

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 19.02.2019

+ W.P.(C) No.2934/2012

THE EXECUTIVE ENGINEER CPWD Petitioner
Through Mr.Arun Bhardwaj, Adv.

versus

GHANSHYAM SINGH AND ORS Respondents
Through Mr.Manoj Joshi, Adv. with
Mr.Rahul Sharma, Adv.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition under Articles 226 & 227 of the Constitution of India, the petitioner/CPWD impugns the Award dated 21st June, 2011 passed by the learned Labour Court No.1, Karkardooma Courts, New Delhi in ID No.61 of 2011. By way of the impugned order, the Court has directed the petitioner/CPWD to pay gratuity to the twelve respondents at the time of their superannuation/death by including the period during which they had worked on muster roll.

2. The undisputed facts which emerge from the record are that the respondents were initially engaged as Beldars on muster roll basis during the period from 1979 to 1984 and were subsequently regularised on different dates during the period from 1991 to 1993. In 2004, the respondents raised an industrial dispute seeking regularization from the date of their initial appointment on muster

roll basis, which was referred by the competent authority to the learned Labour Court. Before the learned Labour Court, the respondents gave up their relief for regularization and confined their relief to get gratuity by including their service for the period during which they had served as muster roll employees. The learned Labour Court after considering not only the scope of Rule 14 of the CCS (Pension) Rules, 1972 but also the effect of the Office Memorandum (OM) dated 14th May, 1968 which was reiterated on 26th June, 2006, found merit in the respondents' claim that they were entitled to get gratuity by including their period of service on muster roll.

3. Aggrieved with the aforesaid Award, the petitioner/CPWD has approached this Court by way of the present petition.

4. Impugning the award, Mr. Nikhil Bhardwaj, learned counsel for the petitioner states that the learned Labour Court, while directing the petitioner to count the muster roll services of the respondents for quantifying the gratuity payable to them, has relied on an OM dated 14th May, 1968 without appreciating the fact that the said OM had ceased to be operative after the CCS (Pension) Rules, 1972 were notified. He further states that even otherwise, the said OM only provides for counting the periods during which the workman is paid from the contingency fund and does not include the period during which he is paid wages from work charge fund, as is the case of the respondents who were paid from the work charge fund while working on muster roll. He, therefore, prays that the impugned Award be set aside.

5. On the other hand, Mr. Manoj Joshi, learned counsel for the respondents while supporting the impugned Award, states that there is no infirmity in the Award as the learned Labour Court has

not only noticed the effect of Rule 14 of the CCS (Pension) Rules, 1972, but also considered the fact that the DOPT had issued a detailed OM dated 14th May, 1968 directing inclusion of the period during which a workman has rendered services on muster roll for the purposes of gratuity, which position has been reiterated by issuance of a Circular dated 26th June, 2006. He, thus, states that the learned Court was justified in directing the petitioner to pay gratuity to the respondents by counting the period during which they have worked on muster roll. He also places reliance on the decision in *Union of India & Anr. Vs. Bhagwan Shahai & Ors. (2015) 216 DLT 404*, wherein this Court while dealing with the claims for pension of similarly placed workmen in the service of CPWD, had directed continuity of their service on muster roll while computing the period for which they are entitled to get gratuity.

6. I have heard the learned counsel for the parties and with their assistance, perused the record. In my view, once the Director General (Works), CPWD himself issued a circular as late as on 26th June, 2006 clarifying that gratuity under the Payment of Gratuity Act, was payable not only to casual workers but also to daily rated and muster roll workers, there is no reason as to why the respondents should be deprived of the benefit of gratuity for their period of service on muster roll. Even otherwise, the Payment of Gratuity Act does not differentiate in the casual or regular period of service and in fact includes all types of service. There is nothing to show that the intention of the legislature was to exclude muster roll service while computing the gratuity of an employee who is subsequently regularised. The Act being a piece of Social Welfare Legislation cannot be interpreted so narrowly so as to exclude the

muster roll service of employees like the respondents who have subsequently been regularised.

7. For the aforesaid reasons, I find absolutely no perversity or infirmity in the impugned Award dated 21st June, 2011. It is further directed that in case the gratuity of any of the respondents has become due during the pendency of the present writ petition, the same will be released immediately along with applicable interest in terms of the impugned Award.

8. The writ petition being meritless is dismissed.

(REKHA PALLI)
JUDGE

FEBRUARY 19, 2019/aa