



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 9TH DAY OF AUGUST 2023

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 111248 OF 2014 (S-RES)

BETWEEN:

BABU S/O SHANKARAPPA MUKKANNVAR,

... PETITIONER

(BY SRI. RAMESH .I. ZIRALI &
SRI. SHIVARAJ .S. BALLOLI, ADVOCATES)

AND:

1. THE UNION OF INDIA, BY ITS SECRETARY,
MINISTRY OF HEALTH & FAMILY WELFARE,
NIRMAN BHAVAN, DELHI.
2. THE STATE OF KARNATAKA,
BY THE SECRETARY,
HEALTH & FAMILY WELFARE SERVICES,
M.S. BUILDING, DR. AMBEDKAR VEEDHI,
BANGALORE-560001.
3. THE COMMISSIONER,
HEALTH & FAMILY WELFARE SERVICES,
ANANDRAO CIRCLE, BANGALORE-560009.
4. THE PROJECT DIRECTOR (RCH),
HEALTH & FAMILY WELFARE SERVICES,
ANANDRAO CIRCLE, BANGALORE-560009.
5. THE ACCOUNTS OFFICER,
HEALTH & FAMILY WELFARE SERVICES,
ANANDRAO CIRCLE, BANGALORE-560009.

**VISHAL
NINGAPPA
PATTIHAL**



Digitally signed by
VISHAL NINGAPPA
PATTIHAL

Date: 2023.09.14
10:57:13 +0530



6. THE PROGRAMME DIRECTOR,
POST PARTUM CENTRE,
J.N. MEDICAL COLLEGE,
NEHRU NAGAR, BELGAUM-590010.
7. THE DEPUTY COMMISSIONER,
BANGALORE CITY, BANGALORE.

... RESPONDENTS

(BY SRI. M.B. KANAVI, CGSC FOR R1;
SRI. V.S. KALASURMATH, HCGP FOR R2-R5 & R7;
SRI. MALLIKARJUNSWAMY B. HIREMATH, ADVOCATE FOR R6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF MANDAMUS AND ACCOURDINGLY DIRECT THE RESPONDENTS TO PAY THE GRATUITY AMOUNT OF Rs.4,09,550 WITH INTEREST AT THE RATE OF 10% FROM 30.09.2007 DETERMINED BY THE CONTROLLING AUTHORITY.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking a direction by issuance of a writ in the nature of mandamus, directing the respondents to pay gratuity, which is left unpaid to the tune Rs.4,09,550/- along with interest from the date it fell due-30.09.2007.

2. Heard the learned counsel Sri. Ramesh I. Zirali and Sri. Shivaraj S. Balloli appearing for the petitioner, the



learned CGSC Sri. M.B. Kanavi appearing for respondent No.1-Union of India and the learned High Court Government Pleader Sri. V.S. Kalasurmth appearing for respondent Nos.2 to 5 and 7 and learned counsel Sri. Mallikarjunsamy B. Hiremath appearing for respondent No.6.

3. Facts in brief germane are as follows:

The petitioner is appointed a First Division Clerk at the Postpartum Centre attached to the Jawarharlal Nehru Medical College, Belgaum on 01.12.1973. After completing 34 years of service, the petitioner retires on attaining the age of superannuation. There were several proceedings in the interregnum i.e. between the date of entry of service of the petitioner and his retirement, which are not germane to be noticed. After the retirement, the petitioner was to have been paid gratuity in terms of The Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act', for short). This was not paid, which drove the petitioner, to file an application before the Controlling Authority under the Act to determine the gratuity and direct its payment.



The application is allowed by the Authority in terms of its order dated 31.05.2012 after hearing the parties, determining the gratuity to be paid at Rs.4,09,550/- with interest at 10% per annum from 30.09.2007. The said order becomes final, as the respondent did not question the said order or the determination by the Controlling Authority. The respondent did not pay the gratuity as was directed by the Controlling Authority. This has led the petitioner before this Court in the subject petition.

4. Respondent No.1-Union of India have filed their statement of objections but the State is yet to, despite passage of 9 years.

5. The learned counsel appearing for the petitioner would contend that the Controlling Authority determines the gratuity at the aforesaid amount and directs its payment within three months from 31.05.2012, failing which, it was also directed that it would be recovered as arrears of land revenue. The order, despite it becoming final, is not yet implemented, as the petitioner, who is now aged 74 years, is



yet to receive the gratuity that he is entitled to for his working in the institution for 34 years.

6. The learned Government Pleader would seek to plead helplessness, as he received no instruction with regard to payment of gratuity or otherwise to the petitioner, in terms of the order of the Controlling Authority. The counsel for the Union of India-Sri. M.B. Kanavi would only take this Court through the documents appended to the statement of objections but would not dispute the entitlement of the petitioner for receipt of gratuity.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The petitioner joins the service of the institution- Jawaharlal Nehru Medical College on 01.12.1973, retires on attaining the age of superannuation on 31.08.2007 and is relieved from the office of the Postpartem Centre of the Medical College where he works for 34 years. Gratuity was not paid to the petitioner on the ground that a dispute with



regard to the service of the petitioner was pending adjudication in Writ Petition No.26349/2004. This was concerning regularization of services of the petitioner's working at the Postpartum Centre created under the Centrally sponsored scheme of the Family Welfare Department of the year 1969. The Co-ordinate Bench allows the petition by rendering several directions.

9. The issue in the lis does not concern the interpretation of the order of the Co-ordinate Bench. On retirement of the petitioner, the petitioner ought to have been paid gratuity, within 30 days of his retirement, sought or unsought. That is not done. This drives the petitioner before the Controlling Authority under the Act seeking a direction for payment of gratuity. The Controlling Authority allows the application by an order dated 31.05.2012 by the following order:

ಆದೇಶ

"ಉಪಧನ ಪಾವತಿ ಕಾಯಿದೆ 1972, ರ ಕಲಂ 7 (4)(ಸಿ) ಮತ್ತು ಉಪಧನ ಪಾವತಿ (ಕರ್ನಾಟಕ) ನಿಯಮಗಳು 1973, ರ ನಿಯಮ (1)ರ ಅಡಿಯಲ್ಲಿ ನನಗೆ ಪ್ರದತ್ತವಾದ ಅಧಿಕಾರವನ್ನು ಚಲಾಯಿಸಿ: -



- 1) ಅರ್ಜಿದಾರರು ಉಪಧನ ರೂ: 4,09,550-00 (ನಾಲ್ಕು ಲಕ್ಷ ಒಂಬತ್ತು ಸಾವಿರದ ಐದು ನೂರ ಐದತ್ತು ರೂಪಾಯಿಗಳು ಮಾತ್ರ) ಗಳ ಉಪಧನವನ್ನು ಪ್ರತಿವಾದಿಗಳಿಂದ ಪಡೆಯಲು ಅರ್ಹರಾಗಿರುತ್ತಾರೆಂದು ಆದೇಶಿಸಲಾಗಿದೆ.
- 2) ಅರ್ಜಿದಾರರು ಉಪಧನ ರೂ. 4,09,55.00ಗಳ ಮೇಲೆ ದಿನಾಂಕ 30-09-2007 ರಿಂದ ಪ್ರತಿವಾದಿಗಳು. ಈ ಉಪಧನವನ್ನು ಈ ಪ್ರಾಧಿಕಾರದಲ್ಲಿ ರೇವಣಿ ಇಡುವವರೆಗೆ ಪ್ರತಿ ವರ್ಷಕ್ಕೆ ಶೇಕಡಾ 10 (ಹತ್ತು) ರಷ್ಟು ಸರಳಬಡ್ಡಿಯನ್ನು ಪ್ರತಿವಾದಿಗಳಿಂದ ಪಡೆಯಲು ಅರ್ಹರಾಗಿರುತ್ತಾರೆಂದು ಆದೇಶಿಸಲಾಗಿದೆ.
- 3) ಮೇಲ್ಕಂಡ ಉಪಧನ ಮತ್ತು ಉಪಧನದ ಮೇಲಿನ ಬಡ್ಡಿ ಹಣವನ್ನು ಅರ್ಜಿದಾರರಿಗೆ ಪಾವತಿ ಮಾಡಲು ನೇ ಮತ್ತು 2ನೇ ಪ್ರತಿವಾದಿಗಳು ಜಂಟಿಯಾಗಿ ಅಥವಾ ಪ್ರತ್ಯೇಕವಾಗಿ ಪಾವತಿಸಲು ಬಾಧ್ಯಸ್ಥರಾಗಿರುತ್ತಾರೆಂದು ಆದೇಶಿಸಲಾಗಿದೆ, ಪ್ರತಿವಾದಿಗಳು ಉಪಧನ ಮತ್ತು ಉಪಧನದ ಮೇಲಿನ ಬಡ್ಡಿಯನ್ನು ಈ ಆದೇಶವನ್ನು ಘೋಷಿಸಿದ 60 (ಆರವತ್ತು) ದಿನಗಳಲ್ಲಿ **ASSISTANT LABOUR COMMISSIONER AND CONTROLLING AUTHORITY UNDER PAYMENT OF GRATUITY ACT 1972** ಇವರ ಹೆಸರಿಗೆ ರಾಷ್ಟ್ರೀಕೃತ ಬ್ಯಾಂಕ್‌ನ ಚೆಕ್ ಅಥವಾ ಪೇ ಆರ್ಡರ್ ಅಥವಾ ಡಿಮಾಂಡ್ ಡ್ರಾಪ್ಸ್ ಮೂಲಕ ಈ ಪ್ರಾಧಿಕಾರದಲ್ಲಿ ರೇವಣಿ ಇಡಬೇಕೆಂದು ಆದೇಶಿಸಲಾಗಿದೆ. ಇದಕ್ಕೆ ತಪ್ಪಿದಲ್ಲಿ ಮೇಲ್ಕಂಡ ಹಣವನ್ನು ಪ್ರತಿವಾದಿಗಳಿಂದ ಕಾಯಿದೆಯ ಪ್ರಕಾರ ವಸೂಲಿ ಮಾಡಲಾಗುವುದು.
- 4) ಖರ್ಚು ವೆಚ್ಚದ ಬಗ್ಗೆ ಆದೇಶ ಇರುವುದಿಲ್ಲ.
ಈ ಆದೇಶವನ್ನು ಶೀಘ್ರಲಿಪಿಗಾರರ ಮೂಲಕ ಬೆರಳಚ್ಚು ಮಾಡಿಸಿದ ನಂತರ ಸೂಕ್ತವಾಗಿ ತಿದ್ದುಪಡಿ ಮಾಡಿ ಇಂದು ದಿನಾಂಕ 31-05-2012ರಂದು ಬಹಿರಂಗವಾಗಿ ಘೋಷಿಸಲಾಗಿದೆ.”

10. Gratuity at Rs.4,09,550/- is determined and a direction is issued to disburse such gratuity with 10% simple



interest from the date it fell due i.e. from 30.09.2007 till the date of its payment. If it would not be paid, the State was directed to recover the gratuity as arrears of land revenue. None of these things happen. The petitioner is neither paid gratuity or it is recovered as arrears of land revenue.

11. This leads the petitioner to this Court in the subject petition seeking a direction for issuance of a writ in the nature of mandamus. The determination is already made by the Controlling Authority. What remained was payment. The payment and grant of interest are governed by the provisions of the Act. Therefore, the entitlement of gratuity and interest on its delayed payment are both statutorily mandated.

12. Section 7 of the Act reads as follows:

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. Section 7 deals with determination of gratuity. Section 7(3)(a) depicts entitlement of an employee for simple interest as notified by the Central Government from time to time. Admittedly in the case at hand, 11 years have passed by, pursuant to the directions issued by the Controlling Authority for payment of gratuity and 16 years have passed by with the petitioner attaining the age of superannuation. Therefore, it is not delay alone, but culpable delay on the part of the respondent in not paying the amount of gratuity that the petitioner was at all time entitled to.

14. It is trite that the gratuity is not a bounty that can be withheld at the sweet will or whim of the employer.



The employer in the case at hand is the 2nd respondent- the Secretary of Health and Family Welfare, Government of Karnataka. The State treating its employee of not paying gratuity, a terminal benefit for the last 16 years depicts apathy towards the citizens, particularly of the retired employees, whose voices have become feeble by progression of age and therefore the State does not hear such voices. Thus, callousness is displayed, not for a year or two but close to 2 decades by denying the gratuity to an employee who was always entitled to it, as a retirement benefit. The State can as well ignore the plea of a citizen for payment of gratuity, as it has nothing to lose, but if an employee whose retirement is dependent on receipt of terminal benefits, gratuity, of which is one, is delayed or denied, he would be condemned to penury, and be driven to impecuniosities, having no money to fall back upon, at the advancing old age. This act of the State is sans countenance. The employee is still fighting to get gratuity that he is supposed to have got within one month from 31.01.2007. Therefore, the petitioner becomes entitled to issuance of a writ in the



nature of mandamus directing immediate disbursal of gratuity to the petitioner along with interest.

15. For the aforesaid reasons, the following

ORDER

- i. The petition is allowed.
- ii. Mandamus issues to respondent Nos.1 and 2 to pay gratuity to the petitioner within 30 days from the date of receipt of copy of this order.
- iii. The amount of gratuity to be paid is as determined by the Controlling Authority in terms of its order dated 31.05.2012.
- iv. The petitioner is entitled to interest @10% p.a. or at higher rates as notified by the Central Government from time to time.
- v. In the event, the petitioner would not be paid gratuity within 30 days from the date of receipt of a copy of the order, the petitioner would become entitled to penalty apart from interest @ 10% per annum at the rate of Rs.1,000/- for every day, day



on day; month on month, till the gratuity amount reaches the petitioner.

Ordered accordingly.

Sd/-
JUDGE

kmv
Ct:Bck