

Before G.S. Sandhawalia & Jagmohan Bansal, JJ.
**THE CHAIRMAN-CUM-MANAGING DIRECTOR,
ALLAHABAD BANK — Appellant**

versus

APPELLATE AUTHORITY AND OTHERS — Respondents

LPA No. 679 of 2017 (O&M)

August 23, 2022

*Constitution of India, Art.51, Payment of Gratuity Act, 1972—
The Single Bench in CWP 19376 of 2012 allowed Interest from 26th
March 2002 to 1st November 2010 on the amount of gratuity to an
employee—Letter patent appeal dismissed and single bench order
upheld—the employee retired in 2001 and received his gratuity in the
year 2001 however on account of the pension scheme coming into
force, he had opted and was bound to refund the gratuity amount
which he had received—The issue regarding gratuity was pending
before the apex court in Allahabad bank and anr. Vs All India
Allahabad bank retired employees association, 2010 SC and the same
was decided in favour of the employees holding that there could be no
comparison between the pension scheme and the right of the
employees to receive gratuity as it was a beneficial piece of
legislation—The bank thus refunded the amount of the bank but had
denied interest—The interest has been allowed by the learned single
judge and further directions are issued for the same to be paid to the
employees within 2 months.*

Held, that accordingly, he made a request on 26.03.2002 requesting that his case be processed under the said scheme and undertaking to refund the gratuity which he had already received and which had been credited to his account on 02.08.2001. Resultantly, he refunded the amount of Rs.3,50,000/- on 26.03.2002 (Annexure P-2/1) and requested sanction of payment from the date of retirement. The issue regarding the right of the employee to receive gratuity was raised before the Apex Court in *Allahabad Bank (supra)*. Resultantly, the Apex Court came to the conclusion that the statutory right under the provisions of the Act could not be defeated by any instrument or contract and decided the issue in favour of the employees of the bank while upholding the judgment of the Allahabad High Court wherein the matter had been challenged by the bank.

(Para 6)

Further held, that it is pertinent to notice that during the pendency of the proceedings, directions had been given to the controlling authority to decide the issue as to whether the benefits under the Allahabad Bank Employees Pension Scheme (Old) were more beneficial in comparison to that of Payment of Gratuity under the provisions of the Act. The Controlling Authority had come to the conclusion that the benefits available under the scheme are more beneficial, which order was quashed by the Apex Court on 15.12.2009 by holding that there could be no comparison between a Pension Scheme which does not provide for payment of any gratuity and the right of the employee to receive payment of gratuity under the provisions of the Act and that it was a beneficial piece of legislation. The bank thus refunded the payment of Rs.3,50,000/- on 01.11.2010 to the writ petitioner but denied the interest for which he thereafter filed appropriate application before the Controlling Authority which was allowed on 01.08.2011 (Annexure P-7) and upheld by the Appellate Authority on 30.07.2012 (Annexure P-12) which in turn has been upheld by the learned Single Judge.

(Para 5)

Further held, that thus, from the above reading, it would be crystal clear that the liability is statutory in nature. In the present case, on account of the fact that the employee had to apply under the Pension Scheme which had come into force, he was forced to refund the amount received. In view of the authoritative pronouncement of the Apex Court, the Bank on its own volition had refunded the amount back on 01.11.2010. Thus, it kept the amount of gratuity from 26.03.2002 to 01.11.2010 for which period the respondent, by way of interest, had been duly compensated as per the statutory provisions. Therefore, the findings which have been recorded by the learned Single Judge cannot be faulted for any reason.

(Para 7)

Vikas Chatrath, Advocate, *for the appellant*.

Raj Kaushik, Advocate, for respondent No.3.

G.S. SANDHAWALIA, J. (ORAL)

(1) Consideration in the present Letters Patent Appeal, filed by the appellant-Bank, is to the judgment passed by the learned Single Judge in CWP-19376-2012 on 13.02.2017 whereby the orders of the authorities under the Payment of Gratuity Act, 1972 (for short, the

'Act') have been upheld and interest has been allowed from 26.03.2002 to 01.11.2010. The learned Single Judge came to the conclusion that there was a statutory provision under the Act on account of which the interest is payable and therefore, upheld the said orders.

(2) Counsel for the appellant has vehemently tried to convince that the said order is not justifiable as the issue of gratuity was subject matter of dispute before the Apex Court itself in the judgment passed in *Allahabad Bank & another versus All India Allahabad Bank Retired Employees Association*¹. It is thus submitted that there were reasonable grounds for the Bank not to make the payment and therefore, the grant of interest on the amount was not justified.

(3) We are of the considered opinion that the order of the learned Single Judge does not suffer from any infirmity or illegality which would warrant interference. It is not disputed that the employee retired on 17.03.2001 and received his payments on 02.08.2001. On account of the Pension Scheme coming into force for which he had opted, he was bound to refund the gratuity amount which he had received of Rs.3,50,000/-.

Clause 7 of the Scheme reads as under:

“7. Minimum Pension:

The pension scheme is applicable to the employees in lieu of Gratuity. An employee is entitled to a minimum pension equivalent to the amount of the Gratuity admissible to him.”

(4) Accordingly, he made a request on 26.03.2002 requesting that his case be processed under the said scheme and undertaking to refund the gratuity which he had already received and which had been credited to his account on 02.08.2001. Resultantly, he refunded the amount of Rs.3,50,000/- on 26.03.2002 (Annexure P-2/1) and requested sanction of payment from the date of retirement. The issue regarding the right of the employee to receive gratuity was raised before the Apex Court in *Allahabad Bank (supra)*. Resultantly, the Apex Court came to the conclusion that the statutory right under the provisions of the Act could not be defeated by any instrument or contract and decided the issue in favour of the employees of the bank while upholding the judgment of the Allahabad High Court wherein the matter had been challenged by the bank.

¹ (2010) 2 SCC 44

(5) It is pertinent to notice that during the pendency of the proceedings, directions had been given to the controlling authority to decide the issue as to whether the benefits under the Allahabad Bank Employees Pension Scheme (Old) were more beneficial in comparison to that of Payment of Gratuity under the provisions of the Act. The Controlling Authority had come to the conclusion that the benefits available under the scheme are more beneficial, which order was quashed by the Apex Court on 15.12.2009 by holding that there could be no comparison between a Pension Scheme which does not provide for payment of any gratuity and the right of the employee to receive payment of gratuity under the provisions of the Act and that it was a beneficial piece of legislation. The bank thus refunded the payment of Rs.3,50,000/- on 01.11.2010 to the writ petitioner but denied the interest for which he thereafter filed appropriate application before the Controlling Authority which was allowed on 01.08.2011 (Annexure P-7) and upheld by the Appellate Authority on 30.07.2012 (Annexure P-12) which in turn has been upheld by the learned Single Judge.

(6) Section 7 of the Act provides that if an application for gratuity is made to the employer, the employer shall pay the amount of gratuity within 30 days from the date it becomes payable under sub-section (3). Sub-section (3A) further provides that if the amount of gratuity is not paid within the period specified, the employer shall pay the interest from the date on which the gratuity becomes payable to the date on which it is paid at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits. The proviso further provides that no interest is payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission from the controlling authority for the delayed payment on this ground. Sub-section (4)(a) further provides that if there is any dispute to the amount of gratuity or as to admissibility of any claim, the employer shall deposit with the controlling authority such amount as he admits to be payable as gratuity and thereafter the controlling authority after due enquiry shall decide the issue. The said provisions read as under:

“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 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.] (4)(a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.”

(7) Thus, from the above reading, it would be crystal clear that the liability is statutory in nature. In the present case, on account of the fact that the employee had to apply under the Pension Scheme which had come into force, he was forced to refund the amount received. In view of the authoritative pronouncement of the Apex Court, the Bank on its own volition had refunded the amount back on 01.11.2010. Thus, it kept the amount of gratuity from 26.03.2002 to 01.11.2010 for which period the respondent, by way of interest, had been duly compensated as per the statutory provisions. Therefore, the findings which have been recorded by the learned Single Judge cannot be faulted for any reason.

(8) Reference can also be made to the judgment of the Apex Court in *H.Gangahanume Gowda versus Karnataka Agro Industries Corporation Ltd.*² wherein also the same issue arose that whether the appellant is entitled to interest on the delayed payment of gratuity and the right to deny the same. The Apex Court set aside the judgment of the learned Single Judge which had declined the benefit of interest on the delayed payment of gratuity which the Division Bench had upheld on account of the fact that it was the discretion of the learned Single Judge. Resultantly, a finding was arrived at that once there is a mandatory provision contained under Section 7 of the Act, the Division Bench had committed an error that the discretion of the Single Judge was not to be interfered with. Resultantly, the appeal was allowed. Relevant portion of the judgment reads as under:

“A penal provision is also made in Section 9 for non-payment of gratuity. Payment of gratuity with or without interest as the case may be does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with the penalty of payment of interest was the view taken in State of Kerala & Ors. vs. M.Padmanabhan Nayyar [1985 (50) FLR 145]. Earlier there was no provision for payment of interest on the delayed payment of gratuity. Sub-section (3A) was added to Section 7 by an amendment, which came into force with effect from 1st October, 1987. In the case of Charan Singh vs. M/s. Birla Textiles and Another [1988 (57) FLR 543 SC], this aspect was noticed in the following words:

"There was no provision in the Act for payment of interest when the same was quantified by the Controlling Authority and before the Collector was approached for its realization. In fact, it is on the acceptance of the position that there was a lacuna in the law that Act 22 of 1987 brought about the incorporation of sub-section 3(A) in Section 7. That provision has prospective application."

8. In the background of this legal position, now we turn to

² (2003) 3 SCC 40

the facts of the present case. The appellant was under suspension from 15.3.1999 to 21.5.1999. On attaining the age of superannuation, he retired from services of the respondent-Corporation on 1.1.2000. The learned Single Judge, after considering the rival contentions, disposed of the writ petition issuing directions to the respondent-Corporation to settle the full salary and allowances for the period of suspension, gratuity, cash equivalent to leave salary, deferred leave, concession amount etc. As regards the claim of interest on gratuity, the learned Single Judge held as under:-

"Since there was a doubt as to whether the petitioner is entitled to the gratuity, cash equivalent of leave salary etc., in view of the divergent opinion of the Courts during the pendency of an enquiry proceeding of a retired employee, in my view, the petitioner is not entitled to the relief of interest for the belated payment of gratuity and other amounts."

9. It is clear from what is extracted above from the order of learned Single Judge that interest on delayed payment of gratuity was denied only on the ground that there was doubt whether the appellant was entitled to gratuity, cash equivalent to leave etc., in view of divergent opinion of the courts during the pendency of enquiry. The learned Single Judge having held that the appellant was entitled for payment of gratuity was not right in denying the interest on the delayed payment of gratuity having due regard to Section 7(3A) of the Act. It was not the case of the respondent that the delay in the payment of gratuity was due to the fault of the employee and that it had obtained permission in writing from the controlling authority for the delayed payment on that ground. As noticed above, there is a clear mandate in the provisions of Section 7 to the employer for payment of gratuity within time and to pay interest on the delayed payment of gratuity. There is also provision to recover the amount of gratuity with compound interest in case amount of gratuity payable was not paid by the employer in terms of Section 8 of the Act. Since the employer did not satisfy the mandatory requirements of the proviso to Section 7(3A), no discretion was left to deny

the interest to the appellant on belated payment of gratuity. Unfortunately, the Division Bench of the High Court, having found that the appellant was entitled for interest, declined to interfere with the order of the learned Single Judge as regards the claim of interest on delayed payment of gratuity only on the ground that the discretion exercised by the learned Single Judge could not be said to be arbitrary. In the first place in the light of what is stated above, the learned Single Judge could not refuse the grant of interest exercising discretion as against the mandatory provisions contained in Section 7 of the Act. The Division Bench, in our opinion, committed an error in assuming that the learned Single Judge could exercise the discretion in the matter of awarding interest and that such a discretion exercised was not arbitrary.

10. In the light of the facts stated and for the reasons aforementioned, the impugned order cannot be sustained. Consequently, it is set aside. The respondent is directed to pay interest @ 10% on the amount of gratuity to which the appellant is entitled from the date it became payable till the date of payment of the gratuity amount. The appeal is allowed accordingly with cost quantified at Rs. 10,000/-.

Appeal allowed.”

(9) To be fair to counsel for the appellant, reference has been made to the judgment dated 03.02.2017 passed by the learned Single Judge of the High Court of Judicature of Bombay, Nagpur Bench in WP No.6282 of 2015 titled *Bhaskar Keshao Lothey versus The General Manager (Admn.) Allahabad Bank, Kolkatta & others*, wherein the relief of interest was denied on account of the dispute which had remained pending before the Apex Court. We are of the considered opinion that in view of the judgment of the Apex Court in *H. Gangahanume Gowda (supra)* on the said issue, we would differ with the reasoning given by the learned Single Judge. Rather in *Y.K. Singla versus Punjab National Bank & others*³, the Division Bench of this Court had denied the benefit of interest on the ground that the judicial proceedings were pending on the date of superannuation of the employee. The same was set aside and that of learned Single Judge

³ (2013) 3 SCC 472

granting interest was restored by holding as under:

“18. Insofar as the present controversy is concerned, the appellant was accused of having entered into a conspiracy with a bank employee superior to him, so as to extend unauthorized benefits to a member of the Indian Administrative Services belonging to the Haryana Cadre. Based on the aforesaid alleged fault of the appellant, the PNB, by an order dated 13.5.2000, informed the appellant, that the release of certain retiral benefits including gratuity was being withheld, because of pending of criminal proceedings against him. The appellant was also informed, through the aforesaid communication, that release of his retiral benefits including gratuity, would depend on the outcome of the pending criminal proceedings. It is, therefore apparent, that the second ingredient expressed in the proviso under sub-Section (3A) of Section 7 of the Gratuity Act was clearly satisfied, when the competent authority approved the action of withholding the appellant’s gratuity. The instant conclusion is inevitable, because it is not the case of the appellant, that the communication dated 13.5.2000, by which his gratuity was withheld, had not been issued at the instance of the concerned controlling authority. The only question which, therefore, arises for consideration is, whether the first ingredient (culled out above) for the applicability, of the proviso under sub-Section (3A) of Section 7 of the Gratuity Act, can be stated to have been satisfied, in the facts and circumstances of the instant case. If it can be concluded, that the aforesaid ingredient is also satisfied, the appellant would have no right to claim interest, despite delayed release of gratuity. 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 (3A) 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(3A) of the Gratuity Act. Accordingly, the appellant has to be awarded interest under section 7(3A) 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 (3A) of Section 7 of the Gratuity Act, on account of delayed payment of gratuity.”

(10) Accordingly, in view of the above discussion, the present appeal is dismissed. The interest element be paid to the employee within a period of 2 months from the receipt of certified copy of this order.

Dr. Payel Mehta