

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18280 of 2015

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1. Bata India Ltd., Bataganj, Digha, Patna, through its General Manager/Unit Manager, namely- M. Srinivasa Rao, Son of Mr. Radhe Krishna Rao, resident of White Pillers, Bata India Limited, Bataganj, Digha, P.S.- Digha, District- Patna.
 2. The Personnel Manager, Baba India Ltd., Bataganj, Digha, Patna- 800018, namely Rambabu Prasad, Son of Shree Uday Prasad, resident of New Bigrampur, P.S.- Jakkanpur, District- Patna- 800001.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Labour Resources Department, Vikas Bhawan, New Secretariat, Bailey Road, Patna- 800001.
2. The Labour Commissioner-cum-Appellate Authority, Bihar (under the Payment of Gratuity Act, 1972), Labour Resources Department, Bailey Road, Patna- 800001.
3. The Deputy Labour Commissioner-cum-Controlling Authority, Patna (under the Payment of Gratuity Act, 1972), Labour Resources Department, 20,21/84, Officer's Flat, New Punaichak, Patna- 800023. null null
4. Ram Babu Rai, Son of Shree B. Nandu Rai, resident of Village- Makhdumpur, P.O.- Dighaghat, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Sinha, Adv.
For the State : Mr. Sunil Kumar, A.C. to GP-11
For the Respondent No.4 : Mr. Nand Kishore Prasad, Adv.
Mr. Deepak Ranjan, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 23-01-2018

Heard learned counsel for the petitioners, learned counsel
for the State and learned counsel for the respondent no.4.

2. The petitioners have filed this writ petition for quashing
the order dated 03.04.2014 passed by the Labour Commissioner-cum-
Appellate Authority in Gratuity Appeal No.03 of 2012 whereby and
whereunder the appeal has been dismissed. They have further prayed
for quashing the order dated 28.04.2012 passed by the Deputy Labour



Commissioner, Patna-cum-Controlling Authority in Gratuity Case No. 49 of 2007 whereby the claim of gratuity of respondent no.4 has been allowed and the management has been directed to make payment of the dues of gratuity amounting to Rs.35,340/- along with 10% interest in accordance with Section 7(3A) of the Payment of Gratuity Act, 1972 (for short 'the Act').

3. On 10.08.2007, the respondent no.4 submitted a claim of gratuity in the prescribed format before the Deputy Labour Commissioner against the petitioner Bata India Ltd. (for short 'company') under Section 7 of the Act, which was registered as G.A. Case No. 49 of 2007.

4. According to the respondent no.4, he was appointed on 07.05.1962 as 'piece rated worker' on temporary basis and worked continuously till his retirement i.e. 04.03.2003. Upon notices both the parties took part in trial, submitted their written statements and also adduced evidences in support of their pleadings. After hearing the parties, the Deputy Labour Commissioner, Patna-cum-Controlling Authority came to the conclusion that the respondent no.4 was appointed as 'piece rated employee' on 07.05.1962 and after his superannuation from service from the petitioner company on 04.03.2003, the management failed to calculate the amount of gratuity in accordance with Section 4(2) of the Act and consequently



paid an amount less than the due amount of gratuity to the respondent no.4. Accordingly, vide order dated 28.04.2012, the management was directed under Section 7(2) of the Act to make payment of the dues of difference of gratuity amounting to Rs. 35,340/- along with 10% interest per annum.

5. The petitioners preferred appeal before the Labour Commissioner, Bihar, Patna-cum-Appellate Authority under the Act, vide Gratuity Appeal No. 03 of 2012. After consideration of the case, an order was passed by the Appellate Authority on 03.04.2014 declining to interfere in the order dated 28.04.2012 passed by the Deputy Labour Commissioner-cum-Controlling Authority in G.A. Case No.49 of 2007.

6. Being aggrieved by the order passed by the Controlling Authority and the Appellate Authority, who rejected the appeal, the petitioners have filed the present writ petition challenging both the orders.

7. The contention of the petitioner is that the petitioner company is engaged in business of manufacture and sale of footwear. It employs various categories of employees like accord, non-accord and essential staff employees. Out of these, accord employees are directly associated with the production of the footwear that involves working on a machine or in the manual process of manufacturing.



From the very inception of the factory, as a practice, the workers are being paid fortnightly for the work done on a weekly computation basis irrespective of rest days and holidays. The basic wages of all the categories including the accord category of employees are agreed by way of settlement mutually arrived at between the petitioner and the Trade Union. The accord employees, who work in different operations in respect of the manufacture of footwear in the factory have a fixed standard production norm in a week for that category. The worker including the accord employee employed in the factory are also entitled to be paid leave, holidays and other benefits and service conditions application to them under the Factories Act, 1948 and other applicable legislations. The respondent no.4 while employed as accord worker in the company at Bataganj, Patna was working on preparing operations and used to get weekly wages that consisted of basic wage and annual extra, house rent allowances and other allowances.

8. Learned counsel for the petitioner submitted that the accord workers are 'time rated employees' and not 'piece rated employees' and the incentive paid to them cannot be treated as part of wages for the purpose of calculation of gratuity. In this regard, he placed reliance on the judgment of this Court dated 04.12.2013 in the matter of *Unit Manager, Bata India Limited Vs. The State of Bihar*



& Ors. (C.W.J.C. No. 3250 of 2007), as contained in Annexure-9.

9. Per contra, learned counsel for the State and learned counsel for the respondent no.4 submitted that the Controlling Authority duly considered the pleadings and evidences of both the parties and after due consideration of entire case, he came to the conclusion that the respondent no.4 was appointed as 'piece rated employee' on 07.05.1962 and after his superannuation from service from the company on 04.03.2003 the management failed to calculate the amount of gratuity in accordance with Section 4(2) of the Act. They submitted that the order passed by the Controlling Authority is in accordance with law giving proper reasoning and that is why the Appellate Authority declined to interfere in the order passed by the Controlling Authority. They submitted that the aforesaid orders passed by the Controlling Authority and the Appellate Authority are quasi judicial orders having been passed by the competent authority having proper jurisdiction and there being no illegality, the writ petition is fit to be dismissed. However, they conceded that in ***Unit Manager, Bata India Limited*** (Supra) this Court has already held that 'accord workers' are 'time rated employees' and not 'piece rated employees'

10. I have heard learned counsel for the parties and perused the record.



11. The dispute raised in the present writ petition is no more res integra. Earlier, like the respondent no.4, several other permanent accord worker including one Baleshwar Prasad Sinha had made similar claims for additional amount of gratuity on the same grounds like that of the respondent no.4 and in their cases also similar orders had been passed by the Controlling Authority as well as by the Appellate Authority allowing their claim by treating incentive as part of wages and by treating them as piece rate employees.

12. In the case of Baleshwar Prasad Sinha, the petitioner had challenged the order of the Controlling Authority as well as of the Appellate Authority by filing writ petition bearing C.W.J.C. No. 3250 of 2007 before this Court. After hearing the parties, this Court passed its judgment on 04.12.2013 in *Unit Manager, Bata India Limited* (Supra) in which all the legal issues arising out of the present factual matrix were answered against the concerned employee and it was held that the accord workers are 'time rated employees' and not 'piece rated employees' and also that the incentive paid cannot be treated as part of wages for the purpose of calculation of gratuity. The orders passed by the Controlling Authority as well as by the Appellate Authority were quashed in the said case, thereby permanently settling the legal issues raised herein.

13. Hence, I am of the considered opinion that all the legal



issues arising in this writ petition have already been answered and settled by this Court in the judgment dated 04.12.2013 passed in C.W.J.C. No. 3250 of 2007. The case of the petitioner is fully covered by the said decision.

14. Accordingly, the orders impugned dated 03.04.2014 passed by the Labour Commissioner-cum-Appellate Authority in Gratuity Appeal No.03 of 2012 and the order dated 28.04.2012 passed by the Deputy Labour Commissioner, Patna-cum-Controlling Authority in Gratuity Case No. 49 of 2007 are quashed. It is, however, directed that the amount of Rs.35,340/-, if already released by the Appellate Authority to the respondent no.4, shall not be recovered from him, but it is clarified that the respondent no.4 shall not be entitled to any interest on the said amount. If the said amount is still lying with the Appellate Authority, the same should be refunded to the petitioner company.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	29-01-2018
Transmission Date	

