

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 43 of 2014**

1. State Of Chhattisgarh, Through Secretary, Water Resources Department, Mahanadi Bhawan, Naya Mantralaya, Naya Raipur, P.S. Mandir Hasaud, Raipur C.G.
2. The Sub Divisional Officer, E/M Light Machinery, Tube well and Gate, Sub Division, Bemetara District Bemetara C.G. **---- Petitioners**

Versus

1. Shri Bashir Mohammad And Anr. S/o Shri Roonugu Mohammad, R/o Village And Post Khandsara, P.S. Bemetara, Distt. Bemetara C.G.
2. The Appellate Authority Under Payment Of Gratuity Act, And The Deputy Labour Commissioner, Raipur Distt. Raipur C.G. **---- Respondents**

For Petitioner/ State	:	Shri Alok Bakshi, Additional Advocate General
For Respondent	:	Shri A. D. Kuldeep, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****06/11/2019**

1. The challenge in this petition is to the order dated 22.11.2013 passed under Section 7 (7) of Payment of Gratuity Act, 1972 whereby the appellate authority has affirmed the order dated 10.07.2012 and has directed the State to make payment of the gratuity.
2. Learned counsel for the petitioner would submit that the only question which is involve in this petition as to whether the service rendered prior to regularization of the respondent would be considered as service rendered for the purpose of payment of gratuity. It is stated that the respondent was appointed on 01.12.1986 as daily wage employee and he was regularized on 13.08.2008 and subsequently retired on 28.02.2009. Learned counsel further submits that the order of the appellate authority has failed to take into

account that the gratuity was not payable prior to the regularization of services of the respondent.

3. The only issue involved in this case as to whether the respondent's service was to be counted prior to his regularization barring the date of his initial appointment. It is not disputed that on 01.12.1986 the respondent was appointed as a daily wage employee and subsequently he was regularized on 13.08.2008 and he was retired on 28.02.2009. He rendered a service of 23 years and the last drawn salary was Rs. 8,793/- per month. The issue involved as to the past services whether to be counted for purpose of payment of gratuity is no more res integra as the principle decided in **Netram Sahu Vs. State of Chhattisgarh and Another (2018) 5 Supreme Court Cases 430** wherein the Supreme Court has held that once the State regularize the services of the employee, the employee would become entitle to count his total period of service for claiming the gratuity, subject to his providing continuous service of 5 years as specified under Section 2 (A) of the Act, 1972. The Court further held it would be travesty of justice if the employees denied the legitimate claim of gratuity despite rendering continues service. Herein this case the respondent had joined the services in the year 1986 and retired on 2009 thereby 23 years continues service he has rendered. Consequently, following the principle laid down by the Supreme Court, I do not find any illegality in the order of the appellate authority dated 22.11.2013, whereby, the past services of the respondent were counted for the purpose of payment of gratuity.
4. The petition has no merit, in view of law laid down by the Supreme Court, it is accordingly dismissed.

Sd/-

Goutam Bhaduri
Judge