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

Date of decision: 6th July, 2021

+ **W.P.(C) 6115/2021**

UNION OF INDIA

..... Petitioner

Through: Mr. Harish Kumar Garg, Ms. Payal
Agrawal & Mr. Saksham Garg,
Advocates (M-9810150029)

versus

RAMESH CHAND

..... Respondent

Through: None

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WITH

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W.P.(C) 6122/2021

UNION OF INDIA

..... Petitioner

Through: Mr. Harish Kumar Garg, Ms. Payal
Agrawal & Mr. Saksham Garg,
Advocates

versus

BALJOR SINGH

..... Respondent

Through: None

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WITH

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W.P.(C) 6123/2021

UNION OF INDIA

..... Petitioner

Through: Mr. Harish Kumar Garg, Ms. Payal
Agrawal & Mr. Saksham Garg,
Advocates

versus

BIRBAL

..... Respondent

Through: None

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WITH

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W.P.(C) 6128/2021

UNION OF INDIA

..... Petitioner

Through: Mr. Harish Kumar Garg, Ms. Payal
Agrawal & Mr. Saksham Garg,
Advocates

versus

BABU LAL

..... Respondent

Through: None

11

AND

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W.P.(C) 6130/2021

UNION OF INDIA

..... Petitioner

Through: Mr. Harish Kumar Garg, Ms. Payal
Agrawal & Mr. Saksham Garg,
Advocates

versus

LEKH RAJ SINGH

..... Respondent

Through: None

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.

CM APPL. 19382/2021 (for exemption) in WP(C) 6115/2021
CM APPL. 19394/2021 (for exemption) in WP(C) 6122/2021
CM APPL. 19397/2021 (for exemption) in WP(C) 6123/2021
CM APPL. 19407/2021 (for exemption) in WP(C) 6128/2021
CM APPL. 19411/2021 (for exemption) in WP(C) 6130/2021

2. Allowed, subject to all just exceptions. Applications are disposed of.

WP(C) 6115/2021 & CM APPLs. 19381/2021 & 19383/2021
WP(C) 6122/2021 & CM APPLs. 19393/2021 & 19395/2021
WP(C) 6123/2021 & CM APPLs. 19396/2021 & 19398/2021
WP(C) 6128/2021 & CM APPLs. 19406/2021 & 19408/2021
WP(C) 6130/2021 & CM APPLs. 19410/2021 & 19412/2021

3. These are a batch of five writ petitions which have been filed challenging the order passed by the Appellate Authority under the Payment of Gratuity Act, 1972.

4. The brief background is that the Respondents were employees who

were initially appointed by the Petitioner in a temporary capacity but were thereafter regularised. All the employees are stated to have superannuated.

5. According to the employees, they are entitled to payment of 100% gratuity amount even during the time they were temporarily appointed. However, the case of the Union of India is that the employees are entitled to only 50% of the muster roll period, in terms of the CCS (Pension) Rules, 1972.

6. According to the Union of India, the entire pensionary benefits have already been paid to the employees. However, the employees have approached the Controlling Authority seeking payment of the gratuity amounts beyond what they are entitled to. The authority under the Payment of Gratuity Act, 1972, namely, the Assistant Labour Commissioner, Delhi has granted 100% amount of balance gratuity to the employees, even though they are not entitled to the same.

7. The order of the Controlling Authority dated 15th July, 2019 was challenged before the Appellate Authority, which has dismissed the same vide order dated 21st October, 2020, on the ground that the same was barred by limitation. This order is under challenge in these petitions.

8. The submission of Mr. Harish Kumar Garg, ld. counsel is that Central Government employees are not covered under the Payment of Gratuity Act, 1972, which is clear from a reading of Section 2(e) read with Sections 3 and 4 of the Act. He submits that Central Government employees would only be covered by the CCS (Pension) Rules, 1972 and not by the provisions of the Payment of Gratuity Act, 1972. Ld. Counsel further submits that the recovery notice in terms of the Controlling Authority's order has already been issued.

9. The issue relating to non-applicability of the provisions of the Payment of Gratuity Act, 1972 and the applicability of CCS Rules to the Respondents, has not been considered either by the Controlling Authority or the Appellate Authority. The Appellate Authority has simply rejected the appeal as being barred by limitation. A perusal of the Appeal filed shows that there is a specific ground that the Respondent is governed by the CCS Rules. The relevant provision of the Payment of Gratuity Act, 1972 is extracted below:

“Section 2. Definitions.

In this Act, unless the context otherwise requires, -

...

(e) "employee" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.”

10. The Supreme Court in ***Union of India v. Manik Lal Banerjee, (2006) 9 SCC 643***, in a case concerning an employee of the Railways, considered the applicability of Section 2(e) of the Payment of Gratuity Act, 1972 and held as under:

“10. The 1972 Act was enacted to provide for a scheme inter alia for payment of gratuity to employees in relation to railway companies.

11. Section 2(e) of the 1972 Act defines “employee”

to mean

“any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity”.

The definition, thus, excludes an employee holding a civil post under the Central Government and governed by another Act or Rules providing for gratuity.

...

13. *The 1972 Act is applicable inter alia to the “establishment” belonging to a railway company. The amount of gratuity, however, is payable to an employee. The interpretation clause contained in Section 2(e) takes out from the purview of the said Act a person who holds inter alia post under the Central Government and whose terms and conditions of service are governed by an Act or the Rules providing for payment of gratuity. The 1993 Rules provide for payment of gratuity in Rule 70 in the following terms:*

“70. Retirement gratuity or death gratuity.—(1)(a) In the case of a railway servant, who has completed five years' qualifying service and has become eligible for service gratuity or pension under Rule 69, shall, on his retirement, be granted

retirement gratuity equal to one-fourth of his emoluments for each completed six monthly period of qualifying service subject to a maximum of sixteen and one-half times the emoluments and there shall be no ceiling on reckonable emoluments for calculating the gratuity. ...”

...

20. *Submission of Mr Banerjee that if the 1972 Act applies to an establishment belonging to a railway company and the persons specified in Section 2(f) are the employers, despite exclusion of railway servants governed by the provisions of the 1993 Rules from the purview of the definition of “employee” in terms of Section 2(e) of the Act, the case shall be governed by the 1972 Act, cannot be accepted.*

21. *The High Court noticed the definition of “employee” contained in Section 2(e) of the 1972 Act but while deciding the issue it fell into an error in coming to the conclusion that there was nothing in the 1972 Act so as to exclude the benefit thereof to a railway employee. It failed to properly construe the said provision.”*

Thus, the Supreme Court held that a Railway employee would be governed by the specific Rules applicable to employees of Railways and not by the Payment of Gratuity Act, 1972, in view of the express exclusion in Sec. 2(e) of the Act.

11. Considering the fact that the jurisdiction of the Controlling Authority itself is being disputed by the Union of India, this Court is of the opinion that the said issue deserves to first be considered by the Appellate Authority as it goes to the root of the matter itself. If the Controlling Authority did not have jurisdiction under the Payment of Gratuity Act, 1972, the order would be

liable to be challenged by the Union of India and the period of limitation prescribed under the Act may not apply. In these circumstances, the issue of jurisdiction having been raised, this Court is of the opinion that the said issue ought to be adjudicated by the Appellate Authority under the Payment of Gratuity Act, 1972 and the Appeal ought not to be rejected simply on the ground of being barred by limitation. In view of the above discussion, the following directions are issued:

- (i) The matters are remanded back to the Appellate Authority under the Payment of Gratuity Act, 1972. The delay in filing the appeal by the Union of India before the Appellate Authority shall stand condoned and shall not come in the way of the issue as to applicability of the Act from being adjudicated. The appeals shall be heard on the issue of jurisdiction raised by the Union of India considering the legal position as held in *Union of India v. Manik Lal Banerjee (supra)*. The Authority shall hear all parties concerned and decide the said issue.
- (ii) In the meantime, the recovery notice shall be stayed, subject to the workmen being paid the admitted amount of 50% of the muster roll period, in terms of the CCS (Pension) Rules, 1972. The said payment shall be made on or before the first date of hearing before the Appellate Authority. Any payments made or accepted shall be without prejudice to the rights and contentions of the parties concerned.
- (iii) The Appellate Authority shall not be affected by any observations made in this order and shall adjudicate the issue of jurisdiction and, if required, on merits, in accordance with law.

12. Considering that these matters relate to amounts of gratuity being claimed by the workmen, the Appellate Authority shall adjudicate the matter

on or before 31st October, 2021.

13. With these observations, the above writ petitions are disposed of. All pending applications are also disposed of.

14. Copy of this order shall be sent to the workmen through the National Vice President, All India CPWD (MRM), Karamchari Sangathan, House No.4, Gali No.1, Karkardooma Village, Delhi-110092.

15. A copy of this order shall also be served by the Union of India upon the workmen concerned and 50% of the amounts due, as per the CCS (Pension) Rules, 1972, which is admitted, shall also be paid, without prejudice to the rights and contentions of all parties.

16. Copy of this order also be transmitted to the Appellate Authority under the Payment of Gratuity Act, 1972 i.e., the Deputy Chief Labour Commissioner (Central), 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001.

17. If the workmen wish to seek any directions in this matter, they are permitted to move an application before this Court. Remedies of all parties in respect of the order to be passed by the Appellate Authority are left open.

18. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

PRATHIBA M. SINGH
JUDGE

JULY 6, 2021

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