

**(2016) 09 JH CK 0028**

**JHARKHAND HIGH COURT**

**Case No:** Writ Petition (L) No. 5508 of 2014

Heavy Engineering Corporation  
Ltd.

APPELLANT

Vs

Sri Sadhu Saran Prasad

RESPONDENT

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**Date of Decision:** Sept. 19, 2016

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Payment of Gratuity Act, 1972 - Section 7

**Citation:** (2016) 4 JLR 355

**Hon'ble Judges:** Mr. Aparesh Kumar Singh, J.

**Bench:** Single Bench

**Advocate:** Mr. Shresth Gautam, Advocate, for the Petitioner

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

**Mr. Aparesh Kumar Singh, J.** - Heard counsel for the petitioner.

2. Petitioner has assailed the orders passed by the Deputy Chief Labour Commissioner (Central), Dhanbad-cum-Appellate Authority under Payment of Gratuity Act, 1972 dated 23.06.2014 (Annexure-7) where under, it has ordered payment of interest for delayed payment @10% per annum to the Respondent workman. The Respondent workman had superannuated on 28.02.2012.

3. The employer issued notice under section 7(2) of the Act determining the amount of gratuity as Rs. 7,02,875/- payable to the appellant. Expecting that payments would be made within a reasonable time, the Respondent workman did not approach the Controlling Authority. It is alleged that the Respondent also did not submit Form-N before the Controlling Authority. The workman thereafter preferred the claim before the Controlling Authority on 22.02.2013 in the prescribed format.

The Controlling Authority by order at Annexure-3 dated 27.09.2013 directed payment of gratuity, but without interest.

4. The workman/Respondent herein being aggrieved, preferred an appeal before the Deputy Chief Labour Commissioner (Central), Dhanbad-cum-Appellate Authority being P.G.A.(08)/2013-DY.CLC in terms of section 7(7) of Payment of Gratuity Act, 1972. In the meantime, Management made payment on 21.10.2013 vide Annexure-2 to the workman. On workman's appeal, the Appellate Authority has after referring to the provisions of Section 7 of the Act and judgments rendered by the Apex Court, held that there was no reason to deny the appellant/Respondent herein payment of interest on the delayed payment of gratuity i.e. Rs. 7,02,875/- reckoning it from the date on which the amount of gratuity became payable to the date on which the amount of interest is paid @10% simple interest per annum. Accordingly, it directed the Respondent/petitioner herein to pay interest @10% per annum of simple interest on the aforesaid amount from 29.02.2012 till the date on which the amount of interest is paid.

5. The issue involved herein is, whether the Management Petitioner was under a liability to make payment of gratuity within 30 days time prescribed under section 7(3) of the Act of 1972, and whether it is entitled to claim remission in payment of interest in view of the proviso to Section 7(3)(A) of the same Act ? Petitioner Management in this case undisputedly did not take permission from the Controlling Authority for the delayed payment. This issue however is not res-integra any more. This Court by judgment rendered in the case of **Maheshi Saw v. Employers in relation to the Management of West Mudidih Colliery of M/s. BCCL dated 12.03.2013 in WPL No. 1428/2012 reported in 2013 (2) LJLR 282** has held as follows :

"5. I have heard learned counsel for the parties. It is true that the petitioner had raised the Industrial Dispute before the Competent Tribunal in relation to his date of premature retirement, but Section 7(3A) stipulates 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. Apparently, the respondent-BCCL has not obtained permission in writing from the controlling authority for delay in payment of gratuity amount even on the ground that the petitioner himself was pursuing the reference case against them. Under section 7(3) of the P.G. Act, 1972, it is the duty of the employer to arrange to pay the amount of gratuity within thirty days from the date it become payable to the person to whom the gratuity is payable. The respondents themselves had made the petitioner retire on 15.9.1998 and they had statutory obligation to deposit the gratuity amount before the controlling authority, which they did after passing of the order of this Court in W.P.(S) No. 641 of 2008. Though, the petitioner might have been pursuing the industrial reference but on the basis of its statutory obligation, the respondent itself could have obtained

permission from the controlling authority which in this case does not seem to have taken. In these circumstances, the impugned order denying interest on the delayed payment of gratuity does not appear to be sustainable in law as well as on facts. Therefore, the impugned orders to that effect are set aside. The respondents are directed to pay statutory interest over the gratuity amount for the period of delay it was withheld to the petitioner as per the Gratuity Act, 1972. Accordingly, this writ petition is allowed in the aforesaid terms."

Reference may also be drawn to the judgment rendered by the Apex Court in the case of **Y.K. Singla v. Punjab National Bank & another [(2013) 3 SCC 472]** on the point.

6. Having regard to the position in law well settled, petitioner have failed to make out a case for interference in the impugned order. Accordingly, writ petition is dismissed.