

WRIT PETITION NO.10751 OF 2015

...Petitioner

...Respondent

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JULY 04, 2016

Heard learned Counsel for the parties. The main controversy in the petition concerns the entitlement of the Respondent employee to gratuity under the Payment of Gratuity Act. The Respondent was working with the Petitioner. In accordance with the option selected by the Respondent, he was paid pensionary and retirement benefits, including gratuity, under the CCS (Pension) Rules applicable to the employees of the Petitioner. The case of the Respondent before the authorities under the Payment of Gratuity Act was that the Respondent was entitled to gratuity under the Payment of Gratuity Act, since he was an employee as defined under the Payment of Gratuity Act. The first authority, namely, the Controlling Authority under the Payment of Gratuity Act, i.e. Assistant

Labour Commissioner (Central-1) Mumbai, on an application of the Respondent under Section 7 of the Payment of Gratuity Act, 1972, accepted the Respondent's contention that the Respondent was entitled to gratuity under the Payment of Gratuity Act and directed the Petitioner to pay balance gratuity amount of Rs.1,32,261/- along with the interest. This order was carried in appeal before the Appellate Authority and Regional Labour Commissioner Mumbai by the Petitioner herein. The Appellate Authority, by its order dated 10 July 2012, partly allowed the appeal. The Appellate Authority did not accept the Petitioner's case that the Respondent was not an employee as defined under the Payment of Gratuity Act. The Appellate Authority came to the conclusion that the provisions of the Payment of Gratuity Act were applicable to the establishment of the Petitioner and the Respondent cannot be termed as holding post under the Central Government and, hence, excluded from the definition of employee under Section 2(e) of the Payment of Gratuity Act. The Appellate Authority, however, relying on the decision of the Supreme Court in **DTC Retired Employees Association & Others vs. DTC**¹ held that the Respondent employee could not have the benefit of both the pension as well as gratuity at the same time. Considering the fact that the Respondent had already received gratuity and pensionary benefits under the CCS (Pension) Rules, 1972, the Respondent was not entitled to any additional amount of gratuity under the Payment of Gratuity Act. In the premises, whilst the Appellate Authority reversed the Controlling Authority's order of awarding balance gratuity to the Respondent, it nevertheless awarded interest to the Respondent on the amount of gratuity paid to him by the Petitioner for delayed payment of the gratuity amount from the date it was due upto the date of payment. It, accordingly, modified the originally awarded amount

1 AIR 2001 SC 1997

of Rs.1,32,261/- and Rs.8,124/- only towards interest of delayed payment of gratuity amount under the CCS (Pension) Rules. The basis of the Appellate Authority's order for denying gratuity to the Respondent under the Payment of Gratuity Act, does not suffer from any infirmity. Since the Respondent actually opted for payment of retirement and pensionary benefits, including gratuity under the CCS (Pension) Rules, he was not entitled to any gratuity under the Payment of Gratuity Act. As for the award of interest on delayed payment, no infirmity can be found either with such award of interest within the parameters of scrutiny by the writ court under Articles 226 and 227 of the Constitution of India. There was, in fact, delay in payment of gratuity and for this delay, the Respondent was entitled to be compensated by award of interest. No infirmity can be found, in the premises, with the impugned order of the Appellate Authority. The writ petition, accordingly, deserves to be dismissed. It is, however, clarified that the dismissal of the petition is on the basis that this Court has found favour with the application of the principle of the Supreme Court decision in the case of **DTC Retired Employees Association** (supra). This Court has not applied its mind to the other ground held by the appellate authority against the Petitioner under Section 33 of the Payment of Gratuity Act. As far as this Court is concerned, that issue is still open and to be concluded by the present order. The petition is, accordingly, dismissed. No order as to costs.

(S.C.GUPTE, J.)