HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.25380 OF 2009

ORDER:

1. This writ petition is filed seeking to issue a writ of Mandamus directing the respondents to pay balance gratuity amount of the petitioner by counting the continuity of service from the date of his initial appointment till retirement i.e., from 1975 to 31.7.2008 (after deducting the amount of gratuity already paid) with interest.

2. Heard Sri P. Govinda Rajulu, learned Counsel for the petitioner and Sri P. Durga Prasad, learned Standing Counsel for the respondents.

3. It has been contended by the petitioner that he was initially appointed as conductor in the year 1975 in the respondent-Corporation and he retired from service on attaining the age of superannuation on 31.7.2008. Further, it has been contended by the petitioner that during December, 1986, he was removed from service vide proceedings dated 20.12.1986 on the ground of certain cash and ticket irregularities, and thereafter, he filed I.D.No.357 of 1987 before the Industrial Tribunal, and the learned Tribunal vide order dated 1.12.1988 was pleased to modify the removal order to that of fresh appointment, and in pursuance of the orders of the Industrial

Tribunal, he was reinstated into service on 25.3.1989, and he retired from service on 31.7.2008, but the respondents have not paid the retirement benefits by counting the service of the petitioner from the date of his initial appointment till retirement. Hence, the present writ petition is filed.

4. The learned Counsel for the petitioner contended that gratuity on whole is to be paid for the services rendered by the employee by taking the last drawn wage by the employee, but the respondents split the gratuity into two spells and calculated the gratuity differently.

5. The learned Standing Counsel for the respondents contended that since no continuity of service was granted to the petitioner, the respondents have rightly paid gratuity in two spells and that no illegality has been committed by the respondents.

6. Now, the issue raised in this writ petition is as to whether the gratuity can be split into two parts i.e., from the date of initial appointment till removal and again from the date of reinstatement till retirement of the petitioner, and can be paid by calculating differently.

7. This Court has considered the rival submissions made by the parties and the material available on record. The gratuity amount is to be paid as per the formula fixed in the Act by duly

taking into account the total number of years of service put in by the employee. At this stage, it is relevant to extract Section 4 of the Gratuity Act, which reads as under:

Payment of gratuity. —

(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,—
(a) on his superannuation, or
(b) on his retirement or resignation, or
(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement;
Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority, if no nomination has been made, to his heirs.
Explanation .— For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.
(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:
Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:
Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days' wages for each season. Explanation. —In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.
(3) The amount of gratuity payable to an employee shall not exceed ten lakh rupees.
(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.
(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.
(6) Notwithstanding anything contained in sub-section (1),—
(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any

> *damage or loss to, or destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused;*
> *(b) the gratuity payable to an employee may be wholly or partially forfeited—*
> *(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or*
> *(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.*

The above provision makes it obvious that the gratuity shall be reckoned only on the basis of the last pay drawn and it cannot be split into spells. In the light of the above provision, it can be said that the action of the respondents in splitting the gratuity of the petitioner into two spells would amount to violation of the provisions of the Act. Therefore, the writ petition can be disposed of directing the respondents to pay the gratuity of the petitioner by calculating the same on the basis of last drawn wages and pay the difference to the petitioner.

8. Accordingly, the Writ Petition is disposed of directing the respondents to calculate the gratuity of the petitioner on the basis of last drawn wages and pay the difference to the petitioner, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

(ABHINAND KUMAR SHAVILI, J)

Dated: 3rd October, 2018
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HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.25380 OF 2009

Dated: 03.10.2018

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