial company is

pending, then, notwithstanding anything contained in the Companies Act, 1956

(1 of 1956), or any other law or the memorandum and articles of

association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the

... industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver

in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in

respect of any loans or advance granted to the industrial company] shall lie or be proceeded with further, except with the consent of the Board or, as

the case may be, the Appellate Authority.â??

22(3) â??Where an inquiry under section 16 is pending or any scheme referred to in section 17 is under preparation or during the period of

consideration of any scheme under section 18 or where any such scheme is sanctioned thereunder, for due implementation of the scheme, the Board

may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of property,

agreements, settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be

applicable to such sick industrial company immediately before the date of such order, shall remain suspended or that all or any of the rights, privileges,

obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adoptions and in

such manner as may be specified by the Board:

Provided that such declaration shall not be made for a period exceeding two years which may be extended by one year at a time so, however, that the

total period shall not exceed seven years in the aggregate.â??

â??Section 25. Appeal.- (1) Any person aggrieved by an order of the Board made under this Act may, within forty-five days from the date on which

a copy of the order is issued to him, prefer an appeal to the Appellate Authority:

Provided that the Appellate Authority may entertain any appeal after the said period of forty-five days but not after sixty days from the date aforesaid

if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the Appellate Authority may, after giving an opportunity to the appellant to be heard, if he so

desires, and after making such further inquiry as it deems fit, confirm, modify or set aside the order appealed against or remand the matter to the

Board for fresh consideration.â??

â??Section 32

Effect of the Act on other Laws:-

(1). The provisions of this Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith

contained in any other law except the provisions of the Foreign Exchange Regulation Act, 1973 (46 of 1973) and the Urban Land (Ceiling and

Regulation) Act, 1976 (33 of 1976) for the time being in force or in the Memorandum or Articles of Association of an industrial company or in any

other instrument having effect by virtue of any law other than this Act.â??

6. Learned Senior counsel for the petitioner-Company further urged that Hon'ble Apex Court in Maharashtra Tubes Ltd Vs. State

Industrial and Investment Corporation of Maharashtra Ltd., JT 1993(1) SC 310, held that the word 'proceeding' as per sub-section 22(1) can be given

in narrow or restricted meaning and as per view taken by Hon'ble Apex Court in Tata Davy Ltd. Vs. State of Orissa & Others, (1993) 78 Company

Cases 803, even the legal proceeding relating to recovery of sale-tax are to remain suspended.

7. Learned Senior counsel for the petitioner-Company further contended that the Authorities under the Gratuity Act have not considered these legal

provisions and the financial health of the petitioner-Company at the time of passing of impugned orders and the impugned orders are liable to be set

aside.

8. In the reply, respondent No.3 (claimant) raised the plea that the respondents-claimants were forced to approach the Controlling Authority under the

Gratuity Act as they were not being paid gratuity for a long time, though the payment of gratuity is to be made within 30 days from the date it

becomes payable to them as per Section 7 of the Gratuity Act. Respondent-claimant also took the plea that as per view taken by the Apex Court as

well as by this Court, the payment on account of gratuity and interest thereon are not to be equated with a claim for money simpliciter. More so,

payment of gratuity is protected for attachment in execution of any decree or order of any Civil, Revenue or Criminal Court. As per Section 14 of the

Gratuity Act, the provisions of the Gratuity Act, are to override other enactments. Even in case of delayed payment, penal provision including

imprisonment has been provided under the Gratuity Act. Such a measure has been adopted to safeguard the interest of the claimants because the

Gratuity Act is a welfare legislation. The provisions of SIC Act would not be applicable in the present case as even if the company becomes sick and

is covered under the provisions of SIC Act, the gratuity is not liable to be attached by any order as per Section 13 of the Gratuity Act. This has been

so laid down under the law as it is an amount earned by an employee. The payment of gratuity is a statutory payment and payment of retiral dues is no

bounty to be paid to the retired employees. The non-payment of interest directly effects the right to life as enshrined in Article 21 of the Constitution of

India, and all these provisions of law and the view taken by Hon`ble Apex Court and this Court, were duly taken care while passing the orders under

challenge and the present writ petitions deserve dismissal.

9. At the time of arguments, learned counsel appearing for the respondents-claimants further contended that payment on account of interest on

gratuity amount to the tune of Rs.8,19,485/- already stands deposited with the Appellate Authority, which is to be released to the respondents-

claimants. The petitioner-Company is not to make any additional payment at this stage on account of interest on gratuity and there is no question of

issuance of any coercive process against the unit, registered as a sick company before BIFR. The respondent-claimants have otherwise legal and

statutory right to recover the amount on account of gratuity and the amount already deposited be ordered to be released to them. The writ petition is

otherwise not maintainable as the orders passed by the Controlling Authority and the Appellate Authority under the Gratuity Act are strictly in

accordance with law.

10. Learned senior counsel representing the petitioner Company also fairly conceded that the interest amount stands deposited by the petitioner-

Company at the time of filing of the appeal and the details are given in Annexure A/1 filed alongwith affidavit of Satpal Sharma, General Technical

Manager, HMT Machine Tools Ltd., Pinjore, but the amount towards interest should not be released to the respondents-claimants and the said amount

be refunded back to the petitioner Company after setting-aside the impugned orders so that the said amount may be released/utilized for payment of

salaries and other dues to the remaining employees of the petitioner-Company.

11. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that

the main controversy with regard to challenge to the impugned orders passed by Controlling Authority and Appellate Authority under the Gratuity Act

are on the point that payment on account of interest on gratuity is to be made to the respondent-workmen or not, especially when the petitioner-

Company has already been registered as sick unit with BIFR. The same plea was raised before the Authorities below under the Act as well and the

same were duly considered by the said authorities. There is no dispute on the fact that no coercive measure can be issued against the unit or industry,

having been registered as sick unit with BIFR as contained in Sections 22, 25 and 32 of the SIC Act, as reproduced above. However, the amount on

account of interest, amount to Rs.8,19,485/-, already stands deposited and there is no question of issuance of any coercive process against the

petitioner-company, then the question comes whether the petitioner-company has got any statutory right not to make payment on account of interest

on gratuity as respondents-workmen herein have already been paid the amount of gratuity and there are certain employees, who are yet to get

payment on account of salary and other dues as well.

12. Section 7 of the Gratuity Act deals with the same and the provisions of Section 7 are extracted below:-

â??Section 7: Determination of the amount of gratuity.â?

(1) 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.

(2) 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

gratuity so determined.

(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 that Government may, by notification specify: Provided

that no such interest shall 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.â??

13. The above mentioned provisions make it ample clear that the company is bound to make payment of gratuity within 30 days from the date when it

becomes due and if the amount of gratuity is not paid within the period prescribed the employer shall pay from the date on which it becomes payable

to the date it is paid, simple interest. Thereafter, the amount on account of interest is also becomes a part of gratuity. Such a view was taken by

Hon`ble Full Bench of this Court in A.S. Randhawa Vs. State of Punjab & Others, 1997(2) ILR (P&H) 312, wherein it was held as under:-

â??The question that now arises for our consideration is whether a retiree can approach this Court under Article 226 of the Constitution to claim

interest only on the delayed payment of pension and other retiral benefits. As observed earlier, there is a duty cast on the State to disburse pension and

retiral benefits immediately when they become due and it is the non-performance of this statutory duty which gives rise to the retiree to claim

compensation by way of interest. The right to claim interest partakes the nature and character of the retiral benefits and is indeed a concomitant of the

right to claim pension and retiral benefits and cannot be separated therefrom. This being so, a claim for interest by a pensioner cannot be equated with

a claim for money simplicite or any interest thereon arising out of contractual obligations. Moreover, in a claim for recovering pension or other retiral

benefits which the State has wrongfully withheld or even interest is claimed on those amounts, the plea of bar of limitation cannot be permitted to be

raised because the State has defaulted in the performance of its duty in not paying the amount when it became due. In this view of the matter, it

follows that when a retired government employee can seek his remedy by invoking the jurisdiction of this court under Article 226 of the Constitution to

claim pension and retiral benefits by the issuance of a writ of mandamus or any other order or direction, he is equally entitled to seek relief in the same

way for claiming interest only on delayed payments which is an enforcement of an incident of the same right. It will, of course, be open to the State to

plead and prove that there has been no delay muchless culpable delay on its part in disbursing the amount so as to entitle a retired employee to any

interest as claimed by him. To put it differently, if a retired government employee can show that there was delay in the payment of pension or any

other retiral benefit to him, the onus would be on the State to show that it is not guilty of any culpable delay and if it is unable to discharge the onus or

satisfy the court as to the reasons for the delay a direction to pay interest for the period of delay would invariable issue.â??

14. The payment of gratuity is further protected as per provisions of Section 13 of the Gratuity Act which lays-down that the payment on account of

gratuity cannot be attached even in execution proceedings of any decree or order of any Civil, Revenue or Criminal Court. Section 13, is reproduced

herein below:-

â??13. Protection of gratuity.- No gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory,

mine, oilfield, plantation, port, railway company or shop exempted under Section 5 shall be liable to attachment in execution of any decree or order of

any civil, revenue or criminal court.â??

15. Section 14 of the Gratuity Act gives overriding effect over other enactments. The said provision reads as under:-

â??14. Act to override other enactments, etc.- The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything

inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other

than this Act.

16. Needless to mention that payment on account of interest becomes the integral part of Gratuity after the same becomes due and as per Section 9 of

the Gratuity Act, even penal provisions have been incorporated in the Gratuity Act. Such safeguards have been provided under the Gratuity Act for

the workmen because the concept and object of Gratuity Act is welfare legislation only. The provisions of SIC Act would not become a bar for

payment on account of gratuity or interest thereon.

17. Learned Controlling Authority and Appellate Authority under the Gratuity Act have rightly decided this controversy and there are no grounds to

set-aside the impugned orders passed by the Appellate Authority, respondent no.1 and the Controlling Authority, respondent no. 2. As an amount of

Rs.8,19,485/- (as detailed in Annexure A/1) has already been deposited with the Appellate Authority as mentioned in the affidavit filed on behalf of

the petitioner-Company, the same shall be released to the respondents-workmen/ claimants within a period of 30 days from the date of receipt of a

copy of this order after following due procedure.

18. The writ petitions stand disposed of in the above terms.