

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURWPL No. 4612 of 2008

1. C.E.O., Bharat Aluminium Company Ltd. [A Company Incorporated Under The Companies Act] Through its Duly Constituted Attorney Holder, Balco Nagar, Korba Chhattisgarh.

---- Petitioner

Versus

1. Controlling Authority, Payment Of Gratuity Act, 1972 Korba, District Korba Chhattisgarh.
2. Rehman Khan (Dead) Through LRs

2(A) Jakir Hussain S/o Late Abdul Rahman Aged About 50 Years R/o Qr. No. 1051, Adarsh Nagar, Kusmunda, P S Kusmunda, Tah. Katghora, Revenue And Civil District Korba Chhattisgarh.

2(B) Smt. Sayyara Khatoon W/o Sharif Ali, Aged About 40 Years R/o Village Jilga, Barpali, P S And Tahsil Kartala, Revenue And Civil District Korba Chhattisgarh.

2(C) Smt. Jubada Begam W/o Dauad Hussain Aged About 39 Years R/o Plot No. 191, T.P. Nagar, Revenue And Civil District Korba Chhattisgarh.

2(D) Smt. Najama Khatoon W/o Wajid Hussain Aged About 35 Years R/o Village Ghargoda, Revenue And Civil District Raigarh Chhattisgarh.

2(E) Smt. Amana Khatoon W/o Sajad Hussain Aged About 32 Years R/o Village Jilga, Barpali, P S And Tahsil Kartala, Revenue And Civil District Korba Chhattisgarh.

2(F) Nural Hassan S/o Late Abdul Rahman, Aged About 30 Years R/o Plot No. 191, T.P. Nagar, Revenue And Civil District Korba Chhattisgarh.

3. State Of Chhattisgarh Through Secretary, Labour D.K.S. Bhawan, Mantralaya, Raipur C.G.

---- Respondent

For Petitioner	Shri Abhishek Sinha, Advocate with Shri D.L. Dewangan, Advocate
For Respondents No.2 (A to 2(F))	None
For Respondent/State	Shri Suryakant Mishra, Panel Lawyer

Order On Board

By

Prashant Kumar Mishra, J.

01/08/2019

1. This writ application would call in question the legality, validity and correctness of the order passed by the Controlling Authority under Payment of Gratuity Act, 1972 (for short 'the Act') allowing the application of the workman namely; Rehman Khan (since deceased) filed under clause (b) of sub-section (4) of Section 7 of the Act.
2. The order impugned is appealable, however, this writ application has been preferred as the petitioner has challenged the jurisdiction of the concerned authority.
3. Shri Abhishek Sinha, learned counsel appearing for the petitioner, argued that the Assistant Labour Commissioner (ALC), Korba, who has passed the order impugned, was an officer appointed by the State Government, therefore, he could not have exercised the jurisdiction in respect of the proceedings under the Act of an employee belonging to the petitioner's establishment for whom the appropriate Government would be the Central Government and

consequently, the Assistant Labour Commissioner (Central) {ALC (C)} would be the Controlling Authority under the Act.

4. It is also argued that the concerned employee was terminated as charges of misconduct were found proved against him, but the said order of termination was set aside by the Labour Court and the Industrial Court. As against those orders, the petitioner had preferred WP No.354 of 2002, which was pending consideration at the time when the ALC, Korba, passed the present impugned order. However, today this Court has allowed the writ petition preferred by the management, therefore, in the changed circumstances the petitioner is entitled to pass a separate order under sub-section (4) of Section 6 of the Act taking a conscious decision whether or not to forfeit the gratuity admissible to the deceased workman.
5. At this juncture, learned counsel for the petitioner would also submit that in all matters of payment of gratuity BALCO is depositing the admissible amount before the ALC (C), who is the Controlling Authority, as the appropriate Government for the establishment of BALCO is the Central Government. Learned counsel would submit that if the workman moves any application before the ALC (C), BALCO shall not raise any objection as to jurisdiction.
6. In view of the above statement made and for the reason that at the time when the impugned order was passed the issue concerning the termination had not attained finality because the writ petition was pending as also for the reason that the management is entitled to take a decision in respect of the

issue of forfeiture of gratuity, keeping in view the nature of charges against the delinquent, the impugned order is set aside directing the petitioner to pass a separate order whether or not to forfeit the gratuity admissible to the deceased employee.

7. The petitioner shall pass an order under sub-section (4) of Section 6 of the Act within a period of three months from today after affording opportunity of hearing to the legal heirs of the workman.
8. Depending upon the nature of order passed by the petitioner, if the legal heirs of the workman are still aggrieved, they would be at liberty to move appropriate application under the Act before the ALC (C).
9. In such eventuality, the ALC (C) shall pass an order on merits without being influenced by the previous order of the ALC, Korba, vide Annexure – P/1 or any observation made in this order. Petitioner shall be entitled to withdraw the amount deposited with the ALC, Korba.
10. As a sequel, the writ petition is allowed to the extent indicated above. No order as to cost(s).

Sd/-

Judge
Prashant Kumar Mishra

Gowri