

In the High Court of Punjab and Haryana at Chandigarh

Reserved on : November 08, 2017

Date of Decision: November 14, 2017

1. CWP No. 24417 of 2015 (O&M)

Cement Corporation of India Ltd. *Petitioner*

Versus

Appellate Authority under Payment of Gratuity Act & Ors.

... *Respondents*

2. CWP No. 26333 of 2015 (O&M)

Cement Corporation of India Ltd. *Petitioner*

Versus

Appellate Authority under Payment of Gratuity Act & Ors.

... *Respondents*

3. CWP No. 26334 of 2015 (O&M)

Cement Corporation of India Ltd. *Petitioner*

Versus

Appellate Authority under Payment of Gratuity Act & Ors.

... *Respondents*

4. CWP No. 26335 of 2015 (O&M)

Cement Corporation of India Ltd. *Petitioner*

Versus

Appellate Authority under Payment of Gratuity Act & Ors.

... *Respondents*

5. CWP No. 26340 of 2015 (O&M)

Cement Corporation of India Ltd. *Petitioner*

Versus

Appellate Authority under Payment of Gratuity Act & Ors.

... Respondents

6. CWP No. 26341 of 2015 (O&M)

Cement Corporation of India Ltd.

.... Petitioner

Versus

Appellate Authority under Payment of Gratuity Act & Ors.

... Respondents

7. CWP No. 26342 of 2015 (O&M)

Cement Corporation of India Ltd.

.... Petitioner

Versus

Appellate Authority under Payment of Gratuity Act & Ors.

... Respondents

8. CWP No. 26343 of 2015 (O&M)

Cement Corporation of India Ltd.

.... Petitioner

Versus

Appellate Authority under Payment of Gratuity Act & Ors.

... Respondents

9. CWP No. 26344 of 2015 (O&M)

Cement Corporation of India Ltd.

.... Petitioner

Versus

Appellate Authority under Payment of Gratuity Act & Ors.

... Respondents

10. CWP No. 26345 of 2015 (O&M)

Cement Corporation of India Ltd.

.... Petitioner

Versus

Appellate Authority under Payment of Gratuity Act & Ors.

... Respondents

11. CWP No. 26346 of 2015 (O&M)

Cement Corporation of India Ltd.

.... Petitioner

Versus

Appellate Authority under Payment of Gratuity Act & Ors.

... Respondents

12. CWP No. 26347 of 2015 (O&M)

Cement Corporation of India Ltd.

.... Petitioner

Versus

Appellate Authority under Payment of Gratuity Act & Ors.

... Respondents

13. CWP No. 26366 of 2015 (O&M)

Cement Corporation of India Ltd.

.... Petitioner

Versus

Appellate Authority under Payment of Gratuity Act & Ors.

... Respondents

14. CWP No. 26388 of 2015 (O&M)

Cement Corporation of India Ltd.

.... Petitioner

Versus

Appellate Authority under Payment of Gratuity Act & Ors.

... Respondents

15. CWP No. 26392 of 2015 (O&M)

Cement Corporation of India Ltd.

.... Petitioner

Versus

Appellate Authority under Payment of Gratuity Act & Ors.

... Respondents

16. CWP No. 26400 of 2015 (O&M)

Cement Corporation of India Ltd.

.... Petitioner

Versus

Appellate Authority under Payment of Gratuity Act & Ors.

... Respondents

17. CWP No. 26416 of 2015 (O&M)

Cement Corporation of India Ltd.

.... Petitioner

Versus

Appellate Authority under Payment of Gratuity Act & Ors.

... Respondents

18. CWP No. 26417 of 2015 (O&M)

Cement Corporation of India Ltd.

.... Petitioner

Versus

Appellate Authority under Payment of Gratuity Act & Ors.

... Respondents

19. CWP No. 26441 of 2015 (O&M)

Cement Corporation of India Ltd.

.... Petitioner

Versus

Appellate Authority under Payment of Gratuity Act & Ors.

... Respondents

20. CWP No. 26482 of 2015 (O&M)

Cement Corporation of India Ltd.

.... Petitioner

Versus

Appellate Authority under Payment of Gratuity Act & Ors.

... Respondents

21. CWP No. 26754 of 2015 (O&M)

Cement Corporation of India Ltd.

.... Petitioner

Versus

Appellate Authority under Payment of Gratuity Act & Ors.

... Respondents

22. CWP No. 26755 of 2015 (O&M)

Cement Corporation of India Ltd.

.... Petitioner

Versus

Appellate Authority under Payment of Gratuity Act & Ors.

... Respondents

23. CWP No. 26756 of 2015 (O&M)

Cement Corporation of India Ltd.

.... Petitioner

Versus

Appellate Authority under Payment of Gratuity Act & Ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mrs. Abha Rathore, Advocate,
for the petitioner(s).

Mr. Pankaj Jain, Advocate,
for the caveator-respondent no.3.

P.B. Bajanthri, J.

1. By this common order, all 23 aforementioned civil writ petitions i.e. CWP Nos. 24417, 26333 to 26335, 26340 to 26347, 26366,

26388, 26392, 26400, 26416, 26417, 26441, 26482 and 26754 to 26756 of 2015 are being decided together as similar facts are involved in these petitions. However, for brevity, facts have been taken from CWP No. 24417 of 2015.

2. In the instant writ petition, petitioner has challenged the validity of orders dated 31.12.2013 and 03.07.2015 passed by the Controlling and Appellate Authority (Annexures P/10 and P/12 respectively).

3. Third respondent – Hawa Singh stated to have been worked with the petitioner during the period from August 1984 to November 1996. Petitioner was stated to have deducted provident fund from time to time. The 3rd respondent had filed an application before the Controlling Authority on 20.10.2008 claiming gratuity. The Controlling Authority passed order in favour of 3rd respondent on 31.12.2013 (Annexure P/10). Feeling aggrieved by the order of Controlling Authority, petitioner preferred an appeal before the Appellate Authority. The Appellate Authority passed order while upholding the order of the Controlling Authority on 03.07.2015 (Annexure P/12). Hence, the present petition.

4. Learned counsel for the petitioner raised preliminary objection to the extent that there is a delay of 12 years on the part of the 3rd respondent in making application to claim gratuity. It was submitted that rule 7(1) of the Payment of Gratuity Rules, 1972 (for short 'Rules 1972') provides for making application within 30 days from the date of gratuity became payable, in Form I to the employer. Sub rule 5 of Rule 7 permits

condonation of delay for which sufficient cause is required to be shown.

The 3rd respondent has not shown any cause for condonation of delay in the application dated 20.10.2008 filed before the Controlling Authority. Therefore, on the ground of delay and laches claim of the 3rd respondent is liable to be rejected.

5. It was further contended that the 3rd respondent was engaged through contractor, therefore, as per the agreement entered into between the petitioner and contractor record of labourers like respondent no.3 were required to be maintained by the contractor. The contractor has not been impleaded as party.

6. It was also submitted that under Section 4 of the Payment of Gratuity Act, 1972 (hereinafter referred to as the “Act, 1972”), 5 years of continuation of service is required for the purpose of claiming gratuity. The 3rd respondent failed to prove that he has worked for 5 years.

7. It was further contended that relevant documents have not been summoned by the 3rd respondent while making application vide Annexure P/5. Whatever the documents summoned by the 3rd respondent were placed on record by the petitioner by way of filing reply statement before the Controlling Authority.

8. It was further contended that petitioner – company was closed on 31.10.2008. Before closure of the company, respondent no.3 presented his application on 20.10.2008. Different contractors were engaged for the purpose of loading and unloading works in the petitioner – company during the period from 01.11.1990 to 30.06.1997.

9. It was further contended that for the purpose of payment of gratuity, there is a bar under Section 21(4) of the Contract Labour (Regulation and Abolition) Act, 1970 (for short 'Act 1970'). In view of the aforesaid statutory provision, principal employer has been excluded for the purpose of extending any gratuity benefit to a labourer who has been appointed through contractor. Learned counsel for the petitioner cited the following decisions:-

- i) M/s Madras Fertilisers Limited, Manali, Madras represented by its General Manager vs. The Controlling Authority under the Payment of Gratuity Act, Assistant Commissioner of Labour (Gratuity), Chennai and others, reported in 2003(3) SCT, 574 (Para Nos. 8, 15 and 19);*
- ii) Cominco Binani Zinc Ltd. vs. Pappachan, reported in I L.L.J., 1989, 452 (Para Nos. 5 and 6);*
- iii) Cement Corporation of India Ltd. vs. Presiding Officer, Labour Court-cum-Industrial Tribunal, Hissar and others, CWP No. 15565 of 1997, decided on 28.08.2009 (Para Nos. IV and X).*

10. Per contra, learned counsel for the 3rd respondent submitted that no doubt there is a delay in filing application for gratuity claim, however, Supreme Court in the following decisions held that technical plea of limitation may not be correct in respect of claiming gratuity:-

- i) P. Rama Rao and others vs. Controlling Authority under PG Act & ALC (C) Vijayawada and others, reported in 1998(3) LLJ 114 (Para No. 16);*
- ii) Krishna District Milk Producers Mutually Aided Co-op Union vs. State of Andhra Pradesh and others, reported in 2015 (19) SCT 421 (Para No. 16);*

- iii) *H. Jayarama Shetty vs. Sangli Bank Ltd. reported in 2005(3) LLJ, 637 (Para Nos. 10, 11 & 12);***
- iv) *Paramount Impex Pvt. Ltd. vs. Appellate Authority and others, reported in 2015 Lab LR 1256 (Para Nos. 5,6 and 7);***
- v) *V.S. Ekambaram and others vs. The Appellate Authority under the Payment of Gratuity Act, 1972 and others, reported in 2016(3) LLJ 719.***

In view of the aforesaid decisions, delay would not be hurdle for claiming gratuity.

11. It was further submitted that undisputedly petitioner has deducted provident fund from time to time during the period from August 1984 to November 1996. This is evident that petitioner is liable to pay gratuity to the 3rd respondent. The contention of the petitioner that respondent no.3 was appointed through contractor is false and no material has been placed on record to show that the 3rd respondent was appointed through a particular contract. It was further submitted that agreement entered into between the petitioner and some contractors do not reveal details of the contractor's name, date and other particulars. Therefore, any reliance on agreement or contract entered between the petitioner and the name of the contractor mentioned in the reply to the application for summoning the records may not hold good.

12. It was further submitted that for production of registers maintained by the petitioner were required to be maintained as per Section 29 of the Act 1970. Having regard to definition of principal employer under Section 2(g) and the contractor under Section 2(c) of Act 1970. It was also

submitted that even though contractor has not been impleaded, it was bounden duty of the management to summon the contractor as a witness to demonstrate that the 3rd respondent's services were engaged by the contractor for the purpose of discharging the duties in the petitioner – company.

13. While countering the petitioner's reliance on Section 2(d), 2(e) (6) of the Payment of Wages Act, 1936, he relied on decision reported in **2003(3) SCT 574 – M/s Madras Fertilisers Limited, Manali, Madras represented by its General Manager vs. The Controlling Authority under the Payment of Gratuity Act, Assistant Commissioner of Labour (Gratuity), Chennai and others (Para No.19).**

14. It was also submitted that it is for the petitioner to establish before the Controlling Authority to the extent of employer and employee relationship if the same is disputed by the petitioner. When the petitioner – company is stated to be that 3rd respondent was appointed through contractor, in that event, it is for the petitioner to establish before the Controlling Authority that 3rd respondent was appointed through contractor to discharge certain duties of the labourer with the petitioner – company. Thus, petitioner has not made out a case so as to interfere with the orders of the Controlling and Appellate Authority.

15. Heard learned counsel for the parties.

16. Question for consideration in the present petition is whether the respondent no.3 is a labourer with the petitioner and is he entitled to gratuity or not?

17. Both the petitioner and respondent no.3 – workman raising

dispute to the extent that respondent no.3 was working with the petitioner as a contract labourer through contractor. Whereas the respondent no.3 disputed the aforesaid issue to the extent that respondent no.3 was directly appointed by the petitioner – Cement Corporation. On this issue, neither of the parties raised any objection before the Controlling Authority. That apart if the 3rd respondent is appointed through a contractor and it is disputed by the respondent no.3, in that event petitioner should have cited contractor as a witness and so also necessary agreement entered into between a particular contractor who has lent the services of the respondent no.3 to the petitioner for the purpose of loading and unloading labourer. The 3rd respondent – workman submitted that there is enough material to show that the petitioner – Cement Corporation have deducted provident fund amount and remitted in the Provident Fund's office. Therefore, respondent no.3 was not appointed through contractor. In this background, perusal of the summoned records do not reveal for the period from 1984 to 1996 for which period the 3rd respondent is stated to have worked, whereas the contractors' name have been furnished by the petitioner 1997 onwards, moreover which contractor has lent the respondent no.3 – workman to the petitioner for discharging the duties of the loading and unloading as a labourer is not forth-coming. In the absence of determination of the 3rd respondent's status to the extent whether he has been directly engaged by the petitioner – Cement Corporation or through contractor, question of deciding who has to pay the gratuity cannot be determined. Thus, the Controlling and Appellate Authority have erred in extending the benefit of gratuity to the respondent – workman.

18. Accordingly, orders dated 31.12.2013 and 03.07.2015 of

Controlling and Appellate Authority (Annexures P/10 and P/12 respectively) are set aside. Matter is remanded to the Controlling Authority to decide the 3rd respondent's application for gratuity afresh. Both the parties are at liberty to produce necessary material before the Controlling Authority to decide who has to pay the gratuity and to what extent. Leaving open all the contentions of both the parties, respondent-workman is permitted to make necessary amended application, if any, so also amended statement of objections, if any, by the petitioner. Parties are hereby directed to appear before the Controlling Authority on 10.01.2018.

19. All 23 afore-mentioned writ petitions are allowed to the above extent.

November 14, 2017
vkd

[P.B. Bajanthri]
Judge

Whether speaking / reasoned : Yes

Whether reportable : No