

**(2016) 05 MP CK 0010**  
**In the Madhya Pradesh High Court**  
**Case No : W.P.S. No. 2370 of 2004**

P.D. Goswami

APPELLANT

Vs

Cimmco Birla Ltd.

RESPONDENT

**Date of Decision :** 05-05-2016

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Payment of Gratuity Act, 1972 — Section 7(4), 7(7)

**Citation :** (2017) 1 CLR 871 : (2017) 152 FLR 363 : (2016) 150 FLR 167 :  
(2016) 4 LLN 188

**Hon'ble Judges :** Sheel Nagu, J.

**Bench :** Single Bench

**Advocate :** Shri C.R. Roman, Advocate, for the Appellant; Shri Prashant Sharma, Advocate, for the Respondent

**Final Decision :** Allowed

## Judgement

Sheel Nagu, J.—The present petition under Article 226 of the Constitution of India assails the order dated 22.10.2003 passed by the Appellate Tribunal (Appellate Authority under Payment of Gratuity Act), Bhopal, by which the appellate authority while exercising power u/S 7(7) of Payment of Gratuity Act has allowed the appeal filed by the employer and has held that the benefit of interest granted to the employee/petitioner is not payable since the employee/petitioner overstayed in the official accommodation even after his retirement.

2. The basic facts giving rise to the present petition are that the petitioner was initially appointed on 29.11.1958 on the post of Permanent Inspector "LFkbbZ fujh{kd" and continued to serve on this post till he attained the age of superannuation on 02.03.1995. At the time of retirement, the last pay drawn by the employee was Rs. 3,200/-. Since gratuity was not paid by the employer, claim was put up before the controlling authority claiming an amount of Rs. 66,460/- on the strength of having served for 36 years. The controlling authority after adjudicating the claim of the rival parties held that in the absence of any

enabling provision empowering employer to withheld gratuity merely because the employee overstayed in the employer's accommodation beyond the date of superannuation, the withholding of gratuity cannot be held to be justified.

3. Consequently, the controlling authority directed payment of gratuity to the tune of Rs. 66,460/- to be paid within thirty days along with S.I. interest @ 10% to be calculated w.e.f. 02.04.1995, with further stipulation that on failure to make payment within this prescribed period, the amount for gratuity shall carry compound interest @15% p.a.

4. The above said order of the controlling authority was challenge by the employer in Gratuity Appeal No. 86/1998 which was dismissed on 29.12.1998 as time barred. The employer did not assail the said order of the appellate authority dated 29.12.1998 and therefore for all legal purposes, the said order attained finality and binding effect on the employer as well as the employee.

5. However, the employer for reasons best known to it, merely challenged the consequential order of recovery and attachment made by the Revenue authority in W.P. No. 963/20001 which was finally disposed of by order dated 14.02.2002. This Court in W.P. No. 963/2001 found that due to the subsequent event of possession of the official accommodation having been received by the employer, the grievance stood satisfied. However, while disposing of this petition, certain observations were made to the effect that the employer had in fact never challenged the basic order of the controlling authority or the appellate authority passed in favour of the employee. These observations have bearing upon this case and thus, are reproduced below:

"The petitioner has not challenged the basic order passed by the Assistant Labour Commissioner-cum-Controlling Authority, under Payment of Gratuity, Gwalior; as such, validity of the same cannot be gone into in the present proceedings.

Consequently, recovery of interest on gratuity is altogether a different matter and the validity of that matter has to be challenged in a separate proceeding before the appropriate forum, if the petitioner is so advised.

The writ petition is disposed of with the aforesaid direction."

6. Learned counsel for the employer contends that because of passing of the order by this Court dated 14.02.2002 in W.P. No. 963/2001, the employer filed a fresh appeal u/S 7(7) of the Payment of Gratuity Act which was allowed by the Appellate authority to the extent of holding that sufficient cause of overstaying by the employee in the employer's accommodation has been shown thereby entitling the employer for waiver of payment of interest over the amount of gratuity.

7. It is not known from bare reading of the impugned order as to whether the employee was heard before the order dated 22.10.2003 was passed in the Gratuity Appeal No. 155/2001, but the fact which is palpable on the very face of

the record is that once the appellate authority had dismissed the appeal of the employer on 29.2.1998, in the earlier round of litigation bearing Gratuity Appeal No. 86/1998 vide P-3, though on technical ground of being barred by limitation, the said authority was denuded of any jurisdiction and rather became functus officio, to deal with the same matter again.

8. Moreso, the impugned order P-1 dated 22.10.2003 has been passed u/S 7(7) of the Act of 1972, which inter-alia provides thus:

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

[Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellate authority such amount].

9. A bare perusal of the above provision elicits that an appeal u/S 7(7) of the Payment of Gratuity Act can be entertained only against an order passed u/S 7(4) of the Payment of Gratuity Act. Sec 7(4) of the Act relates to the power of the controlling authority to decide the dispute in regard to amount payment of gratuity under the Act. Thus, the provisions of Sec 7(7) of the Payment of Gratuity Act cannot be invoked unless the order of controlling authority is challenged.

10. In the instant case, the order of Controlling authority P-2 dated 09.06.1997 had already been challenged by the employer in the earlier round of litigation in appeal which has been dismissed as time barred on 29.12.1998.

11. Unless the said order in appeal was reviewed, recalled or modified by the same authority or by any higher authority, the Appellate authority become functus officio to deal with the same issue of entitlement/waiver of interest.

12. In view of the above, this Court has no hesitation to hold that the impugned order P-1 passed by the Appellate authority under the Payment of Gratuity Act is bereft of jurisdiction.

13. Accordingly, petition is allowed. The impugned order dated 22.10.2003 passed in Gratuity Appeal 155/2001 stands quashed. The petitioner who is retired employee, presently of the age of 78 years has been compelled to knock the doors of this Court in the evening of his life and therefore the employer is

liable to be saddled with cost of present litigation.

14. The petitioner is entitled to cost of Rs. 10,000/- which shall be paid by the respondent employer within a period of sixty days from today.

15. Compliance report in that regard be filed before the Registry of this Court.