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KARNATAKA HIGH COURT ON PAYMENT OF GRATUITY

1. Case Facts:

- a. In *Varma Industrial Private Limited and Ors. vs. P.N Janakiraman Shetty and Ors.*,¹ the respondent, Janakiraman Shetty (**‘Respondent’**) was an employee of Verma Industrial Pvt. Ltd.² (**‘P1’**) and IBC Knowledge Park Pvt. Ltd. (**‘P2’**) (collectively **‘Petitioners’**).³
- b. Respondent demanded payment of gratuity from P1⁴ for the 31 years of service. Gratuity was paid⁵ but without any interest on the delayed payment for 13 years.
- c. Respondent approached the controlling authority under the Payment of Gratuity Act, 1972 (**‘the Act’**) for:
 - (i) Interest on delayed payment of gratuity from P1.
 - (ii) Payment of gratuity along with interest from P2 (who did not pay gratuity for 7 years of service).
- d. Controlling authority directed Petitioners to pay the due amounts with interest to Respondent.
- e. P1 contended that the gratuity amount was paid immediately on receipt of application from Respondent and therefore it is not liable to pay interest.
- f. P2 admitted that gratuity was due but contended that interest is not due since Respondent did not seek gratuity.
- g. Therefore, Petitioners approached the High Court of Karnataka (**‘HC’**). The issue in this case was whether payment of gratuity is dependant on application by employee or if an employer is duty bound to pay gratuity amount after cessation of service of an employee.

2. Decision and Reasoning by the HC:

- a. The Petitioners are liable to pay gratuity along with interest in this case.
- b. The Act makes it clear that gratuity shall be paid to an employee on his superannuation or retirement or resignation.

¹ MANU/KA/0782/2021 decided on 22nd February 2021.

² From 2nd August 1971 to 20th October 2002.

³ From 15th January 2008 to 15th January 2015.

⁴ On 30th May 2015.

⁵ On 2nd June 2015.

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- c. The Act⁶ also mandates that when gratuity becomes payable, employer shall determine the amount due and notify the person concerned and the controlling authority.⁷ This must be done whether an employee sends a written application demanding gratuity⁸ or otherwise.
- d. Further, an employer must arrange for payment of gratuity within 30 days from the day it becomes due.⁹ The employer is absolved from paying interest only when there is a fault on part of the employee and the employer has obtained written permission from the controlling authority.¹⁰
- e. Therefore, gratuity is payable to an employee within 30 days from the date of cessation of employment, failing which such employee is entitled to interest on delayed payment of gratuity. There is no obligation on an employee to make application to receive the gratuity amount.
- f. The HC observed: “*the submission made by the learned counsel appearing for the petitioners that gratuity becomes payable to an employee only on application being made to the employer becomes a figment of imagination as the mandate of law and the judgment considering such mandate (by the Apex Court in the judgment of Gangabanume Gowda¹¹ (supra)) is otherwise.*”
- g. Accordingly, the HC directed the Petitioners to pay the gratuity and interest at 10% on account of the delays in payment.

CONCLUSION

The HC has upheld the importance of receiving gratuity, which is a right of every employee and that an employer is bound to pay on time. The employee need not apply for it.

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⁶ Section 7(2) of the Act (see below). Section 56(2) of the Code on Social Security, 2020 is on similar terms, ‘controlling authority’ is replaced by ‘competent authority’.

⁷ “**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.”*

⁸ Section 7(1) of the Act.

⁹ Section 7(3) of the Act.

¹⁰ Section 3A of the Act.

¹¹ *H. Gangabanume Gowda vs. Karnataka Agro Industries Corpn. Ltd.* (05.02.2003 - SC): MANU/SC/0086/2003.

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