

HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 83 of 2017

Deen Mohammad S/o Late Shri Hisabdeen, Aged About 64 Years R/o Haji Moulana Akbar Ali Barkati, Behind Vivekanand Ashram Eidgahbhata Raipur, Tahsil And District Raipur (Chhattisgarh).

---- Petitioner

Versus

1. The Divisional Forest Officer Forest Division, Bilaspur District Bilaspur (Chhattisgarh).
2. Depo- Incharge, Sale Depo, Kargiroad, Kota, District Bilaspur, Chhattisgarh
3. State Of Chhattisgarh, Through The Secretary, Department Of Forest, Mahanadi Bhawan, New Raipur, Chhattisgarh

---- Respondents

Shri Ritesh Verma, counsel for the petitioner/s.
Shri Chandresh Shrivastava, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

26/10/2017

This petition, under Article 226 of the Constitution of India, is directed against order dated 11/01/2017 passed in appeal whereby petitioner's claim for payment of gratuity has been rejected.

2. Learned counsel for the petitioner submits that though the petitioner was regularised in service on 22/08/2008, he was entitled to count the entire service ever since his initial date of appointment from 01/01/1988. The next submission is that even if the provision relating to payment of gratuity have been made under the Civil Services Pension Rules applicable to the Government Servant, the provisions of Payment of Gratuity Act, 1972 (for short 'the Act of 1972') being beneficent in nature, would also apply to the petitioner.

3. On the other hand, learned State counsel submits that in view of the definition of employee as contained in Section 2 (e) of the Payment of Gratuity Act,

1972, the petitioner being a Government Servant, to whom Rules relating to Gratuity framed by the Government are applicable, the Act of 1972 would not apply and the petitioner's remedy lies in claiming Gratuity under the Gratuity Rules, if the petitioner is entitled thereto.

4. The applicability of the provisions of Gratuity Act would depend upon whether the petitioner is included in the definition of the employee as defined in Section 2 (e) of the Payment of Gratuity Act. The relevant provision is extracted herein below -

“Section 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.”

A bare reading of the provision would clearly show that from the definition of employee, all those persons, who hold the post under Central Government or State Government and are governed by any Act or rules providing for payment of gratuity are excluded.

5. The controlling authority and the appellate authority have relied upon the said provision to hold that the petitioner is not entitled to payment of Gratuity under the Act of 1972 which do not warrant any interference.

6. In the result, the petition is dismissed though with liberty to the petitioner to raise the claim of gratuity, if he is entitled to, under the Gratuity Rules applicable to a Government servant.

**Sd/-
(Manindra Mohan Shrivastava)
Judge**