(2010) 12 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2374 of 2003

Vishal Singh Shekhawat APPELLANT

Vs

Rajasthan State Ganganagar Sugar Mills Ltd. RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Payment of Gratuity (Central) Rules, 1972 — Rule 16(8), 18
Payment of Gratuity Act, 1972 — Section 7, 7(3), 7(3A)

Citation : (2011) 130 FLR 314 : (2012) 1 LLJ 200 : (2011) 2 RLW 1424

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Kothari, J.—Heard learned Counsels for the parties.

By this writ petition, the Petitioner who retired as Senior Manager from Rajasthan State Ganganagar Sugar Mills Ltd. on 31.10.2001, has claimed interest as prescribed in Sub-section (3A) of Section 7 of the Payment of Gratuity Act, 1972 (for short, hereinafter referred to as ''Act of 1972'') for the period 1.11.2001 to 29.6.2002 when the said amount of gratuity of Rs, 3,50,000/- was paid to him vide letter dated 29.6.1992 (Annex. 2).

2. Learned Counsel for the Petitioner submitted that on the date of his retirement on 31.10.2001 itself the Petitioner was served with a charge sheet about supervisory negligence but after taking explanation from the Petitioner, the competent authority exonerated him vide Annex. 1 dated 3.6.2002 since the concerned In-charge of the distillery was some other person, namely, one Guman Chand Dayma, the then Deputy Manager and, therefore, the Petitioner could not be held liable for the alleged supervisory negligence. Learned Counsel for the Petitioner, therefore, submitted that as per relevant provisions of Section 7(3) and (3A), the Petitioner was entitled to be paid interest at the rate notified by the Central Government from time to time for repayment of long term deposits as that has been specified by the Government by a notification; however, no such

notification has been placed on record. Learned Counsel for the Petitioner was also unable to inform the rate of such interest, however, in the writ petition, the interest has been claimed @ 18% p.a. He further submitted that the Petitioner was also paid Leave Encashment amount of Rs. 64,735/- vide Annex. 3 dated 12.6.2002, however, there is no claim of interest on this amount of leave encashment. He, therefore, submitted that in view of the exoneration of the Petitioner from the alleged charge sheet of supervisory negligence by the competent authority vide Annex. 1 dated 3.6.2002, the entitlement of the Petitioner as to interest from the date on which the gratuity becomes payable to the date on which it is actually paid cannot be disputed by the Respondent-Rajasthan State Ganganagar Sugar Mills Ltd., the employer.

3. Per contra, learned Counsel for the Respondent-employer vehemently opposed the writ petition by submitting that firstly the fate of the charge sheet served on the Petitioner on the date of his retirement on 31.10.2001 became clear only on 3.6.2002 when admittedly the Petitioner was exonerated from the said charge by the competent authority but for the period between 31.10.2001 to 3.6.2002, there was justifiable reason for the Respondent-employer not to pay said amount of gratuity and, therefore, the gratuity can be said to have fallen due for payment only on 3.6.2002 when he was exonerated. He further submitted that since the Petitioner was paid the gratuity immediately thereafter to the tune of Rs. 3,50,000/- on 29.6.2002 within stipulated period of thirty days as given in Sub-section (3) of Section 7 of the Act of 1972, therefore, there is no question of payment of any interest to the Petitioner. He also submitted that there was a requirement on the part of Petitioner also to apply for the said payment of gratuity within thirty days, which could be withheld on the aforesaid justifiable grounds, and if the Petitioner was aggrieved of any delayed payment of gratuity, or non-payment at the relevant point, he could approach the appellate authority under Rule 18 of the Payment of Gratuity (Central) Rules, 1972. In such circumstances, the Petitioner had alternative remedy available to him and the writ petition is not maintainable.

4. I have heard learned Counsels for the parties at some length and perused the relevant record and statute produced before this Court. The proviso of Section 4(1) and (6) are relevant for the present controversy, so also, proviso of Section 7 up to Sub-Sections 3, (3A) and Rule 18 prodding for appeal are reproduced herein below for ready reference:

4. Payment of gratuity.--(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years--(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease.

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

[Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.]

Explanation--For the purposes of this Section disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(6) Notwithstanding anything contained in Sub-section (1), -

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee [may be wholly or partially forfeited]-

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

7. Determination of the amount of gratuity.--(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in Sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

(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.

(3A) 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.

Rule 18: Appeal (1) The Memorandum of appeal under Sub-section (7) of Section 7 of the Act shall be submitted to the appellate authority with a copy thereof to the opposite party and the controlling authority either through delivery in person or under registered post acknowledgement due.

(2) The Memorandum of appeal shall contain the facts of the case, the decision of the controlling authority, the grounds of appeal and the relief sought.

(3) There shall be appended to the Memorandum of appeal a certified copy of the finding of the controlling authority and direction for payment of gratuity.

(4) On receipt of the copy of Memorandum of appeal, the controlling authority shall forward records of the case to the appellate authority.

(5) Within 14 days of the receipt of the copy of the Memorandum of appeal, the opposite party shall submit his comments of each paragraph of the Memorandum with additional pleas, if any, to the appellate authority with a copy to the Appellant.

(6) The appellate authority shall record its decision after giving the parties to the appeal a reasonable opportunity of being heard. A copy of the decision shall be given to (he parties to the appeal and a copy thereof shall be sent to the controlling authority returning his records of the case.

(7) The controlling authority shall, on receipt of the decision of the appellate authority, make necessary entry in the records of the case maintained in Form ''Q, under Sub-rule (1) of Rule 16.

(8) On receipt of the decision of the appellate authority, the controlling authority shall, if required under that decision, modify his direction for payment of gratuity and issue a notice to the employer concerned in Form ''S'' specifying the modified amount payable and directing payment thereof to the applicant, under intimation to the controlling authority within fifteen days of the receipt of the notice by the employer. A copy of the notice be endorsed to the Appellant employee, nominee or legal heirs, as the case may be and to the appellate authority.

5. Indisputably, the amount of gratuity under the Act of 1972 becomes due on the date of retirement of the person concerned and the procedure prescribed in Section 7 requiring the employee to apply for payment of gratuity and employer to pay the amount of gratuity due to the employee within thirty days from the date when it becomes payable and if the same is not paid to bear interest at the rate prescribed by the Central Government, does not mean that date of entitlement of the gratuity shifts to a date after thirty days from the date of superannuation as contended by learned Counsel for the Respondent. Sub-section (3A), reproduced above, clearly specifies that if the amount of gratuity payable is not paid within the period specified in Sub-section (3) within thirty

days from the date it become payable, which is the date of superannuation, then the employer has to pay simple interest at such rate as the Central Government notifies; and Sub-section (3A) of Section 7 of the Act of 1972 casts an obligation on the employer if there is a delay in payment of gratuity even if delay in payment occurs due to the fault of the employee, to obtain permission in writing from the concerned controlling authority for such delayed payment on this ground.

6. The said proviso of Sub-section (3A) of Section 7 carves out an exception to the normal contingency of payment of interest on the delayed payment of gratuity and stipulates 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. Admittedly, nothing of this sort, as stipulated in this proviso has been done by the employer in the present case; at least no such document showing the permission of the controlling authority for the delayed payment of gratuity to the Petitioner-employee has been produced before this Court. There is no dispute as to the entitlement and amount of gratuity due to the Petitioner-employee in the present case from either side. The amount of gratuity of Rs. 3,50,000/- has been paid to the Petitioner without any demur from the side of the Respondent on 29.6.2002. The only reason canvassed before this Court by the Respondent is that there was a justifiable reason for such delayed payment of gratuity on account of pendency of charge sheet against the Petitioner for the period 31.10.2001 to till 3.6.2002.

7. The question for consideration is as to whether this constitutes sufficient reason for non-payment of interest as given in Sub-section (3A) of Section 7 and whether the pendency of the charge sheet can be said to be fault of the employee as stipulated in the exception clause contained in the proviso to Sub-section (3A). In the considered opinion of this Court, this cannot constitute a sufficient cause for non-payment of interest on the delayed payment of gratuity by the employer. Firstly, the interest is nothing but financial compensation on the delayed payment of monetary dues of employee by the employer and it does not entail any penal consequences for either party. The entitlement of gratuity under the provisions of Act of 1972 is because of service rendered by the employee for a specified period and on the event of his superannuation. As already stated above, there is not even a dispute on the entitlement of the Petitioner about payment of gratuity to him in the present case. The only question is that whether the interest is to be paid to the Petitioner for the delayed payment on gratuity or not. No such exception as is sought to be contended by the learned Counsel for the Respondent-employer is envisaged by the statutory provisions or Rules that delay caused on account of pendency of charge sheet for disciplinary matter could constitute a good ground for delay in payment of gratuity amount. The provisions of Sub-section (3A) of Section 7 only talks of delay in payment due to the fault of the employee and even for such fault of employee, unless the employer concerned has obtained prior written permission of the controlling

authority under this Act, the interest would accrue to the Petitioner employee and would be liable to be paid by the Respondent-Employer. There is no question of any fault of the Petitioner if the charge sheet against him wrongly issued on 31.10.2001 was admittedly dropped by the competent authority of the Respondent on 3.6.2002. Therefore, the said proviso of Sub-section (3A) of Section 7 cannot at all be attracted in the present case. But for this proviso to Sub-section (3A), there is no escape for the Respondent employer to pay interest on the delayed payment of gratuity to the employee and hence in the opinion of this Court, the Petitioner is entitled to be paid interest on such delayed payment of gratuity for the period 1.11.2001 to 29.6.2002. The rate of such simple interest has to be paid by the Respondent-employer is not clear because such rate would depend upon the notification issued by the Central Government and no such rate is readily available on the record of this case as such notification has been produced. The rate of interest claimed @ 18% p.a. appears to be on higher side.

8. Accordingly, this writ petition is allowed holding the Petitioner entitled for payment of interest u/s 7(3A) of the Payment of Gratuity Act, 1972. It is directed that Respondent-employer shall pay interest @ 9% p.a. of simple interest on the aforesaid Rs. 3,50,000/-, the amount of gratuity for the period 1.11.2001 to 29.6.2002 and such mount of interest should be paid to the Petitioner by the Respondent within a period of one month from to-day. No costs.