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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No.69 of 2017**

Surendra Kumar Thakur S/o Late Rajaram Singh Thakur, Aged About 68 Years R/o LIG- 236, Dhanwantri Nagar, Bhukamp Basti, Maharana Pratap Ward, Gadha, Purva Gadha, District Jabalpur Madhya Pradesh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Water Resources, Hasdeo Bango Project, Indrawati Bhawan, Mantralaya, New Raipur, Chhattisgarh.
2. The Appellate Authority, Payment Of Gratuity Act 1972 And Office Of Deputy Labour Commissioner, Indrawati Bhawan, District Raipur Chhattisgarh.
3. The Executive Engineer, Mininata Bango Dam Project, Circle No.5, Kharsiya, District Raigarh Chhattisgarh.
4. The Controlling Officer, Payment Of Gratuity Act, 1972 And Office Of Assistant Labour Commissioner, Raigarh, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Rajesh Roshan Singh, Advocate.
For State	:	Ms. Astha Shukla, Panel Lawyer.

SB: Hon'ble Shri Justice P. Sam Koshy**Order on Board****10.09.2018**

1. The petitioner in the instant case was initially appointed as daily wage employee on 01.05.1974 in the office of the respondent No.3. After having put in about 24 years of service, the petitioner stood regularized in service of the respondents. Thereafter, he continued to work till his date of superannuation that was on 31.01.2008. As such, the petition served the respondents for about 33 years 8 months which under the Act could be rounded off as 34 years.
2. After his retirement, the respondents were reluctant in granting

payment of gratuity to the petitioner on the ground that since the petitioner was a government employee, Payment of Gratuity Act (in short, the Act) would not be applicable upon him. The petitioner however immediately filed a claim case under the provisions of the Act where the case was registered as gratuity case No.3/PGA/2014. After considering all the contentions put forth on either side and on perusal of records and documents produced before the Controlling Authority, the claim application finally stood allowed vide order dated 06.08.2015 and awarded an amount of Rs.1,37,046/- of which the respondents having paid Rs.26,495/-, the balance amount of Rs.1,10,551/- was ordered to be paid to the petitioner. It was further ordered that the petitioner was also entitled for interest on the said amount @ 10 percent totaling Rs.79,598/-.

3. Thus, the total amount payable by the respondents to the petitioner as a balance of payment of gratuity with interest was quantified as 1,90,149/- as it stood on the date of award i.e. 06-07.08.2015 (Annexure P/2). The controlling authority further quantified monthly interest on the said amount @ 921/- per month which was also awarded and it was ordered that beyond the date of award i.e. 06-07.08.2015 the petitioner would also be entitled for interest of Rs.921/- per month till the payment is actually made.
4. Against the said order, the respondent-State preferred an appeal before the appellate authority under the Act i.e. before the Dy. Labour Commissioner, Govt. of Chhattisgarh. However, vide order dated 06.12.2016 (Annexure P/1) deferring with the view taken by the

controlling authority, set aside the said order and held that the petitioner would not fall within the definition of an employee under Section 2(e) of the Act and held that since the petitioner was working initially as daily wage employee and subsequently was regularized under the contingency establishment, the petitioner would not be entitled for gratuity under the Act. It is this order which is under challenge in the present writ petition with a prayer that the respondents be directed to release the payment of gratuity at the earliest.

5. The Department of Finance, Govt. of Chhattisgarh has in the recent past issued various circulars/orders wherein they have held that so far as the employees working in the contingency establishment, the services rendered by such employees in the capacity of daily wager before their services were regularized in the contingency establishment, that period be also taken into account for the purpose of quantifying the total length of service for determining the pension and pensionary benefits. In the instant case also indisputably the petitioner from 1974 to 1998 worked as daily wage employee and was subsequently regularized in the year, 1998 and later stood retired in the year 2008 and as such the petitioner would also be entitled for the gratuity amount treating the period of daily wage also as qualifying service for quantifying the gratuity.
6. The issued raised in this petition had been recently examined by the Supreme Court in Civil Appeal No.1254 of 2018 in case of Netram Sahu Vs. State of Chhattisgarh & Another. The said judgment was

one which went from the State of Chhattisgarh and where the status of the appellant before the Supreme Court was similar to the petitioner in the present writ petition. In case of Netram (Supra) the controlling authority and the appellate authority both had passed an order in favour of the employee, but the order of controlling authority and the appellate authority when was put to challenge in High Court in WPL No. 178 of 2013 and the High Court set aside the order of the controlling authority and the appellate authority and the petition was allowed and it was ordered that the daily wage employee who have been regularized in service of the State Govt. would not be entitled for gratuity under the Act.

7. The said order of Single Bench was also affirmed by the Division Bench in Writ Appeal No.240 of 2014, decided on 01.08.2014. However, the Supreme Court setting aside both the orders of High Court affirmed the orders of controlling authority and the appellate authority under the Act and reached to the conclusion that the petitioner or the similarly placed employees who were initially engaged as daily wager and have subsequently regularized would be entitled for payment of gratuity. While deciding the claim, the Supreme Court in paragraphs 16 and 18 held as under :

“16.In our considered opinion, once the State regularized the services of the appellant while he was in State services, the appellant became entitled to count his total period of service for claiming the gratuity amount subject to his proving continuous service of 5 years as specified under Section 2A of the Act which, in this case, the appellant has duly proved.

18.....Having regularized the services of the appellant, the State had no justifiable reason to deny the benefit of gratuity to the appellant which was his statutory right under the Act. It being a welfare legislation meant for the benefit of the

employees, who serve their employer for a long time, it is the duty of the State to voluntarily pay the gratuity amount to the appellant rather than to force the employee to approach the Court to get his genuine claim.”

Keeping in view the aforesaid observations, the appeal of the petitioner/employee stood allowed with cost of Rs.25,000/-.

8. Coming back to the present case, indisputably the petitioner was initially engaged as daily wage employee on 01.05.1974 and his services were regularized in the contingency establishment on 03.11.1998 in which capacity the petitioner worked till his superannuation i.e. 31.01.2008. Taking reliance of the judgment of Supreme Court in case of Netram (Supra), this court has no hesitation in reaching to the conclusion that the case of the petitioner also is squarely covered by the said judgment of the Supreme Court.
9. Given the aforesaid facts and circumstances of the case, the impugned order of the appellant authority is not sustainable. The same deserves to be and accordingly stands set aside/quashed and it is ordered that the petitioner be paid gratuity amount under the Act in terms of the order passed by the controlling authority vide order dated 06.08.2015 (Annexure P/2).
10. The writ petition accordingly stands allowed. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge