

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 4625/2023

Jodhpur Institute Of Engineering And Technology (Jiet), Group Of
Institutions Through Manish Bafna, Registrar, Nh-65 Pali Road,
Mogra, Jodhpur.

----Petitioner

Versus

1. Appellate Authority, Under The Payment Of Gratuity Act,
1972, Rajasthan, Jaipur.
2. The Controlling Authority Under The Payment Of Gratuity
Act, 1972, Jodhpur And The Workmen Compensation
Commissioner, Jodhpur Metropolitan, Jodhpur.
3. Sub Divisional Officer And Sub Divisional Magistrate,
Luni (The Authority Under Pdr Act).
4. Smt. Sangeeta Kothari W/o Late Shri Rakesh Kothari,
176, Prem Nagar, Pal Road, Jodhpur.

----Respondents

For Petitioner(s)	:	Mr. Rajesh Shah
For Respondent(s)	:	Mr. Sanjeev Johari, Sr. Advocate with Mr. Lalit Parihar

HON'BLE MR. JUSTICE ARUN MONGA**Order (Oral)****04/11/2024**

1. The petitioner Jodhpur Institute of Engineering and Technology is before this Court aggrieved against the order passed by the Appellate Authority under the Payment of Gratuity Act, 1972, Jaipur dated 15.02.2023, whereby quasi-judicial order passed by the Joint Labour Commissioner (Controlling Authority under the Payment of Gratuity Act, 1972) dated 03.03.2022, directing the petitioner institute to pay the gratuity to the husband of respondent No.4, who superannuated from the post of Registrar

was upheld. The petitioner has also assailed the order dated 12.07.2022, passed by the Controlling Authority under the Payment of Gratuity Act, 1972, by which the application filed by the petitioner for setting aside the ex-parte order dated 03.03.2022 was dismissed.

2. The conceded facts of the case, as pleaded by the petitioner-institute in its petition, are as follows:-

2.1 The husband of respondent No.4, viz., Rakesh Kothari, filed an application before the Controlling Authority under the Payment of Gratuity Act, 1972 against the petitioner seeking direction for payment of gratuity. Notices were issued and were served upon the petitioner but none appeared on behalf of the petitioner before the Controlling Authority. The Controlling Authority, therefore, proceeded ex-parte and issued direction under SEction 7(3)(3-A) of the Payment of Gratuity Act directing the petitioner to deposit a sum of Rs.11,55,375/- with interest and also ordered to pay Rs.5,000/- as litigation expenses.

2.2 Since the aforesaid order was passed ex-parte, therefore, the petitioner did not come to know about the same. Upon gaining knowledge of the same, the petitioner moved an application before the Controlling Authority for setting aside the ex-parte order dated 03.03.2022. The said application was dismissed vide order dated 12.07.2022.

2.3. In the interregnum, the petitioner also filed a writ petition being S.B. Civil Writ Petition No.8462/2022, wherein this Court, vide order dated 05.07.2022, directed the Controlling Authority to decide the pending application filed for setting aside the ex-parte order dated 03.03.2022. The writ petition aforesaid was dismissed

vide order dated 13.07.2022 but a liberty was given to the petitioner to challenge the order dated 03.03.2022 by filing an appeal before the Appellate Authority under the Payment of Gratuity Act, 1972. The petitioner filed appeal before the learned Appellate Authority under the Payment of Gratuity Act, 1972, which was dismissed vide order dated 15.02.2023.

2.4 Hence, this petition.

3. In the aforesaid backdrop, I have heard learned counsel for the petitioner and the learned Senior Counsel representing the respondent No.4, (widow of deceased employee). During the pendency of the proceedings, her husband, who served as Registrar expired after unsuccessfully battling with the terminal cancer.

4. The sum and substance of the argument addressed on behalf of the petitioner-institute is that the Controlling Authority passed the impugned order dated 03.03.2023 without hearing the petitioner-institute or its counsel. The same was upheld without due application of mind by the learned Appellate Authority vide order dated 12.07.2022, which is also assailed herein.

5. At the very thresh hold, having seen the merits of the case, I am unable to persuade myself with the stand taken by the petitioner-institute. No doubt, at the first instance, the petitioner may not have been heard by the Controlling Authority but subsequently, it challenged the said order before the learned Appellate Authority. The learned Appellate Authority passed the order after hearing both the parties. Same is premised on the reasoning that since the appeal was filed after a delay of more than 120 days it had to be dismissed. I am in agreement with the

reasons assigned therein. Moreover, it transpires that the order passed by the Controlling Authority has already been implemented. The gratuity amount stands disbursed.

6. Qua service/knowledge of the proceedings before the fora below, no cogent reasons have come forth. It appears that the petitioner was duly served notices about the proceedings before the Controlling Authority but failed to appear or respond. This indicates a lack of due diligence, and the resulting ex-parte order was a consequence of their negligence, their own doing, not a procedural lapse. Ignorance of the law or proceedings cannot be a defense, especially for an educational institution expected to operate within legal frameworks. Moreover, the petitioner delayed filing the appeal beyond the permissible 120-day limit under the Payment of Gratuity Act.

7. On merits, reference may be had to Section 4 of the Payment of Gratuity Act, 1972, which, for ready reference, is reproduced hereunder:-

"4. *Payment of gratuity.*

(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, -

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the

same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation : For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he, was capable of performing before the accident or disease resulting in such disablement.

x-x-x-x-x"

8. On a perusal of the Section, *ibid*, read with the facts as narrated hereinabove, there is no manner of doubt that the deceased employee was rightly held entitled for payment of gratuity amount. On that ground as well, no grounds to interfere on merits are made out.

9. As is borne out, the claim for gratuity is governed under Section 4 of the Payment of Gratuity Act, 1972, which mandates payment upon superannuation or death. The petitioner has no substantive defense against the claim, and this petition is nothing but indulging in frivolous and obstructive litigation. Pursuing this case further only reflects the petitioner's intent to avoid accountability rather than corrective measure to plug the sheer injustice to the deceased employee and now his widow.

10. Trite it may sound, gratuity is not a bounty but a statutory right and delays in its payment are a serious violation. As a reputed educational institute, the petitioner has to be held to higher standards of accountability and responsibility. Their actions undermine their moral obligations and, no doubt, if not censured, would create an adverse precedent in similar institutions.

11. In the parting, the argument of the learned counsel for the petitioner-institute that the petitioner-institute was not heard on merits by the Appellate Authority, id being noted once again to be

rejected. Same is of no significance at this stage, as I have heard arguments in extenso on merits. As an upshot of my discussion, recorded here in above, I find no grounds to interfere with the impugned order even if it is an ex-parte order.

12. The husband of respondent No.4, who was suffering from cancer, died in the hope to have a quietus to the litigation, whereas the petitioner-institute has relentlessly pursued the lis without there being any substance. Eventually, it is his widow, who is pursuing his cause as a legal representative. Petitioner's adamant litigation against a terminally ill employee and now his widow portrays a lack of compassion, which is especially egregious for an educational institution meant to uphold societal values. Being an educational institute, not only it is expected of the petitioner herein to be a model employer, but also act as a virtuous litigant.

13. In view of the aforesaid, the writ petition is dismissed with costs of Rs.25,000/- payable to the respondent No.4.

14. All pending application(s), if any, shall also stand disposed of.

(ARUN MONGA),J

4-skm/-

Whether fit for reporting : Yes / No