

**SUPREME COURT OF INDIA**

Kerala State Cashew Dev.Corp.Ltd.

Vs.

N.Asokan

C.A.No.5118 of 2009

(Tarun Chatterjee and R. M. Lodha JJ.)

27.01.2009

**ORDER**

1. Leave granted.

2. We are not inclined to interfere with the order impugned in this appeal, by which the High Court has affirmed an order of a learned Single Judge of the High Court of Kerala at Ernakulam, directing the Kerala State Cashew Development Corporation Ltd. (hereinafter referred to as the Corporation), the appellant herein, to pay gratuity with interest to the respondent.

3. It is now an admitted position that during the pendency of the appeal, the amount of gratuity, directed by the High Court to be paid to the respondent, has already been paid. Since the gratuity amount has already been paid, the only question that remains to be considered for us is whether interest on such delayed payment of gratuity amount should also be directed to be paid to the respondent.

4. Section 7 of the *Payment of Gratuity Act, 1972* (in short, the Act) deals with determination of the payment of gratuity. Since the gratuity amount has already been paid, Section 7 (3A), which deals with payment of interest for delayed payment of gratuity, would be necessary only to be dealt with in this appeal and to consider whether interest on delayed payment of gratuity can be directed to be paid by the appellant to the respondent in compliance with Section 7 (3A) of the Act.

5. For this reason, we like to reproduce Section 7(3A) of the Act, which runs as under:-

“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 delay payment on this ground.”

6. On a plain reading of this provision, as noted hereinabove, it is absolutely clear that if any amount of gratuity, which is payable under Section 7 is not paid by the employer within the period specified in sub-section (3), the employer is liable to pay interest 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 but on those delayed payment, where the employer has obtained permission in writing from the Controlling authority for delayed payment, in that case, no such interest shall be payable to the employee.

7. So far as the present case is concerned, no such permission was obtained by the employer in writing from the Controlling authority and, therefore, sub-section (3A) and its term would be squarely applicable in the facts of this case. In the present case, eight years had passed after the retirement of the respondent but gratuity amount was not paid and, therefore, there was a delay of eight years in payment of gratuity amount, which is payable with interest at the rate specified in Section 7(3A) of the Act.

8. The Corporation sought to explain the delay of eight years before the Court saying that its financial condition was such that it was not in a position to pay gratuity amount to the respondent. However, considering the aforesaid mandatory provision of Section 7(3A) of the Act and considering the fact that more than eight years have elapsed since the retirement of the respondent, we are of the view that the High Court was perfectly justified in dismissing the appeal and affirming the judgment of the learned Single Judge, which also directed payment of interest to the respondent.

9. For the reasons aforesaid, the appeal is dismissed. We, however, grant six weeks' time to the appellant-Corporation to pay interest on the delayed payment of gratuity in compliance with Section 7(3A) of the Act. There will be no order as to costs.

10. We further make it clear that this order shall not be treated as precedent in other similar cases.