IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5076/2016

Nabi Mehboob Sheikh
..VS..
The Director Personnel, Western Coalfields Limited & anr.

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Mr. S.K. Pashine, Advocate for the petitioner
Mr. A.M. Ghare, Adv a/b Mr. R. Gahlot, Adv for the respondents

CORAM : MANISH PITALE, J.
DATED : 23/01/2020

1] By this writ petition, the petitioner has challenged the concurrent orders passed by the Controlling Authority and the Appellate Authority under the provisions of the Payment of Gratuity Act, 1972 (hereinafter referred to as "the said Act") whereby the grievance raised by the petitioner as regards improper calculation of gratuity, has been rejected by both the authorities. The facts leading up to the filing of the present writ petition are that the petitioner was in employment of the respondent – Western Coalfields Limited and it is undisputed that he continued performing his duties till 19/09/2010. Thereafter, the petitioner could not attend duty as he suffered an accident and he had to undergo extensive medical treatment. The petitioner superannuated on 30/06/2012.

2] When the question of payment of gratuity to the petitioner arose under the provisions of the said Act, the respondents calculated the amount payable to the petitioner on the basis of the last wages that he had drawn as on 19/09/2010 and disbursed the amount to the petitioner. Although, the petitioner admittedly could not attend duty after 19/09/2010 till superannuating on 30/06/2012, the respondents calculated the gratuity payable to the petitioner on every completed year of his service up to 30/06/2012.

3] The petitioner raised a grievance before the Controlling Authority under the provisions of the said Act, contending that when he was treated as having been in service till he superannuated on 30/06/2012, the wages payable to him on the said date ought to have been taken into consideration by the respondents while calculating the gratuity. It was claimed that in the meanwhile, the National Coal Wage Agreement – IX had come into effect, as a result of which the quantum of wages had increased and that therefore, the petitioner was entitled to benefit of the wages that were payable to him as on 30/06/2012 under the said wage agreement.

4] The Controlling Authority rejected the application filed by the petitioner by holding that since the petitioner had been on duty only till 19/09/2010 and wages were last drawn by him at that point of time, the basis of calculation applied by the respondents could not be said to be erroneous.

5] The Appellate Authority agreed by the findings of the Controlling Authority and accordingly dismissed the appeal filed by the petitioner, although relief of amount of Rs. 9852/- was granted to the petitioner because there had been a calculation mistake on the part of the respondents.

6] It is significant that in the present case the petitioner had initiated litigation with regard to his entitlement for wages for the period between 19/09/2010 and 30/06/2012. Initially, the said relief was granted to him by the Labour Court and a specific order under Section 33C (2) of the Industrial Disputes Act, 1947 was passed in his favour. But on the respondents challenging the same in W.P. No. 1985/2013, by judgment and order dated 01/10/2013, the order of Labour Court was set aside and it was held that the petitioner was not entitled for wages for the period between 19/09/2010 and till his superannuation on 30/06/2012. This judgment passed against the petitioner by this Court is relevant for the purposes of considering the contentions raised on behalf of the petitioner in the present writ petition.

7] Mr. S.K. Pashine, learned counsel appearing for the petitioner invited attention of this Court to a document at page-36 of the writ petition, being a page from the service book of the petitioner. It was pointed out that the respondent – WCL itself through its authorized officer had recorded in the said document that as on 30/06/2012 when the petitioner superannuated, the salary payable was Rs. 1086.21. On this basis, it was submitted that when the respondent – WCL itself in service book had made such a noting, the said amount i.e. Rs. 1086.21 ought to have been the basis for calculating gratuity that was payable to the petitioner. On this basis, it was submitted that the authorities below committed a grave error in rejecting the contentions raised on behalf of the petitioner. It was submitted that once the petitioner was treated to be in service as per the service book maintained by the respondent – WCL itself, the contentions of the petitioner ought to have been accepted. It was further submitted that the authorities below had recorded that the name of the petitioner was never struck off from the role of employees by the respondents and no action for absenteeism was also taken against him and that having noted such facts, the authorities below erred in holding against the petitioner.

8] On the other hand, Mr. A.M. Ghare, learned counsel appearing for the respondents submitted that the definition of wages in Section 2 (s) of the said Act and the basis for calculating amount of gratuity as specified in Section 4 (2) of the said Act made it abundantly clear that no error was committed in the calculation of amount of gratuity payable to the petitioner and the basis thereof. It was submitted that the petitioner admittedly drew his last wages till 19/09/2010 while he was on duty and that any subsequent wage revision till he attained superannuation on 30/06/2012 was irrelevant for calculation of amount of gratuity payable. It was submitted that the judgment and order passed by this Court in W.P. No. 1985/2013 took away the basis of the contentions raised on behalf of the petitioner as it was found as a fact that the petitioner did not perform duty after 19/09/2010. On this basis, the claim of the petitioner for wages for the period between 19/09/2010 and 30/06/2012 was rejected. On this basis, it was submitted that no interference was warranted in writ jurisdiction in the concurrent orders passed by the authorities below against the petitioner.

9] Heard learned counsel for the rival parties and perused the material on record. In order to examine the contentions raised on behalf of the petitioner, it would be appropriate to refer to the relevant provisions of the said Act.

> "2. Definitions:- In this Act, unless the context otherwise requires,----
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> (a) ….
> (b) ….
> (c) ….
> (d) ….
> (e) ….
> (f) ….
> (g) ….
> (h) ….
> (i) ….
> (j) ….
> (k) ….
> (l) ….
> (m) ….
> (n) ….
> (o) ….
> (p) ….
> (q) ….
> (r) ….
> (s) "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.

4. Payment of Gratuity.---

> (1) ….
> (2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:."

10] A perusal of the above quoted relevant portions of the provisions of the said Act would show that gratuity would be payable to an employee on the basis of wages earned by him/her while on duty or on leave in accordance with the terms and conditions of his/her employment. Section 4 (2) of the said Act specifies that the quantum of gratuity would have to be calculated on the basis of wages based on the rate of wages last drawn by the employee. A conjoint reading of the said provisions shows that the basis of calculation has to be on the basis of the rate of wages last drawn and which were earned by the employee either while on duty or on leave in accordance with the terms and conditions of the employment.

11] In the present case, admittedly, the petitioner was last on duty on 19/09/2010 and thereafter till his superannuation on 30/06/2012, the petitioner was not on duty. The judgment and order dated 01/10/2013 passed by this Court in W.P. No. 1985/2013 has conclusively held that the petitioner had not performed duty between 19/09/2010 and 30/06/2012 and that therefore, he was not entitled to wages for the said period. On this basis, the order passed by the Labour Court under Section 33C (2) of the Industrial

Disputes Act, 1947 was set aside by this Court. Therefore, it cannot be said that the petitioner was to be treated as on leave in accordance with the terms and conditions of his employment.

12] As a result, particularly in the light of the fact that by the aforesaid judgment and order passed by this Court in W.P. No. 1985/2013 when the petitioner was held not entitled for wages between 19/09/2010 and 30/06/2012, the rate of last wages drawn, was the wage that he actually was drawing as on 19/09/2010. It is this wage that has been taken into consideration by the respondents while calculating the amount of gratuity payable to the petitioner. In fact, the respondents have treated the petitioner as in service up to 30/06/2012 while calculating the gratuity payable to him by applying Section 4 (2) of the said Act, thereby showing that the requirements of the said Act were fully complied with.

13] It is in this backdrop that the document at page-36 has to be appreciated. It is part of the service book of the petitioner wherein it is merely recorded that as on 30/06/2012, the wages under the National Coal Wage Agreement - IX were payable at Rs. 1086.21. But, the said document does not show that such was the wage actually last drawn by the petitioner. In fact, the judgment and order passed by this Court in W.P. No. 1985/2013 clearly held that the petitioner was not entitled to any wages as between 19/09/2010 and 30/06/2012. Therefore, taking the last wage drawn by the petitioner as on 19/09/2010 as the base for calculation of gratuity, was the only approach that the respondents could have adopted by applying the provisions of the said Act in the facts and circumstances of the present case.

14] In view of the above, it is found that no error can be attributed to the concurrent orders passed by the Controlling Authority as well as the Appellate Authority in the present case. Accordingly, the writ petition is found to be without any merit and it is **dismissed**.

JUDGE

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