

Superintendent of Police, Ballia is hereby quashed.

22. The respondents - State authorities, i.e., the Secretary, Department of Home (Police Section), Government of Uttar Pradesh, Lucknow, the Secretary, U.P. Police Recruitment and Promotion Board, Lucknow, the Superintendent of Police (Personnel) Uttar Pradesh Police Headquarter, Allahabad/ Prayagraj and the Superintendent of Police, District Ballia are hereby directed to ensure that appropriate appointment letter is issued to the petitioner appointing him on the post of Constable in pursuance to the recruitment notified in 2015 and the petitioner shall be allowed to join as such. The appointment letter shall be issued to the petitioner by the competent authority within a period of one month from today, and in any case, by 15th December, 2024.

23. It is clarified that the petitioner shall be entitled to the service benefits, including his pay and other allowances as well as seniority, as a consequence of his appointment, only with effect from the date of his joining.

24. With the aforesaid directions and observations, the writ petition is allowed.

25. A copy of this order be communicated to the Secretary, Department of Home (Police Section), Government of Uttar Pradesh, Lucknow, the Secretary, U.P. Police Recruitment and Promotion Board, Lucknow, the Superintendent of Police (Personnel) Uttar Pradesh Police Headquarter, Allahabad/ Prayagraj and the Superintendent of Police, District Ballia by the Registrar (Compliance) within ten days from today.

(2024) 11 ILRA 586
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 08.11.2024

BEFORE
THE HON'BLE ABDUL MOIN, J.

Writ -A No. 6187 of 2024

Jitendra Kandwal ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Alok Singh

Counsel for the Respondents:
C.S.C., Rishabh Tripathi

A. Service Law – Gratuity – Payment of Gratuity Act, 1972 - Section 7 - Payment of Gratuity (Central) Rules, 1972 - Rule 7 - The word used in Rule 7(1) of the Rules 1972 is "may" meaning thereby that it is open for the employee to either apply for payment for gratuity or not. Once Section 7(2) of Act, 1972 itself stipulates that irrespective of an employee applying for gratuity or not the gratuity would become payable and that the said amount is to be paid in terms of Section 7(3) of Act, 1972 within thirty day of the same becoming payable then irrespective of Rule 7 of the Rules, 1972 which gives a discretion to the employee concerned to apply for gratuity or not under provisions of Act, 1972 the gratuity would in fact become payable and due and thus **no application in this regard would be required to be submitted by the employee. (Para 17)**

From perusal of Rule 7 of Rules, 1972 it emerges that Rule 7(1) of Rules, 1972 provides that an employee who is eligible for payment of gratuity under the Act, 1972 **where the date of superannuation or retirement of an employee is known may apply to the employer before thirty days of the date of superannuation or retirement.** (Para 16)

Petitioner having superannuated on 31.12.2019 and gratuity would fall due on 01.01.2020 and that u/s 7(3) of the Act, 1972, should have been paid by 01.02.2020. Gratuity became payable to the petitioner on 01.02.2020 and the same having been in fact paid to the petitioner on 03.11.2020 the petitioner would be entitled for being paid interest on delayed payment of gratuity which interest would be payable as per the provisions of Section 7(3) of Act, 1972. (Para 15, 18)

Writ petition allowed. (E-4)

Present petition prays for a writ of mandamus commanding the respondents to pay 18% interest on the amount of gratuity for delayed period from the date of retirement i.e. 31.12.2019 upto the date of payment i.e. 05.11.2020.

(Delivered by Hon'ble Abdul Moin, J.)

1. Heard learned counsel for petitioner, learned Standing Counsel for respondent no. 1 and Shri Rishabh Tripathi, learned counsel for respondents no.2 to 4.

2. The instant writ petition has been filed praying for a writ of mandamus commanding the respondents to pay 18% interest on the amount of gratuity for delayed period from the date of retirement i.e. 31.12.2019 upto the date of payment i.e. 05.11.2020.

3. Briefly stated the facts of the case are that the petitioner retired on attaining the age of superannuation on 31.12.2019 from service under respondent no. 2. The gratuity has been paid to the petitioner on 05.11.2020 and hence the instant petition for payment of interest.

4. The contention of learned counsel for the petitioner is that as there is delay in payment of gratuity to the petitioner consequently considering the

provisions of the Payment of Gratuity Act, 1972 (hereinafter referred to as the Act, 1972) the respondents are bound to pay interest for the aforesaid delayed period.

5. On the other hand, Shri Rishabh Tripathi, learned counsel appearing for the respondents no. 2 to 4 on the basis of averments contained in the counter affidavit states that as per Section 7 of the Act, 1972 as well as Rule 7 of the Payment of Gratuity (Central) Rules, 1972 (hereinafter referred to as the Rules, 1972) the petitioner had to apply to the respondents before 30 days of the date of superannuation or retirement for payment of gratuity and it is only thereafter that the liability for making payment of gratuity to the petitioner by the respondents arises.

6. It is contended that the petitioner has only applied for payment of gratuity after his retirement which application has been made in the year 2020. The Divisional Logging Manager, Najibabad, Bijnor through his letter dated 23.09.2020, a copy of which is annexure CA-2 to the counter affidavit, wrote to the Secretary, E.P.F. Trust, U.P. Forest Corporation, Lucknow to provide all relevant service documents of the petitioner. Subsequent thereto the petitioner has been paid the entire amount of gratuity vide letter dated 19.11.2020. Shri Tripathi States that the amount of gratuity has been credited in the account of the petitioner on 03.11.2020. However learned counsel for the petitioner states that the gratuity has been credited in his account on 05.11.2020.

7. It is contended that once the provisions of the Act, 1972 and Rules, 1972 themselves provide for an application to be made by the employee concerned and in case the petitioner himself applied for

payment of gratuity in the year 2020 consequently no error has been committed by the respondents in making late payment of gratuity upon the petitioner having applied for being paid the gratuity belatedly and thus the gratuity having now been paid no interest is payable by the respondents.

8. Heard learned counsel for the parties and perused the record.

9. From the arguments as raised by learned counsel for the parties and from the perusal of records it emerges that the petitioner retired on attaining the age of superannuation on 31.12.2019. It is admitted by the parties that payment of gratuity to the petitioner is governed by Act, 1972 and Rules, 1972. The gratuity has been paid to the petitioner on 03.11.2020.

10. In order to consider the admissibility of interest, if any, to the petitioner, the Court may have to consider the relevant provisions of the Act, 1972.

11. Relevant extract of Section 4 of the Act, 1972 reads as under:

"Section: 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."

12. Section 7 of the Act, 1972 reads as under:

"Section: 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.

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.]

(c)] The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.]

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit - (i) to the applicant where he is the employee; or (ii) where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or] heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely : (a) enforcing the attendance of any person or examining him on oath; (b) requiring the discovery and production of documents, (c) receiving evidence on affidavits; (d) issuing commissions for the examination of witnesses.

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code, 1860 (45 of 1860).

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant

either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under subsection (4), or deposits with the appellate authority such amount.]

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority."

13. Rule 7 of the Rules, 1972 reads as under.

"7. Application for gratuity?

(1) An employee who is eligible for payment of gratuity under the Act, or any person authorised, in writing, to act on his behalf, shall apply, ordinarily within thirty days from the date the gratuity became payable, in Form ?I? to the employer:

Provided that where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before thirty days of the date of superannuation or retirement.

(2) A nominee of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of section 4 shall apply, ordinarily within thirty days from the date of gratuity became payable to him, in Form ?J? to the employer:

Provided that an application in plain paper with relevant particulars shall also be accepted. The employer may obtain such other particulars as may be deemed necessary by him.

(3) A legal heir of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of section 4 shall apply, ordinarily within one year from the date of gratuity became payable to him, in Form ?K? to the employer.

(4) Where gratuity becomes payable under the Act before the commencement of these rules, the periods of limitation specified in subrules (1), (2) and (3) shall be deemed to be operative from the date of such commencement.

(5) An application for payment of gratuity filed after the expiry of the periods specified in this rule shall also be entertained by the employer, if the applicant adduces sufficient cause for the delay in preferring his claim, and no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the specified period. Any dispute in this regard shall be referred to the controlling authority for his decision.

(6) An application under this rule shall be presented to the employer either by personal service or by registered post acknowledgement due."

14. From a perusal of Section 4(1) of the Act, 1972 it is apparent that 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 on his superannuation. Further, from perusal of Section 7(1) of Act, 1972 it emerges that a person who is eligible for payment of gratuity under Act, 1972 has to send a written application to the employer for payment of gratuity. However Section 7(2) of the Act, 1972 provides that 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. Section 7(3) of the Act, 1972 provides that 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. Section 7(3A) of Act, 1972 provides that 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.

15. Thus, it is apparent that under Section 7(2) of Act 1972 as soon as the gratuity becomes payable which in this case considering the provisions of Section 4(1) of the Act, 1972 would be payable on the superannuation of the petitioner, he having superannuated on 31.12.2019 and thus would fall due on 01.01.2020 the employer shall, whether an application by the person concerned has been made or not, determine the amount of gratuity and that under Section 7(3) of the Act, 1972 the

