

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPL No. 2375 of 2011

- Sub Area Manager, Surakachhar Colliery Of S E C L, P. O. Bankimongra, Distt. Korba C. G.

---- Petitioner

Versus

1. Appellate Authority And The Regional Labour Commissioner Central Under The Payment Of Gratuity Act - 1972, Raipur C. G.
2. The Controlling Authority under the Payment Gratuity Act- 1972 (Assistant Labour Commissioner, (Central), Bilaspur C.G.
3. Shri Shobnath Pandey, R/o Qtr. No. MQ 8/1, Ghurdewa, P.O. - Bankimongra, Distt. Korba C.G.

---- Respondents

For Petitioners	:	Shri Sudeep Agrawal with Shri Vivek Kumar Agrawal, Advocate
For Respondent No. 3	:	None

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

08.06.2020

Heard.

1. On the earlier occasion the matter was partly heard and today again the matter was taken up and today Shri Gary Mukhopadhyay, learned counsel for respondent No.3 was informed however after repeated pass overs he was not available, therefore in his absence the matter was heard.
2. The challenge in this petition is to the order dated 22.11.2010 passed by the Appellate Authority /Regional Labour Commissioner Central Raipur, C.G.
3. The facts of this case are that Respondent No. 3 was under service of the petitioner/ SECL and Respondent No. 3 retired on 30.04.2003. Initially Respondent No. 3 filed an application before the controlling authority for difference of arrears of Gratuity as the wages were not calculated as per National Coal Wage Agreement-VII and under ground allowances was not paid according to NCWA VII. The controlling authority by its order dated 31.07.2009 (Annexure P-5) (appears to be communicated on 14.08.2009)

dismissed the application of the Respondent No. 3. The said order was subject of challenge before the Appellate Authority, the Regional Labour Commissioner. The Appellate Authority has passed the impugned order on 22.11.2010 and Respondent No. 3 was held entitle for the under ground allowance according to the National Coal Wage Agreement VII.

4. It is contended that Respondent No. 3, since retired on 30.04.2003 the under ground allowance was paid according to the National Coal Agreement-VI which was in operation at the relevant time. The National Coal Wage Agreement-VII came into operation on 01.07.2004, consequently the benefit of revised coal wage agreement- VII for underground allowances was made applicable on 01.07.2004 cannot be made operative to the Respondent No. 3. It is further contended even as per the Payment of Gratuity Act, 1972 wages do not include any allowances. It is stated above all since benefit to under ground allowances for wages under Coal Wage Agreement-VII subsequently came into operation after retirement of Respondent No. 3, the benefit of under ground allowance as per Nation Coal Wage Agreement-VII cannot be paid to Respondent No. 3.
5. Learned counsel for the Respondent on the earlier date of hearing had submitted that the revised wage has to be calculated as per the National Coal Wage Agreement from time to time and for the purpose of Gratuity, the wages are to be included as per National Coal Wage Agreement-VII.
6. Perused the documents. It is not in dispute that the Respondent No. 3 retired on 30.04.2003. Chapter - IV of the National Coal Wage Agreement-VI (Annexure P-2) takes within its sweep that for the purpose of gratuity and post reitrement benefits, the under ground allowances shall be treated as "wages". Therefore, the under ground allowance would be payable to the employee is to be calculated for the purpose of wages. The petitioner has already paid and calculated the gratuity by taking into account wages by including the under ground allowance, therefore Respondent No. 3 cannot be allowed to raise the ground that the wages according to the

Gratuity Act since do not include the allowances as such the under ground allowances cannot be considered as part of wages.

7. The National Coal Wage Agreement VII (Annexure P-8) came into operation on 15.07.2005. As per Chapter 1, it is stated that the agreement shall be called NATIONAL COAL WAGE AGREEMENT-VII (hereinafter shall be referred to as NCWA-VII) and will be effective from 01.07.2001 to 30.06.2006. Chapter IV of it deals with the under ground allowances. In Clause 4.2.0, it has been stated that the under ground allowances shall be payable from 01.07.2004 @ 10% of the revised basic wage upto Rs. 9,000/- per month and @ 12.5% of revised basic wage of Rs. 9,001/- and above uniformly.
8. Therefore, even as per NCWA VII terms set out that the under ground allowances as would be payable from 01.07.2004 irrespective of the fact that NCWA-VII was effective from 01.07.2001 to 30.06.2006. In respect of the under ground allowances, specific applicable date was given i.e. payable from 01.07.2004 is of the revised basic wage. Therefore, when the Respondent No. 3 stands retired on 30.04.2003 and under ground allowance as was applicable to be paid from 01.07.2004, it cannot be made retrospective in operation and made applicable to calculate within the wages for the purpose of gratuity. In view of the same, the order of the Appellate Authority (Annexure P-1) dated 22.11.2010 appears to have been mis-founded and the facts and findings arrived at by the appellate authority by Annexure P-5 appears to be more logical and sound. In a result, Annexure P-1 cannot be allowed to be sustained and accordingly the same is set aside. The order of the controlling authority passed under the Payment Of Gratuity Act dated 31.07.2009 (Annexure P-5) is restored.
9. In view of the above, the petition is allowed. No order as to costs.

Sd/-
Goutam Bhaduri
Judge