IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.18003 of 2009

(In the matter of application under Articles 226 and 227 of the Constitution of India).

Basanti Kar & others ***Petitioners***

-versus-

Managing Director, Orissa Forest Development Corporation Ltd., Bhubaneswar & another ***Opposite Parties***

For Petitioner : ***Mr. S.P.Das, Advocate***

For Opposite Parties : ***Mr. N.K.Mohanty, Advocate***

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING :22.01.2025
DATE OF JUDGMENT:25.02.2025

G. Satapathy, J.

1. The petitioners by means of this writ petition have invoked the extra ordinary jurisdiction of this Court under Articles 226 & 227 of the Constitution of India with certain prayers, but subsequently moulded their prayer by way of a memo confining it to the second prayer for limiting only to the grant of interest on the gratuity amount w.e.f. the date of retirement till its disbursement.

By the aforesaid memo, it has been clarified that the first prayer of the petitioners have already been considered and the gratuity which was earlier held up had already been disbursed to them during the pendency of the writ petition.

2. In the course of argument, Mr.Sidhartha Prasad Das, learned counsel for the petitioners has submitted that since the gratuity has already been paid at belated stage, thereby the petitioners are entitled to interest on the gratuity amount so paid in view of the proviso to Sec. 7(3-A) of the Payment of Gratuity Act, 1972. On the contrary, Mr.N.K.Mohanty, learned counsel for the OP, however, has submitted that since the deceased employee had some outstanding dues of Rs.25,54,329/- which was pointed out in audit, the payment of gratuity to the deceased employee was deferred/delayed, but ultimately, the same was settled and sanctioned vide Office order No. 502 dated 30.03.2019 and disbursed on 15.04.2019 in terms of Annexures-'F' and 'G', but the deceased employee still after adjustment has to deposit an amount of

Rs.77,977/-, however, the same has not been paid and, therefore, no interest can be levied on the Department on the pretext of delayed sanction of the gratuity which was only due to fault of the deceased employee and, therefore, the prayer as made by the legal representatives of the deceased employee merits no consideration. Accordingly, Mr. Mohanty has prayed to dismiss the writ petition.

3. After having considered the rival submissions upon perusal of record, it is not in dispute that the gratuity amount has already been disbursed to the petitioners, but the fact revealed from the prayer of the petitioners that the retiral benefit of the deceased employee was withheld due to proceeding in DP Nos. 1729 and 1730 of 2000 and the petitioners, therefore, have prayed to sanction the leave salary after adjusting the amount of recovery as ordered in these proceedings. Further, Annexure-1 to the writ petition also discloses about some audit objection amounting to Rs.25,00,000/- and some odd, but later on, after reconciliation and settlement of the audit objection, the gratuity amount was sanctioned and immediately disbursed.

4. For clarity and to address the dispute in the matter, this Court considers it to clarify as to what the word "gratuity" means. Gratuity as it denotes is an amount paid by an employer, when the employee leaves the job after serving the organization of employer for a minimum period of five years. One can, however, consider it to be a financial gift from the employer to employee. In the context of claim of the petitioners, it is appropriate to refer to the proviso to Sec.7(3-A) of the Payment of Gratuity Act, 1972 which provides 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. In the present case, not only Annexure-1, but also the admitted prayer reveals about some outstanding dues against the deceased employee which is quite evident from the prayer in which the petitioners have sought for direction for payment of leave salary after adjustment of recovery amount. Further, a careful reading of the averments of the writ petition and counter affidavit together with the supported documents, it appears to the Court that there was some outstanding dues against the deceased employee and the gratuity to the deceased employee was withheld due to audit objection, but subsequently after settlement of audit objection, the gratuity amount was disbursed. However, the Department still claim for outstanding dues against the deceased employee for an amount of Rs.77,977/-, but the same being disputed question of fact cannot be decided in a writ petition.

5. Be that as it may, since the payment of gratuity was admittedly held up due to audit objection, but subsequently the same was disbursed on reconcilement of the audit objection which is clearly evident from Annexure-1 and, therefore, no interest can be leviable on the Department on the pretext of delayed sanction of gratuity. In view of the aforesaid facts and taking into consideration the relevant documents together with discussions made herein above, this Court considers the prayer of the petitioners for grant of interest on the gratuity to be unsustainable and liable to be rejected.

6. In the result, the writ petition being devoid of merit stands dismissed on contest, but in the circumstance, there is no order as to costs.

(G. Satapathy)
Judge

Orissa High Court, Cuttack,
Dated the 25TH Day of February,2025/Kishore