

Court No. - 6

Case :- WRIT - C No. - 1002256 of 2013

Petitioner :- State Of U.P. Thru Its Secy. Irrigation Civil Sectt.
And Other

Respondent :- Sri Sudama Prasad Tiwari Thru Sri Dhruv
Narain Advocate Andor

Counsel for Petitioner :- C.S.C.

Counsel for Respondent :- C.S.C., Ashish Mishra

Hon'ble Alok Mathur, J.

1. Heard Shri S.K. Khare, learned Standing Counsel for the State/petitioners. No one has appeared on behalf of the respondent no. 1 and perused the material available on record.

2. The State of Uttar Pradesh has filed the present writ petition being aggrieved by the judgment dated 27.06.2012 passed by the Controlling Authority under the provisions of Payment of Gratuity Act, 1972 whereby the claim of respondent no. 1/workman has been allowed and he has been held to be entitled for payment of gratuity for working on daily wages for a period of 25 years, 6 months and 29 days.

3. The facts in brief are that the respondent no. 1 Sudama Prasad Tiwari had worked as Daily Wage Employee on the post of TINDAIL in the office of Sinchai Khand, Sharda Nagar, Lakhimpur Kheri with effect from 2.1.1984 to 8.11.2004. According to the claim made by respondent no. 1, he had continuously worked from 2.1.1984 to 31.07.2009 and attained superannuation on his retirement on his attaining the age of 60 years. He has stated that for his entire length of service, he had worked on daily wages/Muster Roll in the Irrigation Department, Sitapur in the Work-Charge Establishment on the post of Karya Paryavekshak.

4. It is in the aforesaid fact that despite working for 25 years, 6 months and 29 days, the respondent no. 1 was not given gratuity by the petitioner and consequently had moved an application before the Controlling Authority. The notices were issued to the petitioners being the employer and they appeared before the Controlling Authority and filed their objections opposing the claim of the workman. It was stated on behalf of the petitioner that the service in a work charge establishment falls in a different category and also admitted that he does not fall as a regular government servant and hence he cannot be treated as regular government servant and no gratuity is payable to him. It was further stated that under the various government orders issued by the State of Uttar Pradesh, the daily-wagers are not entitled for gratuity, inasmuch as, according to the Civil Service Regulations, the daily wagers are neither entitled for pension nor gratuity. Thus, the petitioners also relied upon the government orders issued by them.

5. It was further stated that while discharging his duties on the post of Work Supervisor as work charge employee w.e.f. 8.11.2004 till 31.07.2009, the respondent no. 1 had worked only for a period of four years, eight months and twenty three days, which is less than a period of five years, hence on this account also he was not entitled for payment of gratuity. Lastly it was stated that the government order dated 18.07.2006 itself provides that a daily-wage employee shall not be entitled for gratuity, hence prayed for rejection of the claim made by employee/respondent no. 1.

6. The Controlling Authority duly considered the objections filed by the petitioners, as well as the evidence, which was made available on record. It duly considered all the arguments raised by the petitioner in their written submissions with regard to the admissibility of the gratuity to the employee.

7. The arguments of the petitioners were rejected on the ground that as per Section 14 of the Payment of Gratuity Act, 1972. The said Act of 1972 overrides all the other Acts or Rules, which are inconsistent with the said Act. Accordingly, the Authority was of the view that the Government Orders or any other Rules made by the State of Uttar Pradesh in this regard cannot be invoked by the petitioners for denying the valid claim of payment of gratuity to the workman. It also returned the finding that it was duly demonstrated and proved by the workman that he had worked from 2.1.1984 to 31.07.2009 continuously on daily-wages and accordingly, all the ingredients were available for him under the Payment of Gratuity Act, 1972.

8. This Court has also perused the impugned judgment and considered the arguments raised by the petitioners assailing the impugned order dated 27.06.2012. For admissibility of payment of gratuity, it is to be considered whether the workman falls in the definition of an employee as provided for under Section 2 of the Act of 1972. The definition of an employee is quoted here-in-below:-

"2 (e) ["employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity;]."

9. From perusal of the aforesaid definition, it is clear that any person who is employed for wages in the establishment defined therein would be entitled for payment of gratuity subject to the condition that such employment should not be under the Central Government or the State Government and is not governed by any Act or Rules provided for payment of gratuity.

10. In the present case, the workman was able to prove that he

had worked continuously from 2.1.1984 to 31.07.2009 on daily wages and Muster Roll pertaining to his employment were duly proved before the Controlling Authority. Even a perusal of the written submissions filed by the petitioner before the Controlling Authority, it was not their case that the respondent no. 1 was entitled for gratuity under any other law or rules framed by the State of Uttar Pradesh. It could not be demonstrated that the workman was covered by any other rules or enactment so as to exclude with regard to the beneficial provisions of the Gratuity Act.

11. The case of the petitioners before this Court is that the workman had worked on daily wages from 2.1.1984 to 8.11.2004 but subsequently his services were regularized and he was working on the post of Karya Paryavekshak and was being paid regular salary. Though this fact was never proved before the Controlling Authority but in any case there is no denial of the fact that even according to the petitioner the workman had worked continuously from 2.1.1984 to 8.11.2004.

12. Even in the writ petition in paragraph no. 16, it has been stated that "*..... the petitioner worked on the post of Tindail as daily wage employee and was getting a sum of Rs.2,400/- per month, as such, the period for which he remained working on daily wage basis is not computable for calculating the amount of gratuity in view of the Government Order dated 18.07.2006.....*"

13. From the above, it is undisputed that the employee had worked from 02.01.1984 to 08.11.2014 on daily wages, and as such he would be entitled to gratuity and these facts support the order passed by the Controlling Authority.

14. The challenge in the present case is primarily on the ground that there is a government order dated 28.7.2006, which

provides that gratuity shall not be made applicable to the employees working on daily wages. To consider the submission of the learned Standing Counsel to the challenge of the order of the Controlling Authority specially with regard to the Government Order dated 28.07.2006, we will have to take into consideration the relevant provisions of the Gratuity Act relating to applicability of other laws. Section 14 of the Payment of Gratuity Act, 1972 provides for the following:-

14. Act to override other enactments, etc.

-The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.

15. Accordingly, the petitioners cannot invoke the provisions of any government order contrary to the provisions of the Repayment of Gratuity Act, 1972 and in case there is any conflict, the provisions of Section 14 of the Act of 1972 provide that the Payment of Gratuity Act would override any such government orders and consequently, merely because the government order dated 28.07.2006 provides for non-payment of gratuity to the persons employed on daily-wages cannot be a ground for denial of gratuity to the respondent no. 1. The provisions of government order dated 28.07.2006 cannot be invoked to deny benefit of gratuity to the petitioner as it would not operate and override the provisions of Gratuity Act, 1972 and as per provisions of Section 14 of the Act of 1972, will have to give way to the beneficial provisions of Act, 1972.

15. Accordingly, the challenge made by the petitioners to the impugned order fails and after examining the impugned order, this Court does not find any infirmity. Accordingly, the petition being devoid of merits is dismissed. However, it is provided that the impugned order is only modified only to the extent that instead of compound interest, the workman shall be entitled to

simple interest on the admissible amount of gratuity from the date when it was admissible till the date of actual payment.

(Alok Mathur, J.)

Order Date :- 23.2.2024

Virendra