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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (L) NO. 115 OF 2020

- Laxmi Narain Sharma, S/o Late Pyare Lal Sharma, aged about 82 years, R/o MIG 1/278, Hudco, Bhilai Nagar, Durg, District Durg (C.G.)

... Petitioner

versus

1. Steel Authority of India Ltd., Bhilai Steel Plant, Bhilai (C.G.), through Managing Director, (Now C.E.O.), Ispat Bhawan, Bhilai Steel Plant, Bhilai, District Durg (C.G.)
2. State of Chhattisgarh, through Chief Secretary, Ministry of Labour Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, District Raipur (C.G.)
3. Appellate Authority under the Payment of Gratuity Act, 1972, Dy. Labour Commissioner, Block-3, 2nd Floor, Indravati Bhawan, Naya Raipur, District Raipur (C.G.)
4. Controlling Authority under the Payment of Gratuity Act, 1972, Assistant Labour Commissioner, Ravi Shankar Stadium (In front of Manas Bhawan) Durg, District Durg (C.G.)

... Respondents

For Petitioner	:	Mr. Laxmi Narain Sharma, Petitioner, in person.
For Respondents	:	Mr. P.R. Patankar, Advocate.

Hon'ble Shri Justice P. Sam Koshy

C A V ORDER

[Reserved on : 06.04.2021]

[Pronounced on : 07.10.2021]

1. Aggrieved by Order dated 2.3.2020 (Annexure P-1) passed by Respondent No.3 i.e. the Appellate Authority under the Payment of Gratuity Act, 1972 and Deputy Labour Commissioner, Office of Labour Commissioner, Raipur, the present Writ Petition has been filed by Petitioner.

2. Vide the impugned Order, the Appellate Authority has rejected the appeal preferred by Petitioner affirming the Order dated 28.6.2019 passed by the Controlling Authority under the Payment of Gratuity Act and Assistant Labour Commissioner, Durg.

3. Brief facts of the case relevant for the adjudication of the present dispute are that Petitioner was appointed under Respondent No.1 establishment i.e. Steel Authority of India Limited (SAIL) way back in the year 1958 and on attaining the age of superannuation he retired on 31.5.1996. Upon the Petitioner not receiving the Gratuity on his superannuation, he preferred a dispute before the Controlling Authority under the Payment of Gratuity Act and Assistant Labour Commissioner, Durg where the case was registered as Case No.11/PGA/DA/1997. After hearing the parties, the Controlling Authority vide Order dated 24.6.1998 (Annexure P-2) allowed the application filed by Petitioner and directed Respondent No.1-SAIL to pay a sum of Rs.2,14,925/- towards Gratuity.

4. The said Order dated 24.6.1998 was subjected to challenge by the Management of SAIL vide W.P. No.5925/1998 by making the Petitioner herein also as one of the Respondents. Petitioner was the Respondent No.209 in the said Writ Petition. The High Court after hearing the parties finally vide its Order dated 21.2.2007 (Annexure P-4) allowed the said Writ Petition by holding as under:-

> **“9.** Learned Counsel appearing for the petitioner would submit that based on the calculation sheet Annexure P/6, some of the respondents are making demands with the petitioner-Company for settling the gratuity amount. Learned counsel would further submit that the 4th respondent has not passed any orders and the same are not communicated to the petitioner. However, learned counsel appearing for the respondents No.136 would submit that the 4th respondent has passed an order under the provisions of the Act. In our opinion, if that is so, the respondents would file an appropriate award before the petitioner to comply with the orders and directions issued by the Competent Authority. If and when such awards are produced before the petitioner for settling the claims made in the awards, we are inclined to given an opportunity to the petitioner to question those awards before the appropriate forum within a particular time frame. In view of the above, the following :

Order

(1) The allegations made by the petitioner against the 4th respondent in the writ petition are expunged.

(2) The 4th respondent shall not claim any damages against the petitioner for the so called allegations made in the writ petition.

(3) The respondents are at liberty to approach the petitioner-Company to settle their claim, if any, under the provisions of the Act, if they have an award in their possession within two months from today. If such awards are produced before the petitioner, the petitioner is at liberty to question the same before the appropriate forum within a month thereafter. If and when such appeals are filed by the petitioner-Company the appellate forum shall decide the same on merits without reference to the period of limitation.

(4) with the aforesaid observations and directions, the writ petition is disposed of.

(5) Ordered accordingly.**"**

5. Based upon the disposal of the said Writ Petition, the Petitioner herein again appeared before the Controlling Authority under the Payment of Gratuity Act for initiating recovery proceeding and an Order was passed in his favour on 14.1.2008 (Annexure P-5). This time the Controlling Authority had ordered for payment of Rs.3,64,424/-. This Order dated 14.1.2008 was again challenged by Respondent No.1 in a bunch of Writ Petitions in which the petition pertaining to Petitioner was W.P.(L) No.1290/2008 wherein after hearing all the parties to the proceedings, the learned Single Bench of this Court again vide Order dated 24.7.2009 (Annexure P-6) allowed the Writ Petition by holding as under:-

> **"23.** Other submission that the controlling authority decided all the 290 cases of payment of gratuity by a common order after consolidating the same and therefore by virtue of direction of the controlling authority the impugned order and calculation sheets prepared by the Labour Inspector becomes a separate award in each case and the management ought to have preferred appeal in each case is concerned, this Court has already upheld the finding of the appellate authority that the order impugned was passed by the controlling authority in collusion with the applicant-employees in a clandestine manner, the order was passed after 24.6.1998 and there is anti-dating. Once it is held that the order is passed in collusion with a party, the same becomes nullity in the eyes of law and it

> can be impugned by the aggrieved at any stage including by way of filing writ petition. Therefore, I do not find force in the argument of Mr. Saxena, learned counsel for the employees that the Act, 1972 being complete Code, the aggrieved i.e. SAIL management in the instant case, was required to challenge the order in favour of each employee separately before the appellate tribunal and in the absence of appeal by the management, the same has attained finality.
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> ORDER
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> **24.** In the result;
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> - W.P. No.3845/1999 filed by petitioner R.S. Kashyap is hereby dismissed.
> - W.P.(L) No.800/2008 & other batch petitions filed by the SAIL are allowed and the Revenue Recovery Certificates issued by the Controlling Authority on the application of individual employees under Section 8 of the Act are hereby quashed.
> - The appellate authority shall decide all applications for payment of gratuity, which were disposed of by order dated 24.6.1998 passed by the Controlling Authority in Case No.11/PGA/DG/1997, afresh as per directions of the appellate authority vide its order dated 22.4.1999 passed in Appeal Case No.47/PGA/98.**"**

6. Thereafter, the matter was again subjected to challenge in a Writ Appeal i.e. W.A. No.381/2009 and another connected Appeal. The Division Bench of this Court again while dismissing the said Appeals vide Order dated 11.12.2012 (Annexure P-7), taking into consideration the submissions made by Respondent No.1-SAIL, in paragraph 18 to 21 has held as under:-

> **"18.** It is correct that SAIL had filed only one appeal against the order dated 24.6.1998. In that appeal only Shri Kashyap was the respondent. However, the important point to be noted in this regard is that there was no separate orders for other persons. The order was one and the same, which was passed in the case of Shri Kashyap. In other cases this order has been made as a basis. Once the order dated 24.6.1998 was set aside on the ground that it was ante-dated. The basis of the order of other employees also went away and the orders in their favour also came to an end.
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> **19.** It would be the travesty of justice to say that the order dated 24.6.1998, is set aside as it was ante-dated and fraudulent but the order in other matters that were decided along with it, would still stand.
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> **20.** The matter has been sent to the Controlling Authority by the Appellate Authority. It is pending there. It is open to the

> Appellants to appear before the Controlling Authority and get the matter decided.
> **21.** The Appeals have no merits. They are dismissed.**”**

7. Pursuant to the order of dismissal of Appeal by the Division Bench, the Petitioner thereafter again appeared before the Controlling Authority. The Controlling Authority finally vide Order dated 28.6.2019 dismissed the claim application of Petitioner. This Order passed by the Controlling Authority on 28.6.2019 was subjected to challenge in an Appeal before the Appellate Authority under the Payment of Gratuity Act and the Appellate Authority also vide impugned Order dated 2.3.2020 (Annexure P-1) has rejected the Appeal, leading to the filing of the present Writ Petition.

8. Contention of Petitioner is that the basis upon which his claim has been rejected is totally illegal inasmuch as, the distinction of Gratuity by the Management of SAIL for a Non-executive and Executive category between the employees is totally unsustainable in the eyes of law. According to Petitioner, every person is an employee and is therefore entitled for Gratuity and the same cannot be denied only on account of designation of the post of an employee or an officer. The Petitioner, who appeared in person, has thus prayed for the setting aside of the two Orders of the Controlling Authority and the Appellate Authority and further has claimed for an appropriate direction to Respondents to consider granting of Gratuity at par with a Non-executive under the Respondents.

9. The question to be considered at this juncture is, whether the payment of Gratuity to the Executives retired from Respondent No.1 establishment would be in terms of the agreement of National Joint Council for Steel Industry or whether it would be under Steel Authority of India Limited Gratuity Rules.

10. The Petitioner, who was initially a Non-executive subsequently became an Executive and was drawing the privileges, benefits and fringe benefits payable to an Executive under the service regulations governing the Executives. Whereas the Non-executive who also stood retired as a Non-executive would be getting the benefits which are otherwise arrived at by a Memorandum of Agreement by National Joint Council for Steel Industry. The dispute arose because of the Executives, getting the payment of Gratuity with an upper ceiling of Rs.1.00 Lakh whereas for the Non-executives there was no upper ceiling. This has resulted in series of litigations referred to in the preceding paragraphs.

11. The Madhya Pradesh High Court in W.P. No.4926/1998 (SAIL v. Appellate Authority & Ors.) and another connected matter as early as on 3.11.1999 dealing with the issue whether an Executive would be entitled for Gratuity for the total length of service at par with a Non-executive, in paragraph 15 has held as under :-

> **"15.** In view of my answer to the aforesaid question it is inexpedient either to incorporate or answer in detail the various other submissions made by Shri Chaphekar and Mr. Gupta in support of their respective stand. However, to put the record serial it's relevant here to state that Mr. Chaphekar has contended that employer being a Government of India undertaking the authority appointed by Central Government shall be the competent authority and not appointed by the State Government. Much Labour was put by Mr. Gupta to contend that the better terms of gratuity agreed between the employer for payment of gratuity to the non executive is preserved under Section 4(5) of the act. As stated earlier, Mr. Chaphekar has very fairly stated that the same is saved, but his stand is that the same does not apply in case of an employee who has retired as executive. Further the stand of Shri Gupta that in fact the employee was asked to continue to perform the same duties in the functional are and other jobs as and when assigned by the employer clearly shows that he was, in fact, a non-executive he has submitted that this Court notwithstanding the nomenclature that the employee was promoted as an executive still can hold, that in fact, he continued as non-executive in support of his submission that this course is open to this Court he has relied on various

> authorities. However in view of the fact that the petitioner has admitted that he was promoted and further not denied the fact that he has been paid all the privileges and benefits which are admissible to the executive as also the fact that has not raised this point before the Controlling Authority I am not inclined to enter into this question in the present writ petition. Suffice it to say that the employer has classified his employees as executive and non-executive and the petitioner has been promoted as executive and has availed the benefit admissible to the executive, he cannot be permitted for the first time to contend before this Court that is in fact, a non executive. Result of the aforesaid discussion leads me to conclude that the order passed by the Controlling Authority as modified by the Appellate Authority cannot be sustained.**”**

12. Similarly, the Delhi High Court in Civil Writ Petition No.486/1995 had held in paragraph-12 as under:-

> **“*12***. I have given my thoughtful consideration to the submissions made by the counsel for the parties. It is seen from the provisions of Section 4 that although the maximum limit of the amount of gratuity payable to an employee at the time of retirement has been fixed at Rs.1 Lakh, a right is provided for both the employer and the employee to arrive at an agreement or contract for payment/receipt of better terms of gratuity. Therefore, when an agreement is arrived at between the employer and the employee for payment of an amount for more than an amount exceeding Rs.1 Lakh, such an enhanced amount of gratuity could be paid and received by the employer and the employee respectively. Although under the Gratuity Rules of the respondent, the amount of gratuity payable to an employee has been fixed at a maximum of Rs.1 Lakh in terms of the provisions of sub-section (3) of Section 4 of the Payment of Gratuity Act. But in view of the Memorandum of agreement provided for no ceiling or limit in the amount of gratuity payable in case of non-executive employees the non-executive employees have been receiving better terms of gratuity. In view of the aforesaid agreement entered into between the non-executive employees and the employer, the respondent such better terms of gratuity under the agreement could be paid by an employer to its employees and such payment is also protected under the provisions of sub-section (5) of Section 4 of the Act. Therefore, the submission of the learned counsel for the petitioner that fixation of higher amount of gratuity payable to the non-executive class under the agreement is inconsistent with the provisions of Payment of Gratuity Act, has no merit and the same is rejected.***”***

13. Relying upon the aforesaid view, the Orissa High Court in the case of "Steel Authority of India Ltd. v. Assistant Labour Commissioner (Central), Rourkela", 2002 LAB.I.C. 2703, in paragraph-6, has held as follows :-

> **"6.** We are in agreement with the reasons enunciated by the Delhi High Court (supra) and reiterate that the Executives being Officers, constitute a different class than the non-executives which constitute workmen and that the classification is based on intelligible differentia which distinguishes persons put together from those left out of the group. The differentia is also clearly distinguishable and has a rational relationship to the object sought to be achieved by the statute inasmuch as, the non-executives have the protection under the Labour Laws and clearly distinguishable. The payment of gratuity of the non-executive employees is made in terms of the Payment of Gratuity Act, 1972, the Rules framed thereunder, the SAIL Gratuity Rules, read with the Agreement arrived at National level, whereas, the Executive employees are entitled to receive gratuity in terms of Section 4(3) of the Payment of Gratuity Act in the absence of any agreement.**"**

14. Again another similar issue came up before the Calcutta High Court where in the case of "Nirendra Kumar Saha v. SAIL", LAWS (CAL) 2009 334, in paragraph-32, accepting the views rendered by the Madhya Pradesh High Court so also by the Orissa High Court and the Delhi High Court, has decided the matter accordingly :-

> **"32.** A short question, therefore, naturally arises as to whether the writ petitioners, who were admittedly "non-executive" cadre employees to begin with, could avail the benefits of the NJCS agreement dated 27th October, 1970, having been promoted to "executive" posts subsequently (emphasis supplied). To come to a finding on this aspect of the matter, if may be relevant to peruse the office order dated 13th October, 1973, whereby Nirendra Kumar Saha, a "non-executive", was posted to a higher post, that of an "executive". As reproduced hereinabove, clause 4 of the said office order says that other terms and conditions of his appointment will remain unaltered. Although the NJCS agreement had already come into force by that time, clause 4 indicates towards the appointment of Nirendra Kumar Saha, who was admittedly appointed to a "non-executive" post on 23rd December, 1959. The NJCS agreement dated 27th October, 1970 did not provide any clause therein which specifically factored in those "non-

> executive" employees who were appointed prior to come into force the NJCS agreement and who were likely to be promoted to "executive" posts subsequently. Therefore, in the ultimate analysis it may not be possible to stretch the logic to the extent that clause 4 of the office order dated 13th October, 1973, included in its fold, the NJCS agreement dated 27th October, 1970, or that the NJCS agreement contemplated inclusion of future "promotee executives". It cannot be, therefore, concluded that the benefit of non-ceiling on the amount of gratuity payable to retiring employees remained saved in case of these writ petitioners by virtue of the NJCS agreement and clause 4 referred above. Moreover, a plain reading of sub-section 1 of section 4 of the Payment of Gratuity Act, 1972 makes it clear that payment of gratuity to an employee comes into effect only upon termination of the employment and not otherwise (emphasis supplied). The said provision of law reads as follows:-
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> "4. Payment of gratuity. -(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, -
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> (a) on his superannuation, or
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> (b) on his retirement or resignation, or
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> (c) on his death or disablement due to accident or disease:
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> Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:**"**

15. Relying upon the aforesaid decisions, what is culled out is that Executives and Non-executives form a class separate by itself and therefore all benefits flowing to the two categories cannot be brought at par. Non-executives would be governed by the Agreement under the National Joint Council for Steel Industry, whereas the Executives under the SAIL are entitled for benefits under the Act and the SAIL Rules on Gratuity.

16. What is also further to be seen is that the Gratuity Act and Rules were made effective from 24.9.1997 and by that time the Petitioner already stood retired from services and therefore he cannot claim the advantages of the amended provisions.

17. Given the aforesaid legal position as it stands and the judicial pronouncements made on the subject-matter by the various High Courts on identical set of facts, this Court is inclined to endorse the same view taken by the various High Courts and is also inclined to accept the fact that Non-executives since their service conditions are based upon the NJCS agreement, the Non-executives would be entitled for the benefits under the NJCS agreement whereas for the Executives they would be governed by the Steel Authority of India Gratuity Rules and also the provisions of the Payment of Gratuity Act both of which otherwise also prescribe for a specific upper ceiling of Rs.1.00 Lakh. No strong case or material has been produced before this Court to hold that the findings arrived at by the two Authorities below were either bad in law or illegal in any manner.

18. Given the limited scope of interference which is permissible for the High Court under Article 226 of the Constitution of India for interfering with an Order passed by the Labour Courts or the Labour Tribunals or such quasi-judicial bodies, this Court does not find any strong case made out for holding the findings to be perverse or without jurisdiction or in excess of jurisdiction. Neither can the findings be held to be contrary to the service rules and regulations governing the field.

19. Thus, for all the aforesaid, the Writ Petition fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

/sharad/