

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 714 of 2009

Manager Chhattisgarh State Co-operative Marketing Federation Ltd.
Nutan Kisan Rice Mill Ramsagar Para Raipur, Chhattisgarh.

---- Petitioner

Versus

Ram Swaroop Sahu C/o Shri Dushyant Tiwari, H. No. 25/45, Brahmin
Para, Raipur, Chhattisgarh.

---- Respondent

For Petitioners	:	Dr. N.K. Shukla, Senior Advocate with Shri Shailendra Shukla and Shri Arijit Tiwari, Advocates.
For the Respondent	:	None.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

06.08.2021

Heard.

1. This petition under Article 227 of the Constitution of India has been brought against the impugned order dated 28.11.2007 passed by the Controlling Authority under Payment of Gratuity Act, 1972 and Additional Labour Commissioner, Raipur and the order of Appellate Authority under Payment of Gratuity Act, 1972 dated 2.8.2008, by which the appeal has been dismissed.
2. The respondent had made a representation to the Controlling Authority under Payment of Gratuity Act, 1972, stating that he was in employment of the petitioner from 1.6.1995 to 1.5.2005 and against his services of about 9 years and 11 months, the gratuity has not been paid to him. The petitioner contested the representation and submitted that the respondent was not an employee of the petitioner. The respondent was

a contingency contract labour, therefore, responsibility, if any, would be on the contractor. Learned Controlling Authority has passed the order dated 28.11.2007 holding that the respondent was not in the employment of any contractor, therefore, he is entitled for the payment of gratuity from the Chief Employer and orders were passed accordingly for payment of gratuity by the petitioner. The appeal that was preferred by the petitioner before the Appellate Authority has been dismissed by the order dated 2.8.2008.

3. it is submitted by counsel for the petitioner that the respondent was never employed by the petitioner and on the contrary, he was an employee of the contractor. The respondent is not having any proof regarding his employment by the petitioner. The Controlling Authority and the Appellate Authority have erroneously dismissed the version of the petitioner. In fact, the respondent worked only for about 5 to 6 months on contractual basis, therefore, the order for making payment of gratuity is erroneous and unsustainable.
4. Reliance has been placed on the judgments of Madras High Court in the case of **Superintending Engineer, Purchase & Admn. vs. Appellate Authority, Joint Commissioner of Labour, Coimbatore & Anr.** reported in **2013 LLR 374** and in the case of **M/s. Madras Fertilizers Limited vs. The Controlling Authority and Ors.** in **W.P. No. 7545 of 1995** decided on 1.11.2002, in which it has been held that the contractor has the initial responsibility of paying gratuity to an employee, therefore, it is prayed that this petition be allowed and the relief be granted to the petitioner.
5. Respondent is unrepresented.
6. Section 4 of the Act, 1972 provides that the gratuity shall be paid to an employee on the termination of his employment after he has rendered

continuous service for not less than 5 years which may be either due to superannuation or due to his retirement or resignation or due to his death or disablement due to accident or disease. Hence, on this basis, if any employee has completed 5 years of service under an employer, has the right to be paid gratuity. The claim of the petitioner is only to this extent that the respondent was not employed by it.

7. On perusal of the order dated 28.11.2007, it is found that the enquiry was made, in which the respondent and the petitioner's side both have led evidence, on the basis of appreciation of that evidence learned Controlling Authority has held that the respondent was a deemed employee of the petitioner and the same has been upheld by the Appellate Court.
8. In the case of **Superintending Engineer, Purchase & Admn. vs. Appellate Authority, Joint Commission of Labour, Coimbatore & Anr.** (supra), the Madras High Court has held that in case of a contract employment initial responsibility lies on the contractor to make payment of gratuity in view of Section 21 (4) of the Contract Labour (Regulation and Abolition) Act, 1970. It has also been held that make payment of gratuity to such labour, the principal employer is liable to pay the gratuity.
9. Reference has been made to the judgment in the case of **M/s. Madras Fertilisers Limited vs. The Controlling Authority & Ors.** (supra) in this case. The facts of this case are different. The supervisory jurisdiction of the High Court is very limited. The power of superintendence under Article 227 of the Constitution of India is to be exercised sparingly only in appropriate cases for the purpose of keeping the Sub-Ordinate Courts and Tribunals within the bounds of their authority and not for correcting mere errors, therefore, the High Court

cannot act has a Court of appeal as has been held in the case of **Surya Dev Rai vs. Ram Chander Rai**, reported in **2003(6) SCC 675**.

Therefore, I am of this view that this Court in exercise jurisdiction under Article 227 of the Constitution of India cannot reverse the finding of fact given by the Controlling Authority, which is based on the evidence brought by both the sides and the same has been affirmed by the Appellate Authority.

10. Hence, for these reasons, this petition being without any substance, is dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nimmi