

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 192 of 2015

- Shri Harishchandra S/o Late Marar, Aged About 64 Years R/o Village And Post Jaamgaon, Tahsil Patan, District Durg Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Public Work Department Mahandi Bhawan Mantralaya, Naya Raipur Chhattisgarh
2. Executive Engineer, Public Work Department (Bh/sa) Durg, Division Durg, District Durg Chhattisgarh

---- Respondent

And

WPL No. 5 Of 2016

- Smt. Sawana Bai D/o Paras Ram Gond, Aged About 66 Years R/o Fekari, Post Selud, Tahsil Patan, District Durg, (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Public Work Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, (Chhattisgarh)
2. Executive Engineer, Public Work Department (Bh/ Sa) Durg, Division Durg, District Durg, (Chhattisgarh)

---- Respondent

And

WPL No. 27 Of 2016

- Smt. Durpat Bai D/o Late Itwari, Halba, Aged About 65 Years R/o Post Sanjari, District Balod Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Water Resources Department, Mantralaya, Mahandi Bhawan, Naya Raipur, Chhattisgarh
2. Executive Engineer, Water Resources Department Balod, Division Balod District Balod Chhattisgarh

---- Respondent

And

WPL No. 26 Of 2016

- Lal Singh Nishad S/o Nanku Nishad, Aged About 66 Years R/o Bhilaigarh, Post Balpur, (Chandrapur) District Janjgir Champa Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Water Resources Department, Mahanadi Bhawan Mantralaya, Naya Raipur Chhattisgarh
2. Executive Engineer, Kelo Project, Public Work Division, Lakhan Raigarh Head Office Kharsiya, District - Raigarh Chhattisgarh

---- Respondent

And

WPL No. 193 Of 2015

- Smt. Tijiya Bai D/o Palturam, Aged About 66 Years R/o Village Banjaripara Utai Post Utai, Tahsil & District Durg Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Public Works Department Mahandi Bhawan Mantralaya, Naya Raipur Chhattisgarh
2. Executive Engineer, Public Work Department (Bh/sa) Durg, Division Durg, District Durg Chhattisgarh

---- Respondent

And

WPL No. 7 Of 2016

- Hemin Bai D/o Kaliram, Aged About 67 Years R/o Village Indira Nagar, Patan, Tahsil- Patan, District Durg, (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Public Work Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, (Chhattisgarh)
2. Executive Engineer, Public Work Department (Bh/sa) Durg Division, Durg, District Durg, (Chhattisgarh)
3. The Appellate Authority Under Payment Of Gratuity Act, Office Of Labour Commissioner, Chhattisgarh, Indrawati Bhawan, Naya Raipur, (Chhattisgarh)

---- Respondent

And

WPL No. 6 Of 2016

- Manthir S/o Late Chandulal Joshi, Aged About 66 Years R/o Post Anda, District Durg, (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through The Secretary, Public Work Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, (Chhattisgarh)
2. Executive Engineer, Public Work Department, Division Durg, District Durg, (Chhattisgarh)
3. The Appellate Authority, Under Payment Of Gratuity Act, Office Of Labour Commissioner, Chhattisgarh, Indrawati Bhawan, Naya Raipur, (Chhattisgarh)

---- Respondent

And

WPL No. 2 Of 2016

- Shri Bhikham S/o Shri Budhram, Aged About 67 Years R/o Village Akalai Post Surpa, Tahsil Patan, District Durg Chhattisgarh

---- **Petitioner**

Vs

1. State Of Chhattisgarh Through The Secretary, Public Work Department Mahanadi Bhawan Mantralaya, Naya Raipur Chhattisgarh
2. Executive Engineer, Public Work Department, Division Durg, District Durg Chhattisgarh
3. The Appellate Authority, Under Payment Of Gratuity Act, Office Of Labour Commissioner Chhattisgarh, Indrawati Bhawan Naya Raipur Chhattisgarh

---- **Respondent**

And

WPL No. 1 Of 2016

- Thakur Ram S/o Shri Jhhumuk Sahu, Aged About 67 Years R/o Village Kharra, Post Teligundara, Tahsil Patan, District Durg, (Chhattisgarh)

---- **Petitioner**

Vs

1. State Of Chhattisgarh Through The Secretary, Public Work Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, (Chhattisgarh)
2. Executive Engineer, Public Work Department, Division Durg, District Durg, (Chhattisgarh)
3. The Appellate Authority, Under Payment Of Gratuity Act, Office Of Labour Commissioner Chhattisgarh, Indrawati Bhawan, Naya Raipur, (Chhattisgarh)

---- **Respondent**

And

WPL No. 9 Of 2016

- Smt Sato Bai D/o Sonam Gond, Aged About 67 Years R/o Village Selud Post Selud, Tahsil Patan, District Durg Chhattisgarh

---- **Petitioner**

Vs

1. State Of Chhattisgarh Through The Secretary, Public Work Department Mahanadi Bhawan Mantralaya Naya Raipur Chhattisgarh
2. Executive Engineer, Public Work Department (Bh/sa), Durg, Division Durg, District Durg Chhattisgarh
3. The Appellate Authority, Under Payment Of Gratuity Act, Office Of Labour Commissioner Chhattisgarh, Indrawati Bhawan Naya Raipur Chhattisgarh

---- **Respondent**

For Petitioners : Shri Hemant Kesharwani, Advocate.

For Respondents : Shri Shashank Thakur, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

22/02/2016

1. In this batch of writ petitions the petitioners are aggrieved by the appellate order passed by the Appellate Authority under the Payment of Gratuity Act, 1972 (henceforth 'the Act, 1972') cum Deputy Labour Commissioner, Chhattisgarh allowing the appeal preferred by the respondents to set aside the order passed by the Controlling Authority under the Act, 1972 making the petitioners entitled to gratuity for the entire service period including the period for which the employee had worked on daily wages.
2. Shri Kesharwani, learned counsel for the petitioners would submit that the petitioners were engaged as daily wager in the Work-Charged

establishment, therefore, they are governed by different set of rules, which were not considered by this Court in WPL No.178/2013 {State of Chhattisgarh & Anr. Vs. Netram Sahu & Anr.) decided on 16.12.2013 and Writ Appeal No.240/2014 (Netram Sahu Vs. State of Chhattisgarh & Others) decided on 1st August, 2014 where **Netram Sahu** (referred to above) was affirmed. According to him, the petitioners acquired status of a temporary employee after 5 years of service, therefore, they are entitled for calculation of their entire service period including the period spent on daily wages for calculation of the amount of gratuity under Section 4 of the Act, 1972. He would further argue that the appeal preferred before the Appellate Authority under the Act, 1972 was itself not competent because it was not submitted by the person who was arrayed as respondent before the Controlling Authority.

3. Per contra, Shri Shashank Thakur, learned Govt. Advocate would place strong reliance on the judgment in the matter of **Netram Sahu** (referred to above) to argue that the matter is no longer *res integra* inasmuch as status of daily wager whether born in the work-charged establishment or in the regular establishment would remain the same for the purposes of the Act, 1972. He would submit that the Division Bench judgment relied by the petitioners in the matter of **Lakhanram Sahu & Others Vs. State of Chhattisgarh & Others** & other connected matters {Writ Appeal No.281/2013} decided on 26.2.2015 was not a case under the Act, 1972, therefore, it has no application. Reliance has also been made

upon an order of the Supreme Court in Civil Appeal No.292 of 2009 (**Bharat Sanchar Nigam Limited, Jammu Vs. Teja Singh**) disposed on 16.1.2009 observing that the period of daily wage pursuant to an appointment contrary to the mandate of Articles 14 and 16 could not confer the right to any person to claim gratuity.

4. Indisputably, each of the employees had preferred a claim under Section 4 of the Act, 1972. Even if the question regarding applicability of the Act, 1972 in terms of the definition of the employee provided under Section 2(e) is not taken for consideration, the law settled in the matter of **Netram Sahu** (referred to above) would still be applicable in the facts and circumstances of the present case. In **Netram Sahu** (referred to above), while affirming the order passed by the Single Bench, the Division Bench held in paragraphs-7 to 11 thus:-

“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 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.”

5. In view of the above, the plea regarding attainment of status of temporary employee would hardly have any effect on the decision making because when the initial appointment itself was dehors the

constitutional scheme of appointment, the period spent on daily wages pursuant to the said illegal appointment would not be available for calculation for the purpose of Section 4 of the Act, 1972. Subsequent regularization would only make the person entitled for retiral benefits in terms of the Rules but a daily wager would not be entitled for calculation of the period spent on daily wage for the purpose of payment of gratuity.

6. In all the cases, the State Government has paid the amount of gratuity in terms of entitlement of each of the petitioners by calculating the period of service after regularization and the Controlling Authority has directed for payment of balance amount by taking into consideration the period spent on daily wages. The Appellate Authority has set aside the said part of the order where the balance amount has been directed to be paid.
7. In the considered opinion of this Court, in view of the Division Bench judgment in the matter of **Netram Sahu** (referred to above), period spent on daily wages cannot be counted for payment of gratuity. Therefore, the Appellate Authority under the Act, 1972 has not committed any illegality by allowing the appeal preferred by the respondents.
8. Insofar as incompetency of the appeal memo before the Appellate Authority for the same being filed by a different officer is concerned, all the appeal memos bear signatures of the lawyer and the officer

presenting the same. There is no factual foundation averring that the officer who has signed the memo of appeal was not holding the office of Executive Engineer on a given date or that while signing the appeal memo, the concerned officer has no authority to put his signatures. It depends on internal working of the department as to the manner in which the appeal is to be preferred. When financial stakes of the Government are involved, this Court would be slow to consider and accept such technical pleas and would prefer to deal the matter on merits.

9. For the foregoing, all the writ petitions being devoid of any substance deserve to be and are hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve