IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18255 of 2015

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 pillars, Bata Pillars, Bata India Limited, Bataganj, Digha ,P.s Digha, District Patna.
2. The Personnel manager, Bata India Ltd. Bataganj, Digha, Patna -800018, namely Rambabu Prasad Son of Shree Uday Prasad resident of New Bigrahpur, P.s Jakkanpur , District -800 001

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Labour Resources Department ,Vikas Bhawan, New Secretariat , Bailey Road, Patna-800 001
2. The Labour Commissioner-cum-Appellate Authority, Bihar(under the Payment of Gratuity Act, 1972) Labour Resources Department, Bailey Road, Patna-800 001
3. The Labour Commissioner-cum-Appellate Authority, Bihar(under the Payment of Gratuity Act, 1972) Labour Resources Department, 20, 21/84, Officer's flat,New Punaichak, Patna -800 023
4. Shri Ram Chandra Sah son of Shree Baldeo Sah resident of Village-Parsaunia, P.o.- Kashi Pakri, P.S Madhuban, District Motihari.

.... Respondent/s

Appearance :

For the Petitioners	:	Mr. Alok Kumar Sinha, Adv.
For the Respondent Nos.1 to 3	:	Mr. M.K. Ambastha- GP14
For the Respondent No.4	:	None.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 27-06-2018

Heard learned counsel for the petitioners. Despite val;id service of notice upon the respondent no.4, he has neither appeared in person nor is being represented through advocate.

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 Case No.04 of 2012 whereby

the appeal has been dismissed under the Payment of Gratuity Act, 1972. 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. 26 of 2006 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.53,629/- along with 10% interest in accordance with Section 7(3A) of the Payment of Gratuity Act, 1972 (for short 'the Act').

3. From the pleadings of the petitioners and the perusal of the record it would appear that on 14.11.2006, 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. 26 of 2006.

4. According to the respondent no.4, he was appointed on 02.01.1969 as a 'piece rated worker' on temporary basis and worked continuously till his retirement i.e. 16.08.2005. 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 02.01.1969 and after his superannuation from service from the petitioner company on 16.08.2005, 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. 53.629/- along with 10% interest per annum.

5. Being aggrieved by the said order dated 28.04.2012 passed by the Deputy Labour Commissioner-cum-Controlling Authority dated 28.04.2012, the petitioners preferred appeal before the Labour Commissioner, Bihar, Patna-cum-Appellate Authority under the Act, vide Gratuity Appeal Case No. 04 of 2012. After consideration of the case, an order was passed by the Appellate Authority on 03.04.2014 declining to interfere with the order dated 28.04.2012 passed by the Deputy Labour Commissioner-cum-Controlling Authority.

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

7. The contention of the petitioners is that the 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. Since 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 petitioners 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. He submitted that the issue raised by the petitioners in the instant writ petition are no more res integra. In ***Unit Manager, Bata India Limited Vs. The State of Bihar & Ors. (C.W.J.C. No. 3250 of 2007)***, as contained in Annexure-6, a Bench of this Court has examined the issue in detail and has come to a finding that the employees like the respondent no.4 are time rated employees and they are entitled to production bonus in the form of incentive for any extra production above the fixed amount. In case such employees fail to produce the fixed amount of production, he would continue to be paid the wages, dearness allowances etc. calculated on the same. The Bench further observed that the salary of such employee is not dependent on number of pieces produced rather the incentive was dependent on extra production beyond a certain point. After the aforesaid observations, it was held that such incentive which is in the nature of production bonus cannot be included in the wages for the purpose of calculation of gratuity and proviso to Section 4(2) of the Act shall not be attracted.

9. Though, State has filed its counter affidavit, a submission has been made that the main contesting party is respondent no.4. However, it has been submitted that impugned orders do not suffer

from any illegality.

10. Having heard learned counsel for the petitioners and perused the record, I find that earlier, like the respondent no.4, several other permanent accord workers 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 the Appellate Authority allowing their claim by treating incentive as part of wages and by treating them as piece rate employees. However, this Court vide its judgment dated 04.12.2013 in ***Unit Manager, Bata India Limited*** (Supra) answered all the legal issues arising out of the present factual matrix 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.

11. As the issue raised by the respondent no.4 in the instant case is squarely covered by the judgment of this Court in ***Unit Manager, Bata India Limited*** (Supra), the orders impugned dated 03.04.2014 passed by the Labour Commissioner-cum-Appellate

Authority in Gratuity Appeal Case No.04 of 2012 and the order dated 28.04.2012 passed by the Deputy Labour Commissioner, Patna-cum-Controlling Authority in Gratuity Case No. 26 of 2006 cannot be sustained. Accordingly, they are set aside. However, the amount of Rs.53,629/-, 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	03-07-2018
Transmission Date	