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**(2018) 05 UK CK 0086**

**In the Uttarakhand High Court**

**Case No : Writ Petition (M/S) No.754, 777 of 2016**

UCO BANK

APPELLANT

Vs

SURYPRAKASH KANNAUJIYA AND OTHERS

RESPONDENT

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**Date of Decision : 17-05-2018**

**Acts Referred:**

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

**Citation : (2018) 05 UK CK 0086**

**Hon'ble Judges : SUDHANSHU DHULIA, J**

**Bench : Single Bench**

**Advocate : J.C. Belwal, M.C. Pant, Sanjay Bhatt**

**Final Decision : Dismissed**

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## **Judgement**

Sudhanshu Dhulia, J

1. The petitioner which is a bank has filed the present writ petition before this Court challenging the orders dated 20.08.2014 and 05.01.2015 passed by

the Controlling Authority and Appellate Authority respectively.

2. Respondent no.1 who was an employee of the bank has faced a departmental enquiry where the charges were extremely serious in nature

amounting to embezzlement, monetary loss to the bank, etc. In the departmental proceedings after a due enquiry, both the charges stood proved

against respondent no. 1 and for each of the charges, the delinquent respondent no. 1 was punished with the penalty of reduction in the basic pay by

two stages in the time scale of pay with cumulative effect vide order dated 04.04.2012. Against this order, respondent no. 1 preferred an appeal

before the appellate authority. The appellate authority vide order dated 03.03.2015 upheld the order of the disciplinary authority and dismissed the

appeal of respondent no.1.Â

3. However, meanwhile the respondent no. 1 superannuated on 31.12.2010 and the gratuity payable to respondent no.1 was withheld and it was

released subsequently in favour of respondent no. 1 without any interest. Demanding the interest on the gratuity for the period it was withheld,

respondent no. 1 approached the Controlling Authority, which has ordered for payment of interest to respondent no.1 vide order dated 20.08.2014.

Against this order, the bank went in appeal, where the order of the Controlling Authority was upheld. Hence, the present writ petition before this

Court.

4. Learned counsel for the petitioner would argue that it is an admitted case that respondent no.1 has caused the monetary loss to the bank and

gratuity is paid for gratuitous service. Evidently, in the present case, respondent no.1 has failed to discharge his service, and therefore, he is not

entitled for the gratuity.

5. On the other hand, learned counsel for respondent no.1 would argue that it is not the case of the department that gratuity was not liable to be paid to

respondent no.1. It is an admitted case that the department i.e. the bank itself has given the gratuity to respondent no.1. The only question is whether

the respondent no.1 is liable to be given the interest for the period the gratuity remained withheld.

6. On this, the learned counsel for respondent no.1 has relied upon Section 7 (3-A) of the Payment of Gratuity Act (hereinafter referred to as the

Act). As per sub-section (3) of Section 7 of the Act, the employer has to give the amount of gratuity within thirty days from the date it becomes

payable. Sub-section (3) of Section 7 of the Gratuity Act reads as under:-

7. Determination of the amount of gratuity.-

(1) The amount of gratuity shall be determined as follows:-

(2) The amount of gratuity shall be determined as follows:-

(3) The employee 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.

7. Thereafter, sub-section (3-A) of Section 7 of the Act states that in case the gratuity is not given within the period specified in sub-section (3) of the

Act, it is to be given with interest. Sub-section (3-A) of Section 7 of the Act reads as under:-

7. Determination of the amount of gratuity.-

(1).

(2).

(3).

(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.

8. As is clear from the proviso to sub-section (3-A) of Section 7 of the Act that the interest shall not be payable if such delay is on account of the fault

of the employee himself, but the employer will have to obtain the permission of the controlling authority in writing for delayed payment on this

ground.

9. Though under the above proviso a case could be made out in favour of the Bank that the interest was not liable to be given to respondent no.1 due

to his own fault, but even here the second condition is not fulfilled inasmuch as the employer had not obtained the permission in writing from the

Controlling Authority for denying interest on delayed payment of the gratuity. It is an admitted position that this permission as contemplated in the

above proviso has not been taken by the Bank.

10. Learned counsel for respondent no.1 has relied upon paragraph nos. 18 and 20 of the decision of the Hon'ble Apex Court in the case of Y.K.

Singla v. Punjab National Bank & others, reported in (2013) 3 SCC 472, which read as under:-

18. Sub-section (3-A) of Section 7 of the Gratuity Act is the most relevant provision for the determination of the present controversy. A

perusal of sub-Section (3-A) leaves no room for any doubt that in case gratuity is not released to an employee within 30 days from the date the same

becomes payable under sub-section (3) of Section 7, the employee in question would be entitled to simple interest at such rate, not exceeding

the rate notified by the Central Government from time to time for repayment of long-term loans, as the Government may, by notification specify.

There is, however, one exception to the payment of interest envisaged under sub-section (3) of Section 7 of the Gratuity Act. The aforesaid exception

is provided for in the proviso under sub-section (3-A) of Section 7. A perusal of the said proviso reveals, that no interest would 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. The exception contemplated in the proviso under sub-section (3-A) of Section 7 of the Gratuity Act incorporates

two ingredients. Where the two ingredients contemplated in the proviso under sub-section (3-A) are fulfilled, the employee concerned can be denied

interest despite delayed payment of gratuity. Having carefully examined the proviso under sub-section (3-A) of Section 7 of the Gratuity Act, we are

of the view that:

(i) The first ingredient is that payment of gratuity to the employee was delayed because of some fault of the employee himself.

(ii) The second ingredient is that the controlling authority should have approved such withholding of gratuity (of the employee concerned) on the basis

of the alleged fault of the employee himself.

None of the other sub-sections of Section 7 of the Gratuity Act would have the effect of negating the conclusion drawn hereinabove.

20. Our determination of the first ingredient is as follows. We are of the considered view that consequent upon the acquittal of the appellant by the

Special Judge, CBI Court, Chandigarh, it would be erroneous to conclude that the gratuity payable to the appellant on attaining the age of

superannuation i.e. on 31-10-1996 was withheld on account of some fault of the appellant himself. We may hasten to add, if the appellant had been

convicted by the Special Judge, CBI Court, Chandigarh, then the first ingredient would also be deemed to have been satisfied. Conversely, because

the appellant has been acquitted, he cannot be held to be at fault. Accordingly it

emerges that the "fault" ingredient of the employee himself, for denial of gratuity when it became due, remains unsubstantiated. Since one of the two salient ingredients of the proviso under sub-section (3-A) of Section 7 of the Gratuity Act is clearly not satisfied in the present case, we are of the view that the appellant cannot be denied interest under the proviso to Section 7(3-A) of the Gratuity Act. Accordingly, the appellant has to be awarded interest under Section 7(3-A) of the Gratuity Act. Therefore, if the provisions of the Gratuity Act are applicable to the appellant, he would most definitely be entitled to interest under sub-section (3-A) of Section 7 of the Gratuity Act, on account of delayed payment of gratuity."

11. In view of the facts of the case and the settled legal position, the writ petition fails and it is hereby dismissed.

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