

Court No. - 7

Case :- WRIT - C No. - 11317 of 2020

Petitioner :- U.P. Bhumi Sudhar Nigam Thru. Managing Director

Respondent :- Appellate Authority Under P.G. Act Lko And Others

Counsel for Petitioner :- Anurag Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. The petitioner which is a corporation of the State of U.P. has filed the present writ petition challenging the orders dated 22.01.2019 and 24.01.2020 passed by the Prescribed Authority and the Appellate Authority under the provisions of the Payment of Gratuity Act, 1972.

2. The facts in brief are that the respondent no.3 was employed with the petitioner on the basis of contract entered into between the parties on consolidated salary w.e.f 09.06.1996 He had worked with the petitioner for a period of 11 years and his services were dispensed with on 02.01.2007 after working for 11 years.

3. Respondent no.3 had filed an application for grant of gratuity as per provisions of the Payment of Gratuity Act, 1972. He has stated that he has continuously worked with the petitioner and he was covered within the definition of "employee" as provided in the Act of 1972 but despite his application the amount of gratuity was not paid by the petitioner, accordingly, he filed an application for Payment of Gratuity before the controlling authority/ Assistant Labour Commissioner, Lucknow.

4. The Assistant Labour Commissioner/ Prescribed Authority considered the arguments and the averments made by the opposite party no.3 and came to the conclusion that he had worked for more than 5 years continuously and was entitled for gratuity irrespective of the fact that his employment was of contractual nature.

5. With regard to the petitioner he concluded that the petitioner is a Corporation and falls within a definition of Section 2 (f) of the Act of 1972 wherein it has been provided that :-

"employer? means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop -

i. belonging to, or under the control of the Central Government

or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the Head of the Ministry or the Department concerned."

6. Considering the aforesaid provision he concluded that there was no doubt that the petitioner falls under the aforesaid provisions of the Act of 1972 and 'wages' have been defined to be all emoluments which are carried by the employee while on duty or on leave and in accordance with the terms and conditions of the employment and held that the respondent no.3 was entitled to receive gratuity under the Act of 1972.

7. The petitioner being aggrieved by the order of the Prescribed Authority dated 22.01.2019 preferred an appeal before the Appellate Authority. The Appellate Authority also affirmed the findings recorded by the controlling authority and rejected the appeal by means of the judgment dated 24.01.2020.

8. It has been submitted that prior to filing of the said appeal the petitioner had deposited amount of gratuity payable to the private respondents before the controlling authority and after judgment of the appellate authority the said amount was duly withdrawn by the private respondents.

9. It has been submitted by the learned counsel for the petitioner that both the orders are illegal and arbitrary inasmuch as it has been presumed that the private respondents has been in continuous services for more than five years inasmuch as there was no specific term in the agreement or the contract that they would be allowed to continue for such a period. It has further been stated that the appointment of the private respondents was for a specific period and whenever the said period came to an end a fresh contract was entered into and, accordingly, it cannot be said that the private respondents has been under continuous service as defined under Section 2 (A) of the Act of 1972 to hold that the respondents have been in continuous service.

10. It has further been stated that the respondents were contractual employees and the services were governed by the specific terms and conditions and, consequently, provisions of Payment of Gratuity Act, 1972 could not be attracted and, hence, have assailed the impugned orders.

11. Learned counsel for the private respondents have on the other hand submitted that the Prescribed Authority as well as the Appellate Authority has dealt with these objections raised by the petitioner in detail and also relied upon the various case laws in the matter and rejected the conditions holding that the petitioner has been in continuous service for more than five years and was fully covered by the provisions of the Payment of

Gratuity Act, 1972 and the petitioner also falls within the definition of "employee" and, hence, concluded that there is no infirmity in the impugned orders and prays for dismissal of the writ petition.

12. We have considered the submissions of the learned counsel appearing for the parties and perused the record.

13. It is noticed that the respondent no.3 was appointed on contract basis by the petitioner and the said contract period was extended on the expiry of the previous contract period and in this regard he continued to work for 11 years.

14. Neither before the authorities below or in the present writ petition is there any averment or material which may indicate that after expiry of the period of contract, the employee was out of job and on the contrary it has been demonstrated that on expiry of the contract a fresh contract was entered into and, accordingly, he continued into services continuously since 1996-2007. It could not be demonstrated that there was any break in service or that period of 11 years in employment were not covered by "continuous service" as described in Section 2 A of the Act of 1972.

15. Continuous service has been defined under Section 2 (A). Continuous Service - For the purpose of this Act, -

1. An employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act;

2. Where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1) , for any period of one year or six months, he shall be deemed to be in continuous service under the employer -

a. For the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than -

i. One hundred and ninety days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

ii. Two hundred and forty days, in any other case;

b. For the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than

i. Ninety five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

ii. One hundred and twenty days, in any other case.

Explanation - For the purposes of clause (2), the number of days on which an employee has actually worked under an employer shall include the days on which -

i. He has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment;

ii. He has been on leave with full wages, earned in the previous year;

iii. He has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

iv. In the case of a female, she has been on maternity leave, so, however, that the total period of such maternity leave does not exceed such period as may be notified by the Central Government from time to time;

3. Where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than on which the establishment was in operation during such period."

While Section 2 (f) describes "employer" which is as under : -

2 (f) "employer" means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop -

(i) belonging to, or under the control of, the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the Head of the Ministry or the Department concerned,

(ii) belonging to, or under the control of, any local authority, the person appointed, the chief executive officer of the local

authority,

(iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port railway company or shop, and where the said affairs are entrusted to any other persons, whether called a manager, managing director or by any other name, such person;

16. Terms and conditions of employment of the private respondents are evident by means of various agreements entered into between the parties from time to time. Act of 1972 does not talk of salary but the Payment of Gratuity Act, 1972 has cautiously used the word "wages" and has linked the same with the terms and conditions of employment.

17. The terms and conditions of employment are evident from the contract. Thus, the services of opposite party no.3 would be deemed to be a fixed service as contemplated under Section 2 A of the Act of 1972 and the fixed amount paid to him would be included within the ambit of "wages" as described under Section 2 (s) of the Act.

18. The term "completed year of service" and "continuous service" as defined under Section 2 (b), 2 (c) and 2 A of the Act of 1972 also lead to only one interpretation that the employment of the opposite party no.3 has to be treated as continuous employment.

19. The Apex Court in the case of **Ahmedabad Pvt. Primary Teachers' Assn Vs. Administrative Officer and Others, (2004) 1 SCC 755**, has ruled as under :-

"6. The Act is a piece of social welfare legislation and deals with the payment of gratuity which is a kind of retiral benefit like pension, provident fund etc. As has been explained in the concurring opinion of one of the learned Judges of the High Court ?gratuity in its entymological sense is a git, especially for services rendered, or return for favours received?. It has now been universally recognized that all persons in society need protection against loss of income due to unemployment arising out of incapacity to work due to invalidity, old age etc. For the wage- earning population, security of income, when the worker becomes old or infirm, if of consequential importance. The provisions contained in the Act are in the nature of social security measures like employment insurance, provident fund and pension. The Act accepts, in principle, compulsory payment of gratuity as a social security measure to wage- earning population in industries, factories and establishments.

7. Thus, the main purpose and concept of gratuity is to help the workman after retirement, whether retirement is a result of rules of superannuation or physical disablement or impairment

of vital part of the body. The expression 'gratuity' itself suggests that it is a gratuitous payment given to an employee on discharge, superannuation or death. Gratuity is an amount paid unconnected with any consideration and not resting upon it, and has to be considered as something freely, voluntarily or without recompense. It is a sort of financial assistance to tide over post retiral hardships and inconveniences."

In the case of Management of Goodyear India Limited (supra), the Apex Court has ruled as under :-

"..... Gratuity will have to be paid to all those persons whose employment came to an end after the coming into force of the Act for that period during which he came within the definition of an employee within the meaning of Section 2 (e) of the Payment of Gratuity Act. To hold otherwise may render a whole class of persons who all their lives got wages of less than Rs.1000/- per month, but on the eve of their retirement started getting wages of Rs.1000/- per month. Surely that could not have been the intention of Parliament. We think the only reasonable way of construing Section 4 in the light of the definition of employee in Section 2 (e) is to hold that a person whose services are terminated for any of the reasons mentioned in Section 4 (1), after the coming into force of the Act is entitled to the payment of gratuity, if he has rendered continuous service for not less than five years, for that period during which he has satisfied the definition of employee under Section 2 (e) of the Act."

Having considered the aforesaid dictum of the Apex Court as well as the provisions of the Act, the inevitable conclusion is that opposite party no.3 is entitled for gratuity as he has rendered more than five years of continuous service. I find no illegality in the orders passed by the Prescribed Authority as well as by the Appellate Authority. Learned counsel for the petitioner could not raise any substantial legal point to indicate that the order suffers from any illegality in any manner.

The writ petition is devoid of merit. It is accordingly dismissed."

20. Learned counsel for the respondent have also relied upon the judgment of this Court passed in the **Writ Petition No.310 (MS) of 2010; U.P. Bhumi Sudhar Nigam T.C./19-B Vibhuti Khand, Gomti Nagar, Lucknow vs. Appellate Authority and Others** where similar controversy had arisen and the orders of the controlling authority and appellate authority were assailed and this Court after considering the facts had dismissed the writ petition.

21. Parties have not disputed that the facts are similar and, hence, the ratio of the said case would duly apply to the facts of

the present case also.

22. Accordingly, this Court is of the considered view that there is no infirmity in the impugned orders passed by the controlling authority or by the Appellate Authority which may require interference of this Court under Article 226 of the Constitution of India.

23. It is noticed that once the judgment was available before the authorities as rendered by this Court in **Writ Petition No.310 (MS) of 2010 [U.P. Bhumi Sudhar Nigam T.C./19-B Vibhuti Khand, Gomti Nagar, Lucknow vs. Appellate Authority and Others]** then on the same facts multiple writ petitions against the employees without any discernible facts or law should not have been filed. Such a practice has already been deprecated by the Hon^{ble} Apex Court where such petitions have been held to be mere certificate proceedings only to obtain stamp of the Court and, accordingly, the petition is **dismissed**.

Order Date :- 4.10.2024

A. Verma

(Alok Mathur, J.)