

(2004) 04 MP CK 0064
In the Madhya Pradesh High Court
Case No : Writ Petition (S) No. 2989 of 2003

Kasturi Bai

APPELLANT

Vs

Sub-Divisional Officer, P.W.D., Sub-Division and Others

RESPONDENT

Date of Decision : 22-04-2004

Acts Referred:

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

Citation : (2005) 1 LLJ 254

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Anoop Shrivastava, for the Appellant; Samdarshi Tiwari, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.—The petitioner, who worked, as an employee in Public Works Department, has knocked at the doors of this Court for issue of a writ of certiorari for quashment of the order dated August 30, 2003 passed by the respondent No. 2, the Appellate Authority under the Payment of Gratuity Act, who in Gratuity Appeal No. 77/2002, preferred by the Controlling Authority, has accepted the appeal by holding that the employee would be entitled only to gratuity and no interest.

2. As far as claim of gratuity is concerned, the said fact is admitted. The real crux is with regard to grant of interest. Submission of Mr. Anoop Shrivastava, learned counsel for the petitioner is that there was delay in the payment of gratuity and the petitioner was not given the benefit as per the provision of the Gratuity Act, 1972. Mr. Samdarshi Tiwari, learned counsel for the respondents supported the order passed by the appellate authority.

3. The controversy raised in this case is more res integra inasmuch as the Apex Court in the case of H. Gangahanume Gowda Vs. Karnataka Agro Industries Corpn. Ltd., while dealing with the provisions of the aforesaid statute and taking

note of various decisions and the conception of gratuity in paragraphs 8 and 9 has held as under at p. 1222 of LLJ:

"8..... It is clear from what is extracted above from the order of learned single Judge. that interest on delayed payment of gratuity was denied only on the ground that there was doubt whether the appellant was entitled to gratuity, cash equivalent to leave etc., in view of divergent opinion of the Courts during the pendency of enquiry. The learned single Judge having held that the appellant was entitled for payment of gratuity was not right in denying the interest on the delayed payment of gratuity having due regard to Section 7(3-A) of the Act. It was not the case of the respondent that the delay in the payment of gratuity was due to the fault of the employee and that it has obtained permission in writing from the controlling authority for the delayed payment on that ground. As noticed above, there is a clear mandatory in the provisions of Section 7 to the employer for payment of gratuity within time and to pay interest on the delayed payment of gratuity. There is also provision to recover the amount of gratuity with compound interest in case amount of gratuity payable was not paid by the employer in terms of Section 8 of the Act. Since the employer did not satisfy the mandatory requirements of the proviso to Section 7(3-A), no discretion was left to deny the interest to the appellant on belated payment of gratuity. Unfortunately, the Division Bench of the High Court, having found that the appellant was entitled to interest, declined to interfere with the order of the learned single Judge as regards the claim of interest on delayed payment of gratuity only on the ground that the discretion exercised by the learned single Judge could not be said to be arbitrary. In the first place in the light of what is stated above, the learned single Judge could not refuse the grant of interest exercising discretion as against the mandatory provisions contained in Section 7 of the Act. The Division Bench, in our opinion, committed an error in assuming that the learned single Judge could exercise the discretion in the matter of awarding interest and that such a discretion exercised was not arbitrary.

9. In the light of the facts stated and for the reasons aforementioned, the impugned order cannot be sustained. Consequently, it is set aside. The respondent is directed to pay interest @ 10% on the amount of gratuity to which the appellant is entitled from the date it became payable till the date of payment of the gratuity amount. The appeal is allowed accordingly with cost quantified at Rs. 10,000."

4. In view of the aforesaid enunciation of law, I am inclined to quash the order of the appellate authority contained in Annexure P-I and direct the respondents to pay the interest to the petitioner as has been directed by the Controlling Authority.

5. The writ petition is accordingly allowed without any order as to costs.