

(2006) 10 KAR CK 0053
In the Karnataka High Court
Case No : Writ Petition No. 5761 of 2006

S.N. Vasudevaiah

APPELLANT

Vs

Appellate Authority under Payment of Gratuity Act, 1972 and
Deputy Labour Commissioner and Controlling Authority Under
PG Act and KSC Apex Bank Limited

RESPONDENT

Date of Decision : 10-10-2006

Acts Referred:

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

Citation : (2007) 112 FLR 185 : (2006) ILR (Kar) 4263 : (2007) 1 KarLJ 327

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : P.S. Manjunath and H.C. Shivaramu, for the Appellant; S.V. Srinivasan and Kumaraswamy for R. 3 and Jagadeesh Mundargi, AGA for R. 1 and R. 2, for the Respondent

Final Decision : Allowed

Judgement

S. Abdul Nazeer, J.—The petitioner was employed with the 3rd respondent-Bank as its Deputy General Manager. He had retired from his services on 12.11.1998 on attaining the age of superannuation. He made an application before the 2nd respondent for payment of gratuity amount due to him under the provisions of Payment of Gratuity Act, 1972, (for short "the Act") and the Karnataka Payment of Gratuity Rules, 1973. The 2nd respondent by its order dated 8.3.2002 dismissed the application holding that the provisions of Payment of Gratuity Act, 1972, does not apply to the employees of the 3rd respondent. Feeling aggrieved by the said order, the petitioner filed an appeal before the 2nd respondent. The 2nd respondent dismissed the appeal holding that there is no necessity for modification or setting aside the order dated 8.3.2002 of the 3rd respondent. Thereafter, the petitioner along with certain other similarly situated employees of the 3rd respondent, filed writ petitions before this Court in WP Nos. 33493-504/2002. This Court set aside the aforesaid order and remanded the matter to the 2nd respondent for fresh disposal in accordance with law taking

into consideration the Full Bench decision of this Court the case of N.S. Srinivasamurthy and Others Vs. The Registrar of Co-operative Societies and Others, . The 2nd respondent by its order dated 14.10.2004 held that the petitioner and other employees were entitled to gratuity payable under the Payment of Gratuity Act and ordered the 3rd respondent to pay the gratuity amount due to them along with simple interest of 10% per annum within 90 days from the date of receipt of copy of the said order. Petitioner has enclosed a copy of this order to the writ petition and has marked it as Annexure-A. The 3rd respondent has challenged the said order before the 1st respondent and the 1st respondent has upheld the liability to pay the gratuity amount to the petitioner. However, it has reduced the interest from 10% to 5% p.a. on the difference of the gratuity amount payable to the petitioner. Petitioner has called in question the said order in this writ petition.

2. Learned Counsel for the petitioner submits that the modification of the order in so far as the payment of interest from 10% to 5% p.a. is illegal. Learned Counsel has also drawn my attention to the notification issued under Sub-section (3-A) of Section 7 of the Act, and submits that the Central Government has issued a notification specifying the rate of interest at 10% p.a. in cases where the gratuity amount is not paid within the specified period.

3. Learned Counsel for the respondents has justified the impugned order.

4. It is to be stated here that the 3rd respondent has not challenged the order at Annexure-B whereby the Appellate Authority has confirmed the order of the original authority in so far as payment of difference of gratuity amount is concerned. The only question to be considered in this writ petition is whether the 1st respondent is justified in reducing the rate of interest from 10% to 5% p.a. on the difference of gratuity amount payable to the petitioner.

5. Section 7 of the Act deals with the determination of payment of gratuity amount. Sub-section (3-A) of Section 7 states that 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. It is not in dispute that the Central Government has issued a notification in terms of Sub-section (3-A) of Section 7 which is as under;

NOTIFICATION No. SO874(E), dated 1st October, 1987

Gazette of India, extraordinary, dated 1-10-1987, part II, Section 3(ii), P-2.

In exercise of the powers conferred by Sub-section (3-A) of Section 7 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies ten per cent per annum as the rate of simple interest payable for the time being by the employer to his employee 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.

6. It is clear from the above notification that the Central Government has specified the rate of interest at 10% p.a. payable by the employer to the employee in cases where the gratuity is not paid within the specified period. The 1st respondent therefore has erred in reducing the rate of interest to 5% p.a. on the difference of the gratuity amount payable to the petitioner. The 2nd respondent has correctly fixed the rate of interest at 10% p.a. on the gratuity payable to the petitioner.

7. In the result, the writ petition succeeds and it is accordingly allowed. The order of the 1st respondent dated 3.11.2005 in so far as reduction of rate of interest from 10% to 5% p.a. is hereby quashed and the order at Annexure-A dated 14.10.2004 is restored. The 3rd respondent is directed to deposit the difference of interest payable to the petitioner within eight (8) weeks from the date of receipt of copy of this order.

No costs.