

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 27.11.2019**

+ **W.P.(C) 10027/2019 & CM APPL. 41509/2019**

NATIONAL BAL BHAWAN Petitioner

versus

VANDANA Respondent

+ **W.P.(C) 10050/2019 & CM APPL. 41579/2019**

NATIONAL BAL BHAWAN Petitioner

versus

ROOPA SHARMA Respondent

+ **W.P.(C) 10056/2019 & CM APPL. 41590/2019**

NATIONAL BAL BHAWAN Petitioner

versus

RAJ BALA Respondent

+ **W.P.(C) 10058/2019 & CM APPL. 41594/2019**

NATIONAL BAL BHAWAN Petitioner

versus

RENUKA AGGARWAL Respondent

+ **W.P.(C) 10059/2019 & CM APPL. 41597/2019**

NATIONAL BAL BHAWAN Petitioner

versus

SHAILAJA SHARMA Respondent

+ **W.P.(C) 10060/2019 & CM APPL. 41600/2019**

NATIONAL BAL BHAWAN

..... Petitioner

versus

ANJALI BINDRA

..... Respondent

+ **W.P.(C) 10066/2019 & CM APPL. 41612/2019**

NATIONAL BAL BHAWAN

..... Petitioner

versus

UMA SHARMA

..... Respondent

Present: Mr. S. Rajappa, Advocate with Mr. Ram Gupta and
Mr.R. Gowrishankar, Advocates for petitioner.

CORAM:

HON'BLE MR. JUSTICE A.K.CHAWLA

J U D G M E N T

A.K. CHAWLA, J. (ORAL)

The instant seven (07) writ petitions have come to be preferred by the petitioner–National Bal Bhawan assailing the order dated 11.02.2019 passed by the Assistant Labour Commissioner (Central), Delhi, whereby, the petitioners have been granted gratuity of Rs.2,21,538/-, Rs.1,84,038/-, Rs.8,827/-, Rs.2,35,386/-, Rs.1,90,385/-, Rs.2,28,462/- & Rs.2,35,385/- respectively, along with simple interest @ 10% p.a. as provided for under

Section 7 (3A) of the Payment of Gratuity Act, 1972 in short, 'the Act, 1972'.

2. In view of the fact that a common question of law as regards the applicability of the Act, 1972 is agitated, all the petitions are taken up for hearing together.

3. In the submissions of Mr. Rajappa, Id. counsel for the petitioner, the petitioner is entirely funded by the Ministry of Human Resource and Development and therefore, it falls within the definition of State as enshrined under Article 12 of the Constitution. It is thus contended that the respondents are deemed to hold a post under the Central Government and thereby, excluded from the category of the employees to whom the Act, 1972 applies. The thrust of his submissions is founded on the definition of employee as provided for under Sub-Section (e) of Section 2 of the Act, 1972.

4. Sub-Section (e) of Section 2 of the Act, 1972 reads as follows:

*“2(e) “employee” means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, **but does***

not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.”

(emphasis supplied)

5. When Mr.Rajappa adverts to the foregoing definition of employee as provided for under the Act, 1972, on being queried during the course of hearing, he is at pains to explain the context in which the post held by the respondents can be construed to be a post under the Central Government. More so, when, undisputedly, the petitioner is a society registered under the Societies Registration Act, 1860 and an autonomous body. Mere funding or assuming, entire funding for running the affairs of such society, cannot change the character or identity of the Society being an independent autonomous body. How come then, rendering of services to such autonomous body by the respondents be construed to be a post under the Central Government, Mr.Rajappa, Id. counsel for the petitioner, is at pains to explain. In plain words, the respondents cannot be said to be holding a post under the Central Government. They are also not shown to be governed by any other Act or by any Rules providing for payment of gratuity. In the given factual conspectus, how can the respondents be said to be excluded from the applicability of the Act, 1972 adverting to the definition of 'employee' as defined in Sub-Section (e) of Section 2 of the Act, 1972,

cannot be understood. It does not appear that Mr. Rajappa did not understand such simple way of looking at the given provision. He seems to be constrained by the instructions to have a decision on merits by the Court. His difficulty can be understood being a counsel with a limited brief. I am constrained to observe so, in view of the fact that at the threshold of the matter coming up for hearing, the Court had expected the petitioner to look into the given context and reconsider.

6. In the written submissions filed on behalf of the petitioner, the reliance is placed upon the observations made in '*Ajay Hasia etc. vs. Khalid Mujib Sehravardi & Ors.*' to contend that when the Central Government has control on the working of the society, it is merely a projection of the Government inasmuch as it is the voice of the State. There cannot be any dispute about the observation so made but the context in which it comes cannot be overlooked. The said observations were made in the context of a legal entity, to consider, as to whether such body was to be construed to be an instrumentality or an agency of the State as enshrined under Article 12 or not. There cannot be any difference of opinion in holding that the petitioner is an instrumentality or agency of the State, but, equally, it cannot be forgotten that the petitioner is an autonomous body registered under the

Societies Registration Act. A Society or a Corporate Body, which is created by a Statute or wholly funded by the funds provided by the Union / State and / or its affairs are substantially to achieve the public functions, is to be treated to be an instrumentality or agency of the State for the purposes of maintaining an action under Article 226 of the Constitution of India and nothing beyond. The independent character of such Body or Society does not change otherwise. The contention raised to the contrary by Mr.Rajappa is thus, wholly misconceived and is rejected.

7. Undisputedly, the respondents were offered appointment by the petitioner in its own rights. There is a relationship of employer and employee amongst the petitioner and the respondents is also not in question. Petitioner is an establishment under the Act, 1972, also not being in question and sub-Section (e) of Section 2 of the Act, 1972 not coming to the aid to the petitioner, there is no reason as to why, the respondents would not be covered within the purview of the Act, 1972.

8. In the other limb of his submissions, though Mr. Rajappa, ld. counsel for the petitioner contended that the respondents were part time employees and therefore, the Act, 1972 was not applicable to the respondents, he fails to point out any statutory provision, rule or regulation, in support of such

submissions. The Court does not find merit even in the submission so made. An employee is an employee, whether on casual, ad-hoc or part time basis. The definition of employee in the Act, 1972 also does not speak of any specific categories of the employees for its applicability, be it, regular, ad-hoc, part time, casual etc. etc. As for the payment of gratuity under the subject Act, to assess the quantum thereof, it provides for the definition of wages in sub-Section (s) of Section 2, which reads as under:

“wages” means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.”

9. The combined reading of sub-Section (e) and sub-Section (s) of Section 2 of the Act, 1972 leaves no doubt that the gratuity is payable to the employees defined under the subject Act and is to be assessed on the basis of the wages / emoluments, within the ceiling limit as provided there-under.

10. During the course of hearing, Mr.Rajappa also submitted that the respondents were paid only the consolidated wages besides conveyance. The impugned order takes note of the consolidated salaries of the respondents as Rs.300-20-400 p.m. w.e.f. 11.11.1986, Rs.400-20-500 p.m. w.e.f.

15.06.1987, Rs.400-20-500 p.m. w.e.f. 15.05.1990, Rs.200/- p.m. w.e.f. 11.05.1984, Rs.200/- p.m. w.e.f. 05.11.1983, Rs.200/- p.m. w.e.f. 11.05.1984, Rs.200/- p.m. w.e.f. 16.05.1983. It would thus be seen, for few of the respondents, who are equally stated to be part-time employees, the petitioner has provided for the increments, apparently, on yearly basis. All of them, undisputedly, have rendered their uninterrupted services for more than five (05) years to be eligible for the gratuity under the Act, 1972. Most of them have rendered services for almost 30 years or more and they have come to be declined the entitlement of gratuity, that too, by a Society, which is stated to be wholly funded by the Central Government. They are not entitled to pension as they are not the regular employees under the Central or the State Government nor the society on its part is shown to have any such scheme. Fact however remains that the payment of gratuity is a Statutory liability under the Act, 1972. Thus, for the respondents services having been availed for over the years, most of them having been the employees of the petitioner for decades, denial of gratuity to them, is to leave them in lurch, when they superannuated. What to talk of bread and butter, they are left even without bread, a basic necessity for survival. It is a reflection of total

insensitivity to their just cause, which, the petitioner has failed to advert to, ignoring the genesis of the beneficial legislation like the Act, 1972.

11. For the foregoing reasons, the writ petitions are dismissed with costs of Rs.20,000/- each, in all Rs.1,40,000/- (Rupees One Lac Forty Thousand Only), to be deposited with **The Blind Relief Association**, Lala Lajpat Rai Road (Lal Bahadur Shastri Marg), Near The Oberoi Hotel, New Delhi-11003, within four weeks from today. Pending applications stand disposed of.

12. Registry to list the matter before the Court in the event, receipt of deposit of costs is not filed within five weeks from today.

13. At this stage, Mr. Rajappa, Id. counsel for the petitioner submits that the time to release the gratuity may be extended. Time to release the gratuity is extended for two weeks from today.

Order *dasti* under the signatures of Court Master.

A. K. CHAWLA, J

NOVEMBER 27, 2019

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