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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (L) No. 64 of 2014

- Sub Area Manager, Charcha Colliery Churcha Colliery (R.O.), South Eastern Coalfields Ltd, Post Churcha Colliery, Distt Korea, C.G.

---- Petitioner

Versus

1. The Appellate Authority Under The Payment Of Gratuity Act, 1972, Raipur (C.G.)

2. The Controlling Authority Under The Payment Gratuity Act, 1972 (Assistant Labour Commissioner, Central Bilaspur, Distt Bilaspur, C.G.

3. Smt. Ramkali W/o Lt Dadnuaram, Ex Conveyer Khalasi, Qtr. No.133, Post Office Line, Po Churcha Colliery, Distt Korea, C.G.

---- Respondents

For Petitioner Mr. V. Verma, Advocate

SB: Hon'ble Shri Justice P.Sam Koshy

Order On Board

09.12.2016

1. The present Petition has been filed under Article 226 of the constitution of India has been preferred assailing the order passed by the Appellate authority under the payment of gratuity act in appeal no. PGA – 13/2011 order dated 3.2.2014 whereby the Appellate Authority has affirmed the order passed by the Controlling Authority under the payment of gratuity act (Assistant Labour Commissioner (Central) Bilaspur) dated 06.04.2011 in case No. BSP – 36(19)/2010-ALC.

2. A brief fact in the instant case is that the husband of Respondent

No.3 was an employee working with the Petitioner establishment as a conveyor Khalasi. The undisputed fact in the instant case is that the husband deceased was appointed on 01.09.1978 and since then he was working continuously with the petitioner establishment till his date of death i.e. till 26.10.2009.

3. Learned Counsel for the Petitioner establishment meanwhile found certain discrepancy in the date of birth of the deceased employee in the service record and therefore presumed date of birth to be 01.09.1948 and accordingly the date of retirement accordingly would have been on 31.08.2008. The employee thus stood retired and therefore it is said that they had made proper calculation and were ready to pay the said amount, but the Respondent No.3 refused claiming that since the deceased had died while on service she would be entitled for gratuity till the date of death.

4. Subsequently, she moved application to the Controlling authority i.e. Assistant Labour Commissioner, Bilaspur were the case was registered as BSP – 36(19)/2010- ALC. Controlling Authority vide its order dated 06.04.2011 ordered for payment of gratuity to the Respondent No.3 from the date of appointment till date of death i.e. 26.10.2009 for a period of 31 years 1 month and 25 days amounting to Rs. 3, 70,646/- with simple interest of 10% per annum from the date of death till the date of actual payment is made.

5. This order of the Controlling Authority was put to challenge in appeal before the Appellate Authority to the Regional Labour Commissioner (Central) Raipur where the case was registered as PGA 13/2011.

The appellate authority also vide its order dated 03.02.2014 had rejected the appeal affirming the order of the controlling authority. These two orders have been put to challenge before this court in the present Writ Petition.

6. The sole ground of challenge by the Petitioner is the entry that has been made in Statutory Form-B Register. Form-B is a register which is duly maintained by every mining establishment. It bears the entry of details of the employees. According to the entry in the said Register the date of birth which could be calculated so far as the employee is concerned would had been 01.09.1948. As on the date of appointment 01.09.1978 the entry recorded in the Form – B Register so far as age of the employee was 30 years as on 01.09.1978 which if calculated relates back to 1948 to be the date of birth.

7. He further relies on the subsequent entries made in the year 1982 which also had the same entry as on 01.09.1982 where the age of the deceased employee was mentioned as 34 years. Therefore, according to the Counsel for the Petitioner, establishment was willing to pay the amount to the Respondent No.3 for the said period only i.e. from 01.09.1978 to 31.08.2008 which would have been the date of superannuation of the deceased employee as per the entry in the Form-B Register.

8. Counsel for the Petitioner further submits that on account of discrepancy in the entry made in the records, advantage can not be given to the employee for the surplus period he has worked beyond

31.08.2008. They would not be entitled for gratuity as that part of service is beyond the age of superannuation. Learned Counsel for the petitioner also relied upon the decision of the coordinate bench in WPL No. 79/2015 decided on 17.12.2015.

9. Having considered the submissions put forth on behalf of the Petitioner what is undisputed is that the petitioner was given appointment as conveyor khalasi with effect from 01.9.1978. Since then he has continuously worked with the Petitioner establishment till his date of death i.e. 26.10.2009. According to the Counsel for the Petitioner, the Petitioner all along when the deceased employee was in employment did not care to take action against the deceased employee for retiring him from service on the basis of date of birth which has been maintained in Form-B Register but now are not accepting the said date of birth for grant of gratuity.

10. Since the management of the S.E.C.L. had not taken any steps in respect of correction in date of birth and also no action were made for retirement of the deceased employee on the date of superannuation. In the intervening period the deceased employee having died in service, for all practical purpose it has to be presumed that he was duly employed in the Petitioner establishment till the date of death and for the said reason that the deceased was on employment till the date of death he would be entitled for payment of gratuity from the date of appointment till he continued in service which in the instant case is date of death i.e. 26.10.2009.

11. So far as the judgment referred to by the Petitioner is concerned

the facts of the said case is different. As is in the said case the management had already passed an order of discharge from service putting him on retirement from the particular date. Therefore the payment of gratuity was ordered to be payable only till the period of superannuation and not beyond, which is not the fact in the present case and therefore the said judgment is distinguishable on its facts.

12. Section (4) of the payment of Gratuity Act specifically deals with the method and mode of gratuity to be paid and Section 4(1) (c) deals with the situation when the employee would be entitled for gratuity. The very fact in the instant case the deceased has put in 31 years of continuous service till his date of death coupled with the fact that the management of the Petitioner establishment have not taken any action against the deceased employee for his retirement.

13. Taking into account that the deceased employee died in harness he would be entitled for gratuity for the period he has worked with the Petitioner establishment. In the given factual back ground of the case this Court without venturing on the issue of date of birth correction so far as the deceased employee is concerned, holds that, there was no order of part of the Petitioner establishment putting him retired on the date which according to the management is the date of retirement it has to be presumed that the deceased is entitled for the payment of gratuity from the date of appointment till the date of death.

14. In the given facts and circumstances of the case this Court is of the opinion that no strong case for interference with the two orders under

challenge has been made out, therefore the present Writ Petition deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE

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