

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**W.P.(L) No. 2120 of 2023**

M/s Tata Steel Limited having its registered office at Bombay House 24 Homi Mody Street Mumbai 400001 and having its Steel Plant at Jamshedpur, P.O. & P.S. Bistupur, Jamshedpur 831001, Jharkhand through Sri R.K. Jha, Head HRM (Legal and Rehabilitation)

...   ...   **Petitioner**

Versus

1. The State of Jharkhand, Nepal House Doranda, Ranchi 834001
2. The Labour Commissioner, Government of Jharkhand – cum – Appellate Authority under the Payment of Gratuity Act 1972 office of Labour Commissioner at Ranchi, Jharkhand.
3. The Deputy Commissioner – cum – Controlling Authority under the payment of Gratuity Act, 1972, Kolhan Division, Sitaramdera, P.O. Agrico, P.S. Sitaramdera, Jamshedpur, Jharkhand
4. Sri Kalyan Ghosh, House No.8 Block No.4, Shasti Nagar, P.O. & P.S. Kadma, Jamshedpur, District East Singhbhum 831001, Jharkhand

...   ...   **Respondents**

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**CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOWDHARY**

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For the Petitioner	: Mr. G.M. Mishra, Advocate (Through VC)
For the Resp. No.4	: Mr. Rohit Ranjan Sinha, Advocate
	: Mr. Atul Vivek, Advocate
For the State	: Mr. Ravi Prakash Mishra, AC to AAG II

17/02.12.2024   Heard the learned counsels appearing on behalf of the parties.

**2.**   This writ petition has been filed for the following reliefs:

*"(i) For quashing the impugned order dated 14.03.2023 passed by the Labour Commissioner cum Appellate Authority under Payment of Gratuity Act, Respondent no.2 in Appeal Case No. PG-03/2021 whereby and where under the learned Labour Commissioner has directed payment of interest @ 10% per annum to the respondent no.4 (Annexure-1) on the amount of gratuity payable to respondent no.4.*

*(ii) For quashing the order dated 19.08.2021 passed by the Deputy Labour Commissioner-cum- Controlling Authority under the Payment of Gratuity Act, 1972, Kolhan Division, Jamshedpur in G.A. Case No. 02 of 2017 whereby and where under the respondent no.3 has directed the payment of simple interest @ 10% per annum on the amount of gratuity (Rs. 10,67,308.00) within 30 days from the date of the issuance of the order. (Annex 3)*

*And or for issuance of any such writ(s)/ order (s)/ direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case for doing conscientious justice to the petitioner."*

**Arguments of the Petitioner.**

**3.** The learned counsel for the petitioner, while assailing the impugned orders passed by the Deputy Labour Commissioner-cum-Controlling Authority under the Payment of Gratuity Act as well as the order passed by the Appellate Authority, has submitted that the direction to pay interest at the rate of 10% on the due amount of gratuity is contrary to the provision of Section 7 (3A) of the Payment of Gratuity Act. He submits that as per the said provision, the maximum interest at the rate of 10% can be awarded. The learned counsel has submitted that the “maximum” necessarily means that there has to be an application of mind and considering the facts and circumstances of the case any amount less than the same may be required to be paid. The learned counsel has also submitted that a plea was raised before the Appellate Authority that the current simple rate of interest notified by the Central Government on long-term deposits is only 6%, and therefore, the award of 10% was not in accordance with the law. The learned counsel has also submitted that the concerned employee had worked till 04.06.2013, although his date of superannuation has been taken to be 03.07.2011. However, this aspect of the matter has also not been taken into consideration by the authorities.

**4.** The learned counsel has further submitted that the Appellate Authority, while dismissing the appeal, has referred to notification dated 01.10.1987 to sustain the award of interest at the rate of 10%, but the notification certainly cannot override the provision of the Act which prescribes that the maximum rate is 10%, meaning thereby any amount less than 10% can also be granted.

**5.** The learned counsel has relied upon the judgment passed by the ***Hon'ble Madras High Court in W.P. (MD) No. 12860 of 2021 dated 28.07.2021***, and submitted that in the said case, the amount of interest at the rate of 10% was reduced to 8.5% by referring to the rate notified by Central Government for repayment of long-term deposits during the period involved in the case which was found to be 8.7% per annum to 8.5% per annum.

**6.** The learned counsel has also relied upon the ***order dated 18.11.2021 passed in WA No.322 of 2019 by Hon'ble High Court of Odisha at Cuttack*** to submit that the rate of interest was reduced from 10% to 6% by the concerned learned Single Judge, and the order was sustained by the Hon'ble Division Bench. The learned counsel has also relied upon the order ***dated 07.12.2020 passed in W.P.(C) No.6890 of 2012***, by this court to

submit that a direction was issued by this Court to pay interest on gratuity at the rate of 6%.

**Arguments of the respondents.**

7. The learned counsel appearing on behalf of the respondents, while opposing the prayer, has submitted that the notification dated 01.10.1987, which has been brought on record through counter-affidavit, clearly quantifies the rate of interest at 10%. He submits that the said notification was issued in terms of Section 7(3A), and if the rate was required to be modified, the same was to be followed by notification to be issued by the Government. He submits that maximum rate of interest at the rate of 10% has been provided under Section 7 (3A), with a clear mandate that the Government has to issue notification and the corresponding notification is dated 01.10.1987. In absence of any fresh Government notification with regard to interest payable on gratuity amount, the same is binding and has been relied upon by the appellate authority also to sustain the direction for granting interest at the rate of 10%.

8. The learned counsel has also submitted that merely because the private respondent has worked till 04.06.2013, which is beyond his actual date of retirement which was found to be 03.07.2011, the same may not be a ground to interfere with the order regarding payment of interest, as the payment of interest is essentially compensatory in nature and the amount was withheld by the management without taking prior permission in terms of the provisions of the Payment of Gratuity Act, 1972. The learned counsel has submitted that the management had taken work from the petitioner and made payment of the salary during the period from 03.07.2011 to 04.06.2013 and this aspect may not be a reason to interfere with the award of interest.

9. He has relied upon the judgment passed by ***Hon'ble Andhra Pradesh High Court reported in 2023 O Supreme (AP) 1133*** in WA Nos.952 & 1000 of 2022 and 26 of 2023 decided on 11.08.2023 to submit that the court was of the view that since the last notification which the court could lay its hand was dated 01.10.1987, the interest of justice would be met if the rate of interest awarded by the learned Single Judge was modified from 9% to 12%. He has also submitted that in the said case, the learned Single Judge had awarded interest at the rate of 9% on all benefits.

10. The learned counsel has also relied upon the judgment passed by ***Hon'ble Allahabad High Court reported in 2023 O Supreme (All) 341*** and

submitted that in the said case, interest on gratuity was awarded at the rate of 4% and a prayer was made for interest at the rate of 10% on delayed payment of gratuity. The Hon'ble Allahabad High Court recorded that the respondent therein had not given any basis or source for payment of only 4% annual interest instead of 10% which existed as per notification dated 01.10.1987 issued by the Central Government in respect of Section 3A of Payment of Gratuity Act and ultimately directed for payment of interest at the rate of 10% by following the notification dated 01.10.1987.

**11.** He has also relied upon the judgment passed by this Court reported in **2022 1 JLJR 549 ( Virender Kumar versus The Union of India )** to submit that in case the provision of law is not followed while withholding gratuity, the employee is entitled for payment of interest. He has also referred to Paragraph 9 to submit that two conditions as enumerated in Section 7 (3A) of Payment of Gratuity Act were not simultaneously satisfied and ultimately held that the interest was payable.

**12.** The learned counsel has submitted that the issue involved in this case is only with regard to the rate of interest and the fact that the conditions precedent to withhold gratuity were not satisfied, is neither under challenge in the present writ petition nor was challenged before the appellate authority.

**13.** The learned counsel has also referred to IA No.7134 of 2024 to submit that through this interlocutory application, a modification to the prayer has been sought and a specific relief has been prayed for that the direction be issued for payment of interest at the reduced rate of 6% or 7% on the amount of gratuity payable instead of 10%. Even during the course of argument apart from the rate of interest, no other arguments have been advanced on behalf of the petitioner.

**Rejoinder arguments of the petitioner.**

**14.** The learned counsel for the petitioner, in response, has submitted that the maximum rate of interest as prescribed under Section 7(3A), calls for interference and considering the facts and circumstances, the rate of interest should be reduced to 6% or 7%.

**15.** Arguments concluded.

**16.** Post this case for “Judgment” on 10.12.2024.

Saurav

**(Anubha Rawat Choudhary, J.)**