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

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Decided on: 06.02.2020

+ **W.P.(C) 10290/2015**

THE MANAGEMENT OF BIRLA TEXTILE MILLS. Petitioner

Through: Dr. M.Y. Khan, Adv.

versus

KANHIYA LAL

..... Respondents

Through: Mr. Sarfaraz Khan, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The sole issue for determination in this petition is whether gratuity ought to have been paid to the workman for the period for which he did not render services. On the previous date i.e. 14.01.2020, the following order was passed:-

"1. The present writ petition filed by the management assails order dated 08.09.2015 passed by the Controlling Authority. Under the impugned Award, the Tribunal has rejected the petitioner's appeal against the order passed by the Controlling Authority directing it to pay gratuity to the respondent for his entire period of service between June 1966 to 31.10.2007, totalling a sum of Rs. 1,05,165/- along with simple interest @ 10% per annum w.e.f. 31.10.2007.

2. Learned counsel for the petitioner submits that even though the respondent's termination was found to be illegal and he was directed to be reinstated in service with full back wages by the learned Labour Court, this Court vide its order dated 11.10.2012 passed in WP (C) 2403/1998 filed by the petitioner, had modified the relief of reinstatement with back wages to that of lump sum compensation of Rs.2,00,000/- in lieu of reinstatement. He, therefore, contends that the respondent was not entitled to claim gratuity for the period when he was not in service after his termination on 05.06.1992. He submits that once the respondent was, as a consequence of this Court's order, not reinstated in service after 05.06.1992 his claim for gratuity for any period thereafter was wholly misplaced specially since this Court had modified the relief of reinstatement with back wages as granted by the Labour Court to that of lump sum compensation after noticing the fact that the petitioner Mill already stood closed on 30.11.1996.

3. On the other hand, learned counsel for the respondent supports the impugned Award by stating that merely because this Court had not granted de-facto reinstatement to the respondent, he cannot be deprived of notional service and consequently deprived of statutory benefits under the payment of gratuity Act for the said period. He further submits that this Court while modifying the relief as granted by Labour Court to that of lump sum compensation had specifically observed that there was no infirmity in the Award passed by the Labour Court. He, therefore, contends that it will be highly unfair to deprive the respondent of his statutory dues for the period when he was prevented from discharging duties only because of the illegal action of terminating him from service and that too when both the Labour Court and this Court have held the said termination to be illegal. He finally submits that the respondent, who is about 75 years of age, has already received the gratuity amount

in terms of the impugned Award and therefore, prays that the writ petition be dismissed.

4. Learned counsel for both sides pray for time to cite case law in support of their aforesaid submissions.

5. At request, list on 06.02.2020.”

2. What emanates from the above is that the company had closed on 30.11.1996 in terms of the order of the Supreme Court. The workman's services, could have been terminated on the basis of retrenchment and/or appropriate rules. Once company ceases to operate, no services would be renderable to it. Hence, on the face of it for the claimant to seeks gratuity for a period thereafter would be anomalous. Vide this Court's order dated 11.10.2012 in W.P.(C) 2403/1998, a lump sum amount of Rs. 2,00,000/- was fixed as compensation in lieu of re-instatement with full back wages. No infirmity was found in the award.

3. Be that as it may, the fact which still is most glaring is that the company had ceased to exist as on November 1996 in Delhi. The gratuity would therefore be payable only for the period that he was in service. This Court's order dated 11.10.2012 did away with his reinstatement in service. Therefore, his services would be counted only till the date the company existed. It is a matter of record that Rs. 1,05,165/- has been paid towards gratuity in the year 2015. The amount already paid shall be appropriated.

4. In the circumstances, no gratuity would be payable to the respondent beyond November 1996. Therefore, the impugned order is modified accordingly. The respondent-workman has already been paid Rs. 1,05,165/-

His age is 75 years. In the peculiar facts of the case, no recovery of excess amounts paid to him shall be recovered.

5. The case is disposed-off in the above terms.

NAJMI WAZIRI, J

FEBRUARY 06, 2020

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