Court No. - 17

Case :- WRIT - C No. - 1773 of 2016

Petitioner :- Secy. Co-Operative Cane Development Union Ltd. Phardhan
Respondent :- Brij Kumar Mishra And Ors.
Counsel for Petitioner :- Anand Shanker Asthana,Paramanand Asthana
Counsel for Respondent :- C.S.C,Ramendra Kumar Dixit,Suresh Chandra Mishra

Hon'ble Alok Mathur,J.

1. Heard Sri Anand Shanker Asthana, learned counsel for the petitioner, Sri Sanjai Kumar Singh, learned counsel for the respondent no.1 as well as learned State Counsel and perused the records.

2. The controversy in the present case in regarding the payment of gratuity to the seasonal employees, employed with the Co-Operative Cane Development Union Ltd., Phardhan, District Lakhimpur Kheri, at the rate of 15 days' wages each year for service rendered by them.

3. Sri Anand Shanker Asthana, learned counsel for the petitioner and Sri Sanjai Kumar Singh, learned counsel for the respondent no.1 both have jointly informed this Court that the aforesaid controversy has been decided by this Court in two judgments, namely, Mahak Singh vs. Appellate Authority/Deputy Labour Commissioner, Payment of Gratuity in WRIT-C No.11140 of 2019 dated 24.07.2019 and also in Misc. Single No.8053 of 2011 (Daya Shankar Agnihotri vs. Appellate Authority Under The Payment of Gratuity Act and Another) dated 13.08.2019. Both the Co-ordinate Benches of This Court have independently considered the submissions an held that seasonal clerk employed by a Cane Co-operative Society who works for more than 240 days in a year is entitled to gratuity @ 15 days' wages, worked out on the wages last drawn during the last year that he has worked for 240 days in accordance with Section 4 (2) of the Payment of Gratuity Act, 1972 (hereinafter referred to as the Act) and for all such years that a seasonal clerk has worked for more than 240 days in a year, even in a seasonal establishment, his gratuity cannot be worked out under the second proviso of Section 4(2) of the Act @ 7 days' wages for each season.

4. It has been submitted that both these judgments were subjected to a Special Leave Petition before the Hon'ble Supreme Court and the Special Leave Petition has been dismissed by means of order dated 21.03.2002 in Special Appeal No.25228 of 2019 (Cooperative Cane Development Ltd. vs. Mahak Singh). It is clear that the said controversy has already attained finality and accordingly, the present writ petition is also to be disposed of in terms of the findings recorded by this Court. For the sake of convenience, the judgment passed in Misc. Single No.8053 of 2011 (Daya Shankar Agnihotri vs. Appellate Authority Under The Payment of Gratuity Act and Another) dated 13.08.2019, is quoted here-in-under:-

"1. Heard learned counsel for the petitioner and Sri Paramanand Asthana for the respondent no.2.

2. This petition has been filed by the petitioner, challenging the order dated 31.3.2010 passed by the appellate authority and the order dated 9.6.2009 passed by the Controlling Authority in PG Case No.2 of 2006 under the Payment of Gratuity Act, 1972.

3. It has been submitted by the learned counsel for the petitioner that the petitioner was employed as Seasonal Clerk in the establishment of respondent no.2 i.e. Sahkari Ganna Vikas Samiti Ltd., Hargaon, District Sitapur initially on 31.12.1974 and continued working as such upto the age of superannuation on 31.8.2003. He completed 29 years of continuous service under the respondent no.2 and at the time of his retirement, the petitioner was being given Rs.5392/- per month as salary and after his retirement, the recommendations of 5th Pay Commission became applicable and his pay was fixed as Rs.6678/- per month.

4. Since the petitioner was not being paid gratuity of Rs.90,212/- by the respondent no.2, but was only paid Rs.40,171/- as gratuity, he filed PG Case No.2 of 2006. The Controlling Authority after hearing both the parties, passed the order on 9.6.2009 only partly allowing the claim of the petitioner. The petitioner had filed an application, praying to the Controlling Authority to summon the Attendance Register as well as Payment Register for the period from December, 1974 to 31.8.2003, but the same was not considered by the Controlling Authority.

5. After the decision dated 9.6.2009, the petitioner under Right to Information Act, filed an application to which, the Cane Officer provided the details of working of the petitioner. Relying upon the chart provided by the Cane Officer, an appeal was filed under Section 7(7) of the Payment of Gratuity Act. It had been submitted in the appeal that the Controlling Authority wrongly came to the conclusion that for 21 years of service, the petitioner was entitled to gratuity at the rate of pay for 15 days in a year and for the rest of eight years where the petitioner had worked for 240 days in a year, he was entitled to be paid gratuity at the rate of 7 days wages per year.

6. In the PG Appeal No.7 of 2009 (Daya Shankar Agnihotri vs. Secretary/Incharge, Ganna Vikas Samiti and others), the appellate

authority did not look into the grounds of appeal but rejected the same by the impugned order dated 31.3.2010.

7. It has been submitted by the learned counsel for the petitioner that although the petitioner was given designation of Seasonal Clerk by respondent no.2, he had worked continuously and was a regular employee of respondent no.2.

8. To substantiate his claim, the petitioner has submitted in Para-18 of the writ petition that he was given the benefit of Time Scale Pay and Promotional Pay on the basis of rendering continuous service for 10 years, 16 years, 19 years and 24 years as provided under the various Government Orders. A copy of the orders dated 10.2.2006 in respect of granting Time Scale on 19 years of continuous service and grant of second Promotional Pay Scale on completion of 24 years in service w.e.f. 1.12.2002 has been filed as Annexures-8 and 9 to the writ petition.

9. Learned counsel for respondent no.2 Sri Paramanand Asthana has referred to his counter affidavit, wherein it has been submitted that the petitioner was only a Seasonal Clerk and all seasonal employees' services stand automatically terminated at the end of crushing season as per Regulation 34 of the U.P. Cane Cooperative Service Regulation, 1975.

10. Learned counsel for the respondent no.2 has referred to Regulation 2(n) of the said Regulations where crushing season is defined as commencing from the date when the crushing of sugarcane in concerned sugar factories commences till the date when crushing ends. It has been submitted that the petitioner's services had automatically been terminated and he was reengaged in the next crushing season and the Controlling Authority has wrongly passed the order dated 9.6.2009 by which, gratuity was given to the petitioner and directed payment of excess amount of Rs.43,149.24. It has been submitted that the appellate authority has rightly rejected the appeal of the petitioner.

11. It has also been submitted by the learned counsel for the respondent no.2 on the basis of Paras-15 and 16 of the counter affidavit that law with regard to payment of gratuity to Seasonal Clerk in Cane Cooperative Societies has been settled by this Court in Special Appeal No.719 of 2015, decided on 16.10.2015. A copy of the judgment rendered by the Division Bench has been filed as Annexure-CA-1 to the counter affidavit. It has been submitted on the basis thereof that a seasonal employee is only entitled to gratuity at the rate of seven days' wages per season. It has been submitted that increment and other service benefits that are given to the petitioner would not be of any help to the petitioner as the petitioner was admittedly a seasonal staff in the Cane Cooperative Society and was governed by Chapter-V of the Regulations of 1975.

12. It has been further submitted by Sri Asthana that although Regulation 26 provides that the seasonal employees placed in Category-A are re-employed in the next season such re-employment is not automatic and is subject to reduction of strength on the basis of reduction of work in the forthcoming year.

13. Learned counsel for the petitioner refers to his rejoinder affidavit and says that the judgment referred to, by the learned counsel for respondent no.2 is not applicable in his case as the employer Sahkari Ganna Vikas

Samiti Ltd., Hargaon, District Sitapur has never been declared as seasonal establishment by any competent authority. It has further been submitted that duration of crushing season is 288 days per year as provided in U.P. Sugar Cane (Supply and Purchase) Act, 1953 and, therefore, crushing season under Regulation 2(n) of the Regulations of 1975 would also mean that the petitioner completed more than 240 days in each year of service.

14. Learned counsel for the petitioner has referred to an order passed by the Cane Commissioner on 20.12.1988, directing equal pay for equal work to even seasonal employees. It has also been submitted that not only the petitioner was paid less gratuity, but also denied interest, which is statutory in nature as per Regulation 7(3-A) of the Payment of Gratuity Act.
15. This Court has perused the Regulations of 1975 and Regulations 26 and 34 thereof specifically referred to, by the learned counsel for respondent no.2.

16. Regulation 26 of the Regulations of 1975 is being quoted hereinbelow:

"26. The staff placed in category "A" shall be automatically re-employed in the next season unless the strength of seasonal staff re-determined under the Regulation 13, has been reduced in any particular year to such an extent that it may not be possible to re-employ all such staff and further such re-employment shall also be depend on the availability of work and financial conditions of the institution concern, during the crushing season."

17. It is apparent that it refers to Regulations 21 and 22 also under Chapter-V, which are also being quoted hereinbelow:

"21. At the end of each crushing season the secretary of the can union shall classify the entire seasonal staff into "A" and "B" categories on the basis of their work and worth during the season. Such persons as possess unquestionable integrity and have discharged their duties efficiently during the crushing season shall be placed in "A" category and rest category "B" when seasonal employee is proposed to be placed in category "B" he will be informed of the same together with the ground for his proposed categorization and an opportunity shall be given to him to explain the charges and deficiencies against him. These proceeding shall be of summary nature and shall be conducted by the secretary of the union concerned.

22. The secretary shall put up the category wise list of the seasonal staff before the zonal or district authority as the case may be of the union for approval. In case of the list of category "B" staff shall also put up the charges, explanation of the employees concerned and his finding thereon for the consideration of the zonal or district authority as the case may be. If any case the authority it may in the case alter the category from to "A" there after the original lists including the alterations if any, ordered by the zonal district authority, as the case may be, shall declare final and posted on the notice board of the union duly signed by the chairman of the meeting and secretary."

18. It is apparent that at the end of each crushing season, the entire seasonal staff are categorized by the Secretary of Cane Union into "A"

and "B" Category on the basis of their work and worth and such persons who have possessed unquestionable integrity and who have discharged their duty during the crushing season, are placed under Category "A" and rest in Category "B". At the start of crushing season, the staff placed under Category "A" shall automatically be reemployed unless the strength of seasonal staff is redetermined under Regulation 13 and has been reduced in a particular year. The reemployment is dependent upon the availability of work.

19. Under Regulation 34, it is provided as follows:

"34. Termination of Service:- The service of a seasonal employee may be terminated by the recruiting or appointing authority at any time on a week's notice or with a week's salary in lieu thereof. The provision shall not apply in case of termination as a result of disciplinary proceedings or termination at the close of the crushing season."

20. From a perusal of the language of Regulation 34, it is not evident that termination of service shall automatically follow of all seasonal staff at the close of crushing season.

21. Learned counsel for respondent no.2 has referred to a Division Bench judgment rendered on 16.10.2015 in Special Appeal No.719 of 2015, rejecting the appellant's case that he was entitled to gratuity equivalent to 15 days wages for each season instead of seven days wages for each season. The Division Bench affirmed the order of the Writ Court based on a judgments rendered in Cooperative Cane Development Union and another vs. Tej Ram Sharma and others, 2009 (123) FLR 393 and a judgment rendered by the Supreme Court in Aspinwall and Company vs. Lalitha Padugady and others, (1995) 5 SCC 642.

22. From a perusal of the said judgment, it appears that the Division Bench took into account the observations made by the Supreme Court that in working for each season, the employee becomes entitled to gratuity at the rate of seven days' wages per season.

23. This Court finds from a perusal of the judgment rendered by the Division Bench that in affirming the order passed by the Writ Court, the Division Bench has not laid down any law with regard to even those employees, who have been treated as regular and in continuous service and who have been given Time Scale Pay for completion of 10 years, 16 years, 19 years and 24 years of continuous service.

24. This Court has perused Annexures-8 and 9 to the writ petition issued by the District Cane Officer as President of District Cane Services Authority, Sitapur where reference has been made to Time Scale and Promotional Pay Scales being given to the petitioner on completion of 10 years, 16 years, 19 years and 24 years of service.

25. It is apparent that the petitioner belongs to Category-A of seasonal workers of respondent no.2. Such seasonal workers are automatically reengaged. The respondents have not shown break in service of the petitioner at any point of time for any reason. It is also not clear from the counter affidavit filed by the respondents that they have challenged the order passed by the District Cane Officer filed as Annexures-8 and 9 to the writ petition dated 10.2.2006.

26. Learned counsel for the petitioner has also placed reliance upon a judgment rendered by a coordinate Bench in General Manager, Kisan Sahkari Chini Mills Ltd., Nanauta, District Saharanpur vs. Appellate Authority/Deputy Labour Commissioner, Payment of Gratuity Act, 1972, Saharanpur and others, 2019 (161) FLR 174, which has been contended by the learned counsel for the respondent no.2 is not applicable as it relates to Cooperative Sugar Factories and not to a Cane Cooperative Service Union.

27. Be that as it may, this Court finds on consideration of rival contentions and the judgements relied upon and the Regulations that the petitioner was entitled to be paid gratuity at the rate of 15 days wages per year for all 29 years of his service, although his nomenclature may have been that of a Seasonal Clerk.

28. The impugned order is modified to the extent of granting at the rate of 15 days wages per season. The petitioner is also entitled to 10% statutory rate of interest for each year of delay in paying the same under Section 7(3-A) of the Payment of Gratuity Act.

*29. The writ petition is **allowed**.*

30. The amount shall be determined by the respondent no.2 and be paid to the petitioner after adjusting the amount already paid within a period of three months from the date, a certified copy of this order is produced before the respondent no.2. "

5. Considering that the controversy has already been finally settled and that the aforesaid judgments have already been upheld by the Supreme Court in Special Appeal No.25228 of 2019 (Cooperative Cane Development Ltd. vs. Mahak Singh), the present petition is also allowed and the impugned order is modified to the extent of granting at the rate of 15 days' wages per season. The petitioner is also entitled to 10% statutory rat of interest for each year of delay in paying the same under Section 7 (3-A) of the Payment of Gratuity Act.

6. With the aforesaid observation, the writ petition is **allowed**.

7. It is further directed that the payment which was deposited before this Court, subject to interim orders, shall be released along with interest, in favour of the respondent no.1/1A, namely, Brij Kumar Mishra (deceased)/ Renu Mishra wife of Late Brij Kumar Mishra.

Order Date :- 8.12.2023
Manoj K.

Digitally signed by :-
MANOJ KUMAR
High Court of Judicature at Allahabad,
Lucknow Bench