

HIGH COURT OF CHHATTISGARH AT BILASPURWPL No. 12 of 2019

1. State Of Chhattisgarh, Through Secretary, Water Resources Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur, Chhattisgarh.
2. The Executive Engineer, Hasdeo Barrage, Water Management Division, Rampur, District Korba, Chhattisgarh.

---Petitioners

Versus

1. Smt. Rukhmani Bai Sahu W/o Late Shri Bhagwat Prasad Sahu, R/o Village Kalmi Duggu, Darri, Post Jamnipali, Police Station Darri, Tahsil Katghora, District Korba, Chhattisgarh.
2. The Appellate Authority Under The Payment Of Gratuity Act, 1972 And Deputy Labour Commissioner, Office Of The Labour Commissioner Chhattisgarh, Indrawati Bhawan, Naya Raipur, Chhattisgarh.
3. The Controlling Authority Under The Payment Of Gratuity Act, 1972 Office Of Assistant Labour Commissioner, Korba, District Korba, Chhattisgarh.

---Respondents

For State : Shri Jitendra Pali, Dy.A.G.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

16/01/2019.

1. The challenge in the instant Writ Petition is to the order Annexure-P/1 passed by the Appellate Authority under the Payment of Gratuity Act dated 04/11/2016 in Appeal Case No. 05/PGA/2016. The Appellate Authority had affirmed the order passed by the Controlling Authority, Payment of Gratuity Act in Case No. 8/PGA/Korba/2015 dated 03/10/2015.
2. The point of issue involved in the instant case is whether the respondent No.1 in the instant case would be entitled for the Payment of

Gratuity for the service rendered by her as daily wage employee. The State Government have assailed the two orders i.e. the order passed by the Controlling Authority as well as the one which has been affirmed by the Appellate Authority – Annexures – P/2 & P/1 respectively relying upon the decision of this Court in the case of WPL No. 178/2013 d/on 16/12/2013.

3. It has been brought to the notice of this Court that, the said order of this High Court had been subsequently reversed by the Hon'ble Supreme Court in the case of Netram Sahu v. State of Chhattisgarh & Anr. [2018 5 SCC 430] in Civil Appeal No. 1254/2018 decided on 23/03/2018] wherein the Supreme Court while deciding the said issue in paragraphs No. 14, 16, 17 & 18 has held as under:-

“14. We do not agree with this submission of learned counsel for the respondent-State for more than one reason. First, the appellant has actually rendered the service for a period of 25 years; Second, the State actually regularized his services by passing the order dated 06.05.2008; Third, having regularized the services, the appellant became entitled to claim its benefit for counting the period of 22 years regardless of the post and the capacity on which he worked for 22 years; Fourth, no provision under the Act was brought to our notice which disentitled the appellant from claiming the gratuity and nor any provision was brought to our notice which prohibits the appellant from taking benefit of his long and continuous period of 22 years of service, which he rendered prior to his

regularization for calculating his continuous service of five years.

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.

17. In the circumstances appearing in the case, it would be the travesty of justice, if the appellant is denied his legitimate claim of gratuity despite rendering “continuous service” for a period of 25 years which even, according to the State, were regularized. The question as to from which date such services were regularized was of no significance for calculating the total length of service for claiming gratuity amount once the services were regularized by the State.

18. It was indeed the State who took 22 years to regularize the service of the appellant and went on taking work from the appellant on payment of a meager salary of Rs.2776/- per month for 22 long years uninterruptedly and only in the last three years, the State started paying a salary of Rs.11,107/- per month to the appellant. 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.”

4. Since the grounds and issues which the State has raised in the instant Writ Petition are the same grounds under which the Supreme Court has decided, this Court is inclined to dismiss the Writ Petition in the light of the judgment of the Supreme Court in the case of Netram Sahu (Supra).
5. As a consequence, the Writ Petition stands dismissed.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit