

(2024) 12 JH CK 0039
In the Jharkhand High Court
Case No : W.P.(L) No. 2120 of 2023

M/s. Tata Steel Limited

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 09-12-2024

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 7(3A)

Citation : (2024) 12 JH CK 0039

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : G.M. Mishra, Rohit Ranjan Sinha, Atul Vivek, Ravi Prakash Mishra

Final Decision : Dismissed

Judgement

Anubha Rawat Choudhary, J

1. Heard the learned counsels appearing on behalf of the parties.

2. This writ petition has been filed for the following reliefs:

“(i) For quashing the impugned order dated 14.03.2023 passed by the Labour Commissioner cum Appellate Authority under Payment of Gratuity Act, Respondent no.2 in Appeal Case No. PG-03/2021 whereby and where under the learned Labour Commissioner has directed payment of interest @ 10% per annum to the respondent no.4 (Annexure-1) on the amount of gratuity payable to respondent no.4.

(ii) For quashing the order dated 19.08.2021 passed by the Deputy Labour Commissioner-cum- Controlling Authority under the Payment of Gratuity Act, 1972, Kolhan Division, Jamshedpur in G.A. Case No. 02 of 2017 whereby and where under the respondent no.3 has directed the payment of simple interest @ 10% per annum on the amount of gratuity (Rs. 10,67,308.00) within 30 days from the date of the issuance of the order. (Annex 3) And or for issuance of any

such writ(s)/ order (s)/ direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case for doing conscionable justice to the petitioner."

Arguments of the Petitioner.

3. The learned counsel for the petitioner, while assailing the impugned orders passed by the Deputy Labour Commissioner-cum-Controlling Authority under the Payment of Gratuity Act as well as the order passed by the Appellate Authority, has submitted that the direction to pay interest at the rate of 10% on the due amount of gratuity is contrary to the provision of Section 7 (3-A) of Payment of Gratuity Act, 1972 (hereinafter referred to as the Act of 1972). He submits that as per the said provision, the maximum interest at the rate of 10% can be awarded. The learned counsel has submitted that the "maximum" necessarily means that there has to be an application of mind and considering the facts and circumstances of the case any amount less than the same may be required to be paid. The learned counsel has also submitted that a plea was raised before the Appellate Authority that the current simple rate of interest notified by the Central Government on long-term deposits is only 6%, and therefore, the award of 10% was not in accordance with the law. The learned counsel has also submitted that the concerned employee had worked till 04.06.2013, although his date of superannuation has been taken to be 03.07.2011. However, this aspect of the matter has also not been taken into consideration by the authorities.

4. The learned counsel has further submitted that the Appellate Authority, while dismissing the appeal, has referred to notification dated 01.10.1987 to sustain the award of interest at the rate of 10%, but the notification certainly cannot override the provision of the Act which prescribes that the maximum rate is 10%, meaning thereby any amount less than 10% can also be granted.

5. The learned counsel has relied upon the judgment passed by the Hon'ble Madras High Court in W.P. (MD) No. 12860 of 2021 (S. Vasanthan Vs. The Managing Director and Anr.) dated 28.07.2021, and submitted that in the said case, the amount of interest at the rate of 10% was reduced to 8.5% by referring to the rate notified by Central Government for repayment of long-term deposits during the period involved in the case which was found to be 8.7% per annum to 8.5% per annum.

6. The learned counsel has also relied upon the order dated 18.11.2021 passed in WA No.322 of 2019 (Gagan Bihari Prusty Vs. Paradip Port Trust and Ors.) by Hon'ble High Court of Odisha at Cuttack to submit that the rate of interest was reduced from 10% to 6% by the concerned learned Single Judge, and the order was sustained by the Hon'ble Division Bench. The learned counsel has also relied upon the order dated 07.12.2020 passed in W.P.(C) No.6890 of 2012 (Dinesh Pandey Vs. Steel Authority of India Ltd. And Ors.), by this Court to submit that a direction was issued by this Court to pay interest on gratuity at the rate of 6%.

Arguments of the Respondents.

7. The learned counsel appearing on behalf of the respondents, while opposing the prayer, has submitted that the notification dated 01.10.1987, which has been brought on record through counter-affidavit, clearly quantifies the rate of interest at 10%. He submits that the said notification was issued in terms of Section 7(3-A) of the Act of 1972, and if the rate was required to be modified, the same was to be followed by notification to be issued by the Government. He submits that maximum rate of interest at the rate of 10% has been provided under Section 7 (3-A), with a clear mandate that the Government has to issue notification and the corresponding notification is dated 01.10.1987. In absence of any fresh Government notification with regard to interest payable on gratuity amount, the same is binding and has been relied upon by the appellate authority also to sustain the direction for granting interest at the rate of 10%.

8. The learned counsel has also submitted that merely because the private respondent has worked till 04.06.2013, which is beyond his actual date of retirement which was found to be 03.07.2011, the same may not be a ground to interfere with the order regarding payment of interest, as the payment of interest is essentially compensatory in nature and the amount was withheld by the management without taking prior permission in terms of the provisions of the Act of 1972. The learned counsel has submitted that the management had taken work from the petitioner and made payment of the salary during the period from 03.07.2011 to 04.06.2013 and this aspect may not be a reason to interfere with the award of interest.

9. He has relied upon the judgment passed by Hon'ble Andhra Pradesh High Court reported in 2023 0 Supreme (AP) 1133 in WA Nos.952 & 1000 of 2022 and 26 of 2023 decided on 11.08.2023 to submit that the court was of the view that since the last notification which the court could lay its hand was dated 01.10.1987, the interest of justice would be met if the rate of interest awarded by the learned Single Judge was modified from 9% to 12%. He has also submitted that in the said case, the learned Single Judge had awarded interest at the rate of 9% on all benefits.

10. The learned counsel has also relied upon the judgment passed by Hon'ble Allahabad High Court reported in 2023 0 Supreme (All) 341 (Laxman Singh Bhadauriya Vs. Controlling Authority and Ors.) and submitted that in the said case, interest on gratuity was awarded at the rate of 4% and a prayer was made for interest at the rate of 10% on delayed payment of gratuity. The Hon'ble Allahabad High Court recorded that the respondent therein had not given any basis or source for payment of only 4% annual interest instead of 10% which existed as per notification dated 01.10.1987 issued by the Central Government in respect of Section 7 (3-A) of the Act of 1972 and ultimately directed for payment of interest at the rate of 10% by following the notification dated 01.10.1987.

11. He has also relied upon the judgment passed by this Court reported in 2022 1 JLJR 549 (Virender Kumar versus The Union of India) to submit that in case the provision of law is not followed while withholding gratuity, the employee is

entitled for payment of interest. He has also referred to Paragraph 9 to submit that two conditions as enumerated in Section 7 (3-A) of the Act of 1972 were not simultaneously satisfied and ultimately held that the interest was payable.

12. The learned counsel has submitted that the issue involved in this case is only with regard to the rate of interest and the fact that the conditions precedent to withhold gratuity were not satisfied, is neither under challenge in the present writ petition nor was challenged before the appellate authority.

13. The learned counsel has also referred to IA No.7134 of 2024 to submit that through this interlocutory application, a modification to the prayer has been sought and a specific relief has been prayed for that the direction be issued for payment of interest at the reduced rate of 6% or 7% on the amount of gratuity payable instead of 10%. Even during the course of argument apart from the rate of interest, no other arguments have been advanced on behalf of the petitioner.

Rejoinder arguments of the Petitioner.

14. The learned counsel for the petitioner, in response, has submitted that the maximum rate of interest as prescribed under Section 7(3-A), calls for interference and considering the facts and circumstances, the rate of interest should be reduced to 6% or 7%.

Findings of this Court.

15. The sole point involved in the present case is as to whether the rate of interest on gratuity as provided under Section 7 (3-A) of the Act of 1972 by issuance of notification dated 01.10.1987 is binding on the employer or whether the rate of interest could be any other rate depending upon the variation of the rate of interest by the Central Government from time to time for re-payment of long-term deposit.

16. Section 7 of the Payment of Gratuity Act, 1972 is quoted as under:

7. Determination of the amount of gratuity. - (1) ...

(2)

(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.

(3-A) 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.

Notification dated 01.10.1987

S.O. 873 (E)- In exercise of powers conferred by sub-section (2) of section 1 of the Payment of Gratuity (Amendment) Act; 1987 (22 of 1987), the Central Government hereby appoints the 1st day of October, 1987, as the date on which the provisions of sections 2, 3 clauses (b) and (c) of section 4, sections 6, 7, 8 and 9 of the said Act, shall come into force.

SO. 874 (E) – In exercise of the powers conferred by sub-section (3A) of section 7 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies ten percent per annum as the rate of simple interest payable for the time being by the employer to his employees in cases where the gratuity is not paid within the specified period.

2. This notification shall come into force on the date of its publication in the official Gazette.

17. So far as the judgment passed by this Court reported in 2022 1 JLJR 549 (supra) is concerned, though the same was relating to payment of interest on delayed payment of gratuity in terms of Section 7 (3-A) of the Act of 1972 but it was not dealing with the rate of interest on which the interest was payable. The ratio of the said case was in relation to the conditions which were required to be satisfied for attracting payment of interest in terms of Section 7 (3-A) of the Act of 1972.

18. So far as the judgment passed by this Court in W.P.(C) No.6890 of 2012 (supra) is concerned, a writ petition was filed directly before this Court seeking a direction upon the Steel Authority of India Limited for payment of gratuity along with interest @ 12% from the date of retirement. From perusal of the order passed by this Court in the said case dated 07.12.2020, it appears that the gratuity was not being paid as the petitioner had not vacated the quarter and the gratuity was retained by the employer as security. In that background, the judgment passed by the Hon'ble Supreme Court in the case of Ram Naresh Singh Vs. Bokaro Steel Ltd. and others (Civil Appeal No.4740 of 2017) was referred and in the said case also, there was a dispute in connection with vacation of quarter where gratuity was withheld. This Court ultimately while disposing of the writ petition directed payment of gratuity along with the interest @ 6% as was ordered in the case of Ram Naresh Singh (supra) by exercising power under Article 226 of the Constitution of India. The said order passed in W.P.(C). No.6890 of 2012 (supra) has no bearing in the present case inasmuch as in the present case, the impugned orders are the orders passed by the statutory authorities, that is, the Controlling Authority and the appellate authority under the Act of 1972 and they have exercised their powers and acted in terms of the Act of 1972 and notification issued by the Central Government under Section 7 (3-A) of the Act of 1972 whereby the rate of interest has been fixed at 10%. Accordingly, the order dated 07.12.2020 passed in W.P.(C) No.6890 of 2012 (supra) does not apply to the facts and circumstances of the case.

19. So far as the judgment passed by Hon'ble Orissa High Court at Cuttack in W.A. No.322 of 2019 (Gagan Bihari Prusty Vs. Paradip Port Trust and Ors.) dated 18.11.2021 is concerned, the notification dated 01.10.1987 was not placed before the Hon'ble Division Bench as is apparent from the order itself and the Hon'ble Division Bench refused to interfere with the direction issued by the learned Single Judge directing the interest on delayed payment of gratuity @ 6% instead of 10% per annum which was claimed by the writ petitioner. The order also reveals that the learned Single Judge had granted interest @ 6% per annum by referring to interest of justice. It further appears that the learned Single Judge had examined the provisions of Interest Act and had directed payment of interest @ 6% and not by referring to the notification issued under Section 7 (3-A) of the Act of 1972.

20. So far as the judgment passed by Hon'ble Madras High Court in W.P (MD) No.12860 of 2021 (supra) is concerned, in the said case also, the writ petitioner had directly approached the High Court seeking payment of post retiral benefits including gratuity and reference was made to Section 7 (3-A) of the Act of 1972. It was noticed in the said judgment that notification dated 01.10.1987 issued by the Central Government, fixed the rate of interest for delayed payment of gratuity under Section 7 (3-A) @ 10% per annum and no modification of the same was issued. In the said judgement, a reference was also made to an earlier judgment passed by the same High Court dated 01.02.2019 in W.P. (MD) No.2334 to 2357 of 2019 and was of the view that the notification issued under the statutory provision cannot be applied if it was granted counter to the statutory mandate. It was further observed that Section 7 (3-A) of the Act of 1972 provides upper ceiling limit for the rate of interest to be awarded which is the rate notified by the Central Government for repayment of long-term deposits. Thereafter, the Hon'ble court also recorded that it was not in dispute in the said case that for the period in question, the rate notified by the Central Government for repayment of long term deposit was between 8.7% to 8.5 % per annum and if the notification of the year 1987 was originally issued under the provision is applied that would certainly run counter to the restriction laid down in Section 7 (3-A) of the Act of 1972, and therefore, the Hon'ble Court was of the view that the appellate authority erred in awarding 10% interest and modified and reduced the rate of interest to 8.5% per annum. However, the petitioner of the said case stated that the petitioner would satisfy if the interest on gratuity was granted @ 6% per annum stated to be the current rate and filed an e-mail to this effect. Consequently, the Hon'ble court allowed interest @ 6% per annum for all retirement benefits which were gratuity, leave salary, provident fund from the date of retirement till the terminal benefits were paid. Thus, the order was passed by the Hon'ble Madras High Court to pay interest @ 6% per annum on gratuity with the consent of the concerned petitioner and direction was also issued to pay interest @ 6% per annum on other post retiral benefits from the date of retirement till the date on which terminal benefits were paid.

21. With due respect to Hon'ble Madras High Court, this Court is not inclined to

take the same view and is of the considered opinion in view of the discussions made above that once the notification has been issued by the Central Government notifying the rate of interest payable on gratuity in terms of Section 7 (3-A) of the Act of 1972, the same is binding on all concerned and has the force of law. The rate of interest payable by Central Government on long term deposit may vary from time to time and it is for the Central Government to issue appropriate notifications from time to time in terms of Section 7(3-A) of the Act of 1972 modifying the applicable rate of interest and in absence of any subsequent notification modifying the rate of interest prescribed vide notification dated 01.10.1987, any other rate of interest cannot be made automatically applicable merely because there has been change in the rate of interest by the Central Government payable in long term deposits. The notification of the Central Government dated 01.10.1987 was not under challenge in the said proceeding before the Hon'ble Madras High Court nor it is under challenge in this proceeding.

22. In the judgment passed by Hon'ble Allahabad High Court reported in 2023 0 Supreme (All) 341 (Laxman Singh Bhadauriya Vs. Controlling Authority and Others), the writ petitioner had challenged the order passed by the statutory authority granting interest @ 4% in place of 10% for the delay in payment of gratuity. The Hon'ble Allahabad High Court noticed that the statutory authority had not given any basis or source for payment of only 4% annual interest instead of 10% interest as per the existing notification dated 01.10.1987 issued by the Central Government in respect to Section 7 (3-A) of the Act of 1972, and thus, the court came to a conclusion that the order and judgment of the statutory authority in respect of payment of 4% interest was contrary and against the law and directed payment of interest @ 10% and allowed the writ petition.

23. In the judgment passed by Hon'ble Division Bench of Andhra Pradesh High Court in the case of Narahari Vs. The State of Andhra Pradesh reported in 2023 0 Supreme (AP) 1133 wherein the Court also referred to the aforesaid notification issued by the Central Government fixing the rate of interest @ 10% but the court modified the rate of interest from 9% to 12% per annum considering the peculiar circumstances of the case and the protracted legal battle fought by the petitioner and the direction was to pay interest @ 12% per annum on all amounts due which included all retiral benefits and not just gratuity.

24. On simple reading of Section 7 (3-A) of the Act of 1972, this Court finds that a clear guideline has been mentioned therein regarding payment of interest from the date on which gratuity becomes due to the date which it is paid. It has been provided that simple interest at such rate, which shall not exceed the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify. Thus, the Government may notify any rate of interest in terms of section 7 (3-A) of the Act of 1972 but it shall not exceed the rate notified by Central Government from time to time for

repayment of long-term deposits. It is not in dispute that in terms of Section 7 (3-A), a notification dated 01.10.1987 has been issued by the Central Government providing for payment of rate of interest @ 10%. This Court is of the considered view that such notification dated 01.10.1987 is binding on the parties till it is modified by issuance of another notification. Section 7 (3-A) of the Act of 1972 provides the parameter for fixing the rate of interest but the section by itself does not fix any rate of interest. However, the rate of interest is to be notified by the Central Government in terms of Section 7(3-A) of the Act of 1972 which has been notified vide notification dated 01.10.1987 @ 10% but no subsequent notification has been issued to modify this rate.

25. This Court is of the considered view that once a notification has been issued in terms of Section 7(3-A) of the Act of 1972, it can be modified only by issuing a fresh notification in terms of the said section and merely because the Central Government has different rate of interest from time to time with respect to repayment of long-term deposits, the same would not automatically apply to the rate of interest payable in term of Section 7 (3-A) of the Act of 1972. The section 7(3-A) does not contemplate automatic change of rate of interest and such modification of rate of interest without any follow up notification would run contrary to the mandate of Section 7(3-A) of the Act of 1972.

26. This Court is of the considered view that there is no conflict in the provision of Section 7 (3-A) of the Act of 1972 and the Notification dated 01.10.1987, in view of the fact that the Notification dated 01.10.1987 is a follow up and sequel to the provision of Section 7 (3-A) of the Act of 1972, which provides the basis on which the notification is to be issued. This Court also finds that by virtue of the notification dated 01.10.1987, the Central Government has acted in terms of and in consonance with Section 7 (3-A) of the Act of 1972.

27. This Court is of the considered view that the respondent appellate authority while sustaining the rate of interest @ 10% granted by the Controlling Authority has rightly referred to the Notification dated 01.10.1987 which is a statutory notification issued under Section 7 (3-A) of the Act of 1972 and certainly has the force of law. It is nobody's case that the said notification dated 01.10.1987 is not in force or has been subsequently modified by issuance of another notification.

28. As a cumulative effect of the aforesaid findings, this Court is not inclined to interfere with the orders passed by the appellate authority refusing to interfere with the order passed by the controlling authority granting interest @ 10% by referring to the notification dated 01.10.1987. It is not in dispute that the condition precedent for attracting section 7(3-A) of the Act of 1972 were duly satisfied in the present case. This Court is of the considered view that the impugned appellate order sustaining the interest granted @ 10% by referring to statutory notification dated 01.10.1987 does not suffer from any perversity or illegality calling for any interference under Article 226 of the Constitution of India.

29. Accordingly, this writ petition is dismissed.

30. Pending interlocutory application, if any, stands dismissed as not pressed.