

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No.115 of 2014**

Vandana Vidhut Limited, through its President
(Commercial), Sirgitti Industrial Area, Sector-B, Bilaspur
(CG)

---Petitioner

Versus

1. Appellate Authority under the Payment of Gratuity Act, 1972 and Dy. Labour Commissioner, O/o. Labour Commissioner, Raipur (CG)
2. Nityanand Choudhary, C/o. P. Kurmaiya, Makan No.152, Ward No.38, RNT Lane, Hemu Nagar, Bilaspur (CG)

---Respondents

For Petitioner	:	Mr.Vaibhav Shukla and Ms Ashtha Sharma, Advocate
For Respondent No.1	:	Mr.Varun Sharma, Panel Lawyer
For Respondent No.2	:	Mr.Gary Mukhopadhyay, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

16/12/2015

1. Respondent No.2 herein was appointed as Boiler Operator in the petitioner's company on 1.7.2002. His last drawn wages as per salary slip for the month of November, 2011 was ₹ 7860/- (Basic ₹5895+DA ₹1965) . Thereafter, from 10.12.2011 respondent No.2 remained

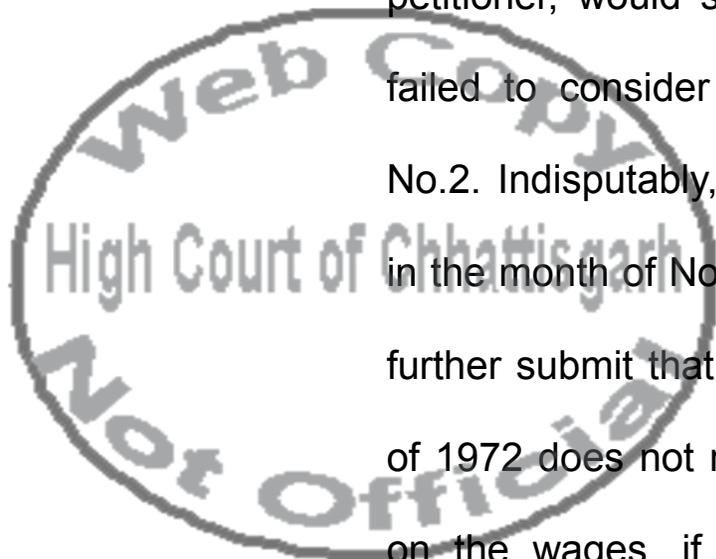
unauthorizedly absent from his duty leading to issuance of show-cause notice dated 10.12.2011. Respondent No.2 did not respond to the show-cause notice and tendered his resignation on 14.1.2012, which was accepted by the petitioner with immediate effect i.e.14.1.2012. Respondent No.2 filed an application under Section 7(4) of the Payment of Gratuity Act, 1972 (hereinafter called as "the Act of 1972") claiming gratuity amount from the petitioner.

The Controlling Authority by its order dated 18.6.2013 granted ₹45,346/- (without interest) as gratuity taking last drawn wages as ₹7860/- indicated in the salary slip of the month of November, 2011.

2. Feeling aggrieved and dissatisfied with the order of the Controlling Authority, respondent No.2 preferred an appeal under Section 7(7) of the Act of 1972 before the Appellate Authority. The Appellate Authority by its order dated 3.3.2014 held that respondent No.2 is entitled for gratuity to the tune of ₹ 71,311/- along with 10% interest.
3. The petitioner Company has filed the instant writ petition questioning the order of the Appellate Authority stating to be contrary to the provisions contained in sub-section (2) of Section 4 of the Act of 1972 and explanation appended

therein and has prayed that order of the Appellate Authority deserves to be set aside.

4. Return has been filed by respondents No.1 and 2 opposing the writ petition stating inter-alia that order passed by the Appellate Authority is in accordance with law and no interference is called for.
5. Ms Ashtha Sharma, learned counsel appearing for the petitioner, would submit that the Appellate Authority has failed to consider the last drawn wages of respondent No.2. Indisputably, last drawn wages of respondent No.2 in the month of November, 2011 was ₹ 7860/-. She would further submit that sub-section (2) of Section 4 of the Act of 1972 does not mean that gratuity has to be calculated on the wages, if last drawn wages has wrongly been computed. She would also submit that award of interest at the rate of 10% is also unwarranted in the facts and circumstances of the case.
6. Mr.Gary Mukhopadhyay, learned counsel appearing for respondent No.2, would submit that last drawn wages of respondent No.2 was reduced illegally in the month of November, 2011 by the petitioner-employer, whereas the petitioner was being paid higher last drawn wages in the



month of April, 2011 i.e. ₹ 9076/-, which has been taken as last wage by the Appellate Authority for the purposes of wages under sub-section (2) of Section 4 of the Act of 1972. He would further submit that interest has rightly been awarded to respondent No.2 by the Appellate Authority in view of the provisions contained in Section 7 (3A) of the Act of 1972.

7. Mr.Varun Sharma, learned Panel Lawyer appearing for respondent No.2, would support the impugned order.

8. I have heard learned counsel appearing for the parties, given thoughtful consideration to the submissions raised therein and also gone through the record with utmost circumspection.

9. In order to resolve the dispute, it would be appropriate to notice sub-section (2) of Section 4 of the Act of 1972 which states as under:-

“4(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days’ wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this

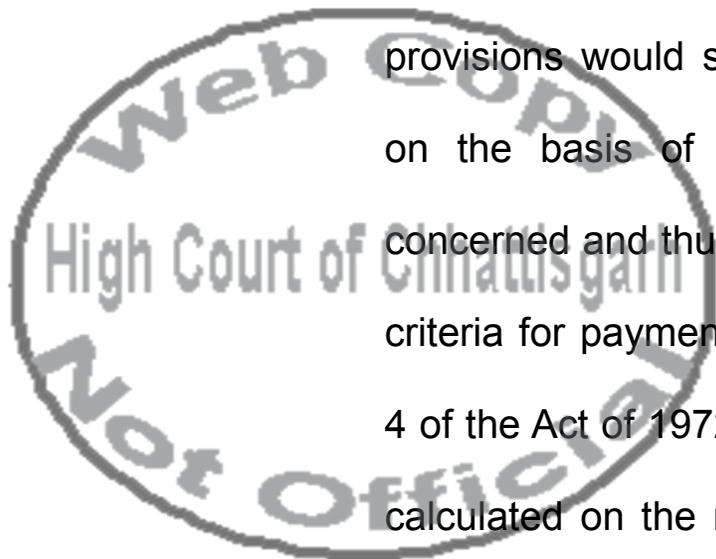
purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days' wages for each season.

Explanation.- In the case of monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen."

10. A careful and meaningful reading of the above-stated provisions would show that gratuity has to be calculated on the basis of last drawn wages by the employee concerned and thus, last drawn wages by the employee is criteria for payment of gratuity. Sub-section (2) of Section 4 of the Act of 1972 does not mean that gratuity has to be calculated on the rate of wages last drawn, if last drawn wages has wrongly been computed, gratuity has to be calculated at the rate of wages i.e. actually paid to the employee and which is last drawn by him.

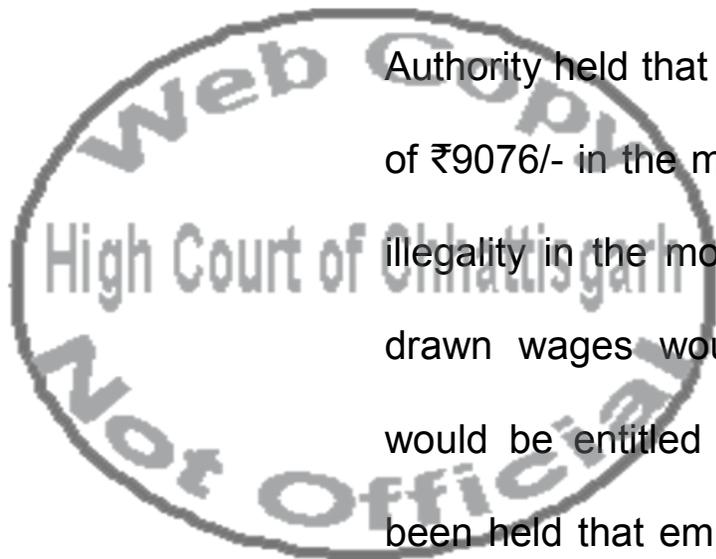
11. Admittedly, respondent No.2 worked with the petitioner Company up to 10.12.2011, thereafter he remained unauthorizedly absent from his duty and he was paid salary for the month of December, 2011. Salary slip of the month of December, 2011 has been filed along with



petition as Annexure P/2, which clearly demonstrates that basic pay of respondent No.2 was ₹ 5895/- and DA was ₹ 1965/- , which comes to ₹ 7860/- and gratuity has to be calculated on the basis of revised last drawn wages.

12. The Controlling Authority in its order dated 18.6.2013 has taken ₹ 7860/- as last drawn wages and accordingly, held that respondent No.2 is entitled for gratuity of ₹ 45,346/-.

In appeal preferred by respondent No.2, the Appellate Authority held that respondent No.2 had drawn last wages of ₹9076/- in the month of April, 2011, which was reduced illegality in the month of November, 2011, therefore, last drawn wages would be ₹9076/- and respondent No.2 would be entitled for ₹ 71,311/- as gratuity. It has also been held that employee would be entitled for gratuity on the basis of last drawn wages. Since the pay scale of respondent No.2 was revised, which has led to decrease in the last drawn wages, the gratuity has wrongly been calculated by the Appellate Authority on the basis of last drawn wages paid to respondent No.2 in the month of April, 2011 and therefore, order of the Appellate Authority taking last drawn wages as ₹9076/- is erroneous and consequently, order of the Appellate Authority holding that



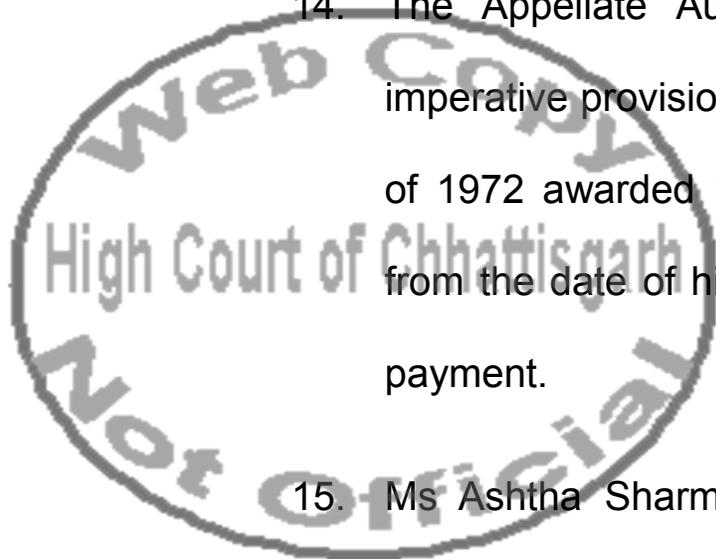
respondent No.2 entitled for gratuity to the extent of ₹71,311/- is hereby set aside and order passed by the Controlling Authority holding respondent No.2 entitled for gratuity of ₹45,346/- is hereby restored.

13. The determination of the amount of gratuity brings me to the question of interest as awarded by the Appellate Authority.

14. The Appellate Authority taking into consideration the imperative provision contained in Section 7 (3A) of the Act of 1972 awarded 10% interest to the amount of gratuity from the date of his superannuation till the actual date of payment.

15. Ms Ashtha Sharma, learned counsel appearing for the petitioner, would submit that amount of gratuity has already been determined by the Controlling Authority and amount of gratuity has been deposited on 29.8.2013, therefore, no amount of interest is payable to respondent No.2.

14. At this stage, it would be appropriate to notice Section 7 (3) of the Act of 1972, which mandates the payment of gratuity by the employer to the employee within the period



specified in sub-section (3), which states as under:-

7. Determination of the amount of gratuity.-

(1) xxx xxx xxx

(2) xxx xxx xxx

(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.

15. Section 7 (3A) of the Act of 1972 provides as under:-

“7(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.”

16. Thus, the aforesaid provision makes the employer liable to pay amount of gratuity within 30 days from the date it becomes payable to the employee and once there is default in payment of gratuity within 30 days, the statutory liability of the employer comes in and employer is liable to make payment of interest on amount of gratuity not exceeding the rate notified by the Central Government from time to time by virtue of the provision contained in

Section 7 (3A) of the Act of 1972.

17. The question of interest payable under sub-section (3A) of Section 7 of the Act of 1972 came to be consideration before the Supreme Court in the matter of H. Gangahanume Gowda v. Karnataka Agro Industries Corpn. Ltd.¹, in which Their Lordships have held in no uncertain term that interest on delayed payment of gratuity is mandatory, it is a statutory compulsion and pertinently observed as under:-

“7. It is evident from [Section 7\(2\)](#) that as soon as gratuity becomes payable, the employer, whether any application has been made or not, is obliged to 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. Under [Section 7\(3\)](#), the employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable. Under sub-section 3(A) of Section 7, if the amount of gratuity is not paid by the employer within the period specified in sub-section (3), he 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; 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 that ground. From the provisions made in [Section 7](#), a clear command can be seen mandating the employer to pay the gratuity within the specified time and to pay interest on the delayed payment of gratuity. No discretion is available to exempt or relieve the

¹ (2003) 3 SCC 40

employer from payment of gratuity with or without interest as the case may be. However, under the proviso to [Section 7\(3A\)](#), no interest shall be payable if delay in payment of gratuity is due to the fault of the employee and further condition that the employer has obtained permission in writing from the controlling authority for the delayed payment on that ground. Under [Section 8](#), provision is made for recovery of gratuity payable under the Act, if not paid by the employer within the prescribed time. The Collector shall recover the amount of gratuity with compound interest thereon as arrears of land revenue and pay the same to the person entitled. 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 Nayar](#) [(1985) 1 SCC 429]. 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) 4 SCC 212], this aspect was noticed in the following words: (SCC pp.214-15, para 4)

"4. 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."

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....”

18. Keeping in view the statutory provisions contained in sub-section (3A) of Section 7 of the Act of 1972 and applying the law laid-down by their Lordships of the Supreme Court in the matter of **H. Gangahanume Gowda (supra)**, I do not have any slightest hesitation in my mind to hold that failure of the petitioner to make payment of amount of gratuity within 30 days from the date it becomes payable to the employee, sub-section (3A) of Section 7 of the Act of 1972 is squarely attracted and payment of interest being statutory and mandatory in nature and thereby the petitioner is liable to make payment of interest

on the said amount which the Appellate Authority has rightly been awarded to respondent No.2.

17. As a fall out and consequence of the aforesaid discussion, the writ petition filed by the petitioner is partly allowed and respondent No.2 is entitled for gratuity of ₹45,346/-. The petitioner is directed to pay the amount of gratuity along with 10% interest on the amount of gratuity, to which respondent No.2 is entitled from the date of retirement till the date of actual payment. No order as to cost(s).



Sd/-
(Sanjay K. Agrawal)
JUDGE

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (L) No.115 of 2014

Petitioner

Vandana Vidhut Limited

Versus

Respondents

Appellate Authority and others

HEAD-NOTE

(English)

Payment of interest on amount of gratuity is statutory
compulsion under Payment of Gratuity Act

(हिन्दी)

उपदान की राशि पर ब्याज का भुगतान उपदान संदाय अधिनियम के
अंतर्गत सांविधिक अनिवार्यता है।

