

HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 179 of 2014

1. State Of Chhattisgarh Through Secretary, Water Resources Department, Mahanadi Bhawan, Naya Mantralaya, Naya Raipur, Ps Mandir Hasaud, Dist Raipur, CG

Petitioner No.1 was not a party before the learned Labour Court, but has been impleaded as petitioner No.1 herein as it is necessary to implead the State Govt. through the Secretary of concerned Department).

2. The Chief Engineer Minimata (Hasdev) Bango Project, Distt Bilaspur, CG
3. The Sub Divisional Officer, Minimata Bango Canal, Sub Division No. 17, Distt Bilaspur, CG

---- Petitioner

Versus

1. Dhansai Sahu, S/o Shri Khanjhar, R/o Khursi, Post Kodwa (Dhani), Distt Mungeli, CG
2. The Controlling Authority Under The Payment Of Gratuity Act & Assistant Labour Commissioner, Bilaspur, Dist Bilaspur, CG

---- Respondent

For Petitioner/State	Shri Y.S. Thakur, Dy. Adv. General
For Respondent No.1	Shri Vinod Deshmukh, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

22/02/2016

1. This writ petition is directed against the order passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (for short 'the Act, 1972'), Bilaspur, directing the State Government to make payment of gratuity to the tune of Rs.1,75,552/- to the

workman by calculating his service rendered as daily wager from 1-3-1986 to 31-8-2008.

2. Shri Deshmukh, learned counsel for the respondent No.1, would submit that the writ petition is not maintainable because the petitioners have alternative remedy of preferring an appeal before the appellate authority under the Act, 1972.
3. Shri Thakur, learned Dy. Adv. General for the State/petitioners, would submit that the Controlling Authority has no jurisdiction to entertain the application, therefore, in view of the law laid down by the Supreme Court in **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others**¹ this Court is entitled to entertain the writ petition, despite availability of alternative remedy.
4. In **Assistant Executive Engineer, Maintenance Sub Division, Cauvery Neeravari Nigam Ltd. v. Dy. Labour Commissioner and Appellate Authority, Bangalore & Ors.**², it has been held by the Karnataka High Court that where daily wager absorbed on a pensionary service under the State Government is entitled to claim gratuity as per applicable rules against the State Government, the Controlling Authority under the Act, 1972 in respect of such employee is excluded under Section 2 (e) of the Act, 1972.

¹ (1998) 8 SCC 1

² WP No.15856/2012 (4-9-2012)

5. The petitioner being a regularised employee, his services are governed under the provisions of the Chhattisgarh Civil Services (Pension) Rules, 1976 for grant of retiral benefits including payment of gratuity. Even if the said rules do not provide for inclusion of the period spent on daily wages for calculation towards payment of gratuity, there being rules governing the entitlement, the respondent workman would be governed by the said rules and the Controlling Authority has no jurisdiction to entertain the application. This Court is, thus, in respectful agreement with the law laid down by the Karnataka High Court.
6. Even otherwise, in the matter of **State of Chhattisgarh & Another v. Netram Sahu & Another**³, affirmed by the Division Bench in WA No.240 of 2014 (1-8-2014), this Court has held that the period spent on daily wages is not applicable for rendering the benefit of payment of gratuity to an employee who was subsequently regularised.
7. In **Netram Sahu** (supra) the following binding precedent has been laid down by the Division Bench of this Court :

7. We have considered the respective submissions.

8. The rights and status of a person appointed even on daily wage contrary to the mandate of Articles 14 and 16 of the Constitution was considered by a Constitution Bench in (2006) 4 SCC 1 (Secretary, State of Karnataka and

³ WPL NO.178 of 2013 (16-12-2013)

others Versus Umadevi (3) and others).
It was observed:-

“2.....But, a regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up and the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other considerations. Regular appointment must be the rule.”

“43.....Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee.....The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.”

9. We are not oblivious of Section 4 of the Act. Eligibility arises after completion of five years of continuous service. We also cannot entirely disagree with Municipal Council, Panna (supra) holding that Section 2(e) of the Act will include daily wagers who have completed five years of service even though it does not notice Section 4(2) First Proviso providing for the method to calculate gratuity of daily wagers. But will the Act cover an appointment made contrary to the Constitutional mandate of

Articles 14 and 16 of the Constitution. Will the Act by virtue of Section 14 prevail over the Constitution. The answer has to be in the negative. A harmonious construction shall be that the Act will apply to daily wagers appointed in accordance with the Constitutional mandate. The Learned Single Judge had already adverted to this aspect. It is not the case of the appellant that he was appointed on daily wage in accordance with law. A reading of his order for regularization evinces it to be contrary to the law laid down in Umadevi (supra). But that is not an issue for our consideration at present. If regularization was not permissible in law, he cannot be held eligible for another benefit on the same facts. In Teja Singh (supra) relied upon the respondents gratuity was denied on a claim based on illegal appointment as daily wage.

10. The appellant is therefore not entitled to count his period of service on daily wage under Section 4 of the Act to claim entitlement for gratuity.

11. The appeal is dismissed.”

8. In view of the above, the writ petition is allowed and the impugned order dated 18-7-2013 is set aside. No order as to costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri

