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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.14440 OF 2009

AND

M.P.NOS.1 AND 2 OF 2009

Capt.RC Rajan (Ex.Comdt 0080-E)

... Petitioner

.Vs.

The Director General of Coast Guard,
Tatrakshak Mukhalaya,
Coast Guard Head Quarters,
National Stadium Complex,
New Delhi- 110 001.

... Respondent

PRAYER:-

Writ petition filed under Section 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of the respondent in his proceedings in OF/0303/0080-E, dated 11.05.2009 and quash the same and consequently direct the respondent to release and disburse the gratuity payable to the petitioner for his 16 long years of service in Coast Guard.

For petitioner : Mr.Balakrishnan
For Mr.Ravi

For Respondent : Mr.T.L.Thirumalaisamy
Central Government
Standing Counsel

O R D E R

The Writ Petition has been filed to quash the proceedings passed in OF/0303/0080-E, dated 11.05.2009, rejecting the request for payment of gratuity and for a consequential direction to the respondent to release and disburse the gratuity amount payable to the petitioner for his 16 years of service as Coast Guard.



2. It is the case of the petitioner that originally the petitioner had joined service as Coast Guard in the year 1983 and served in the capacity of a Staff Pilot, Squadron Commander, Commanding Officer, Instrument rating examiner and a Pilot instructor. As such he had served 16 long years without any break and the petitioner was awarded DGCG Commendation, the Tatrakshak Medal for meritorious service, the Proficiency Award and the Safety Award for accident/incident free flying during the service in Coast Guard. The petitioner had been put in very meritorious service without any blemishes in record of service. On completing his 16 years of service in the post of Coast Guard, owing to pressing family compulsions, the petitioner requested respondent, to accept his resignation. Accepting the said letter of the resignation, the respondent had relieved the petitioner w.e.f. 1st July 1999 on compassionate grounds. Thereafter, the petitioner had applied for the disbursement of gratuity on 09.07.2000. But to the shock and surprise, the respondent by letter dated 26.07.2000, has informed that as per the Rules the petitioner did not complete 20 years of qualifying service in the department and therefore, as per Rule 26(1) of CCS (Pension) Rules, 1972, resignation from a service as post entails forfeiture of past service. In view of the above, the petitioner is not entitled for payment of any gratuity. Challenging the aforesaid rejection order passed by the respondent, the petitioner has filed the present Writ Petition before this Court.

3. The learned counsel for the petitioner submitted that the respondent has rejected the request for gratuity in the light of CCS (Pension) Rules 1972 and the said rule will not be applicable to the petitioner. The petitioner had not sought for any amount under the Pension Rule. As per Section 4(1) of the Payment of Gratuity Act, 1972 the gratuity shall be payable to an employee in the termination of his employment after rendering continuous service for not less than five years. Hence, the petitioner is entitled for gratuity amount as he has completed more than 5 years of continuous service. He further submitted that the gratuity shall be payable even to the employee/delinquent resigned from service provided he shall be put in five years of continuous service. In this case, the petitioner after serving 16 long years, on his own request, he was relieved from service. Hence, the order impugned in this petition is liable to be set aside.

4. The respondent filed counter affidavit stating that the petitioner served as an officer in the Coast Guard, which is a Armed Force of the Union. As far as the pension and gratuity of the Coast Guard officers are concerned, these are covered by CCS



(Pension) Rules, 1972 and hence the payment of Gratuity Act 1972 is not applicable in this case in view of Section 1 (3) of the said Act.

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5. The learned Standing counsel submitted that the petitioner had served as an officer, and that he cannot be said to be an employee within the meaning of Section 2 (e) of the Payment of Gratuity Act, 1972 and thus he is not entitled to any benefits under the said Act as he has not completed 20 years of service. Therefore, the respondent had rightly rejected the claim of the petitioner.

6. I have heard the learned counsel appearing on either side and perused the materials available on record.

7. Admittedly the petitioner had contributed his gratuity amount to the respondent Department for his 15 years 10 months and 11 days of service as Coast Guard. Hence, according to the petitioner, he is entitled to Gratuity as per Section 4 (1) of the Gratuity Act, 1972. The said Act is extracted hereunder for better understanding:

"Section 4(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:

(a) On his superannuation, or

(b) On his retirement or resignation, or

(c) On his death or disablement due to accident or disease."

8. The Respondent department relied on Section 2 (e) of the Payment of Gratuity Act, 1972 in support of their claim that the petitioner is not entitled for Gratuity as he is not come under the meaning of Employee. Section 2 (e) of the said Act is extracted below for better appreciation:

Section 2(e):

Employee means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway



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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 an rules proving for payment of gratuity."

9. The learned Standing Counsel has also relied on the Judgements of the Hon'ble Supreme Court made in Civil Appeal Nos.6166 of 1999, 2121 of 2000 and 2491 -2492 of 2001, dated 30.03.2001 wherein the Hon'ble Supreme Court observed as follows:

"Retiring person is further given to a government servant who retires or is retired in advance of age of compulsory retirement in accordance with the provisions of Rule 48 after completing 30 years of qualifying service or Rule 48 A of the CCS (Pension) Rules or Rule 56 of the Fundamental Rules or Article 459 of the Civil Service Regulations. Rule 48 - A provides for Voluntary retirement after completion of 20 years qualifying service after giving three months notice in writing to the appointing authority and if such notice is accepted he would get retiring pension. Thereafter, Rule 49 provides for method of calculation of amount of pension to such government servant. Relevant parts of the CCS (Pension) Rules for grant of Pension are as under:

35. Superannuation Pension: A superannuation pension shall be granted to a Government servant who is retired on his attaining the age of compulsory retirement."

10. Yet another decision has also been relied on by the learned Central Government Standing Counsel in Civil Appeal No.1027 of 2020, dated 30.09.2021 in support of his contention.

11. In the aforesaid decisions cited supra, there is no discussion or finding with regard to the benefit granted under the Payment of Gratuity Act and the said decision relates to Payment of Superannuation Pension benefit. In view of Section 4 (1) of the Gratuity Act which is extracted supra, on completion



of 5 years of service in the department, the employee are entitled to Gratuity amount.

12. In this connection, it is pertinent to refer the decision of the Hon'ble Supreme Court reported in 2020 (5) SCC 741 in Rajasthan State Road Transport Corporation Limited and others Vs. Mohani Devi and another to consider the request of the petitioner for payment of gratuity amount. The relevant paragraph is extracted hereunder for better appreciation:

"11... As rightly pointed out by the learned counsel for the respondents, Section 4(1)(b) of the Payment of Gratuity Act, 1972 provides that the gratuity shall be payable if the termination of employment is after 5 years of continuous service and such termination would include resignation as well."

13. On careful reading of the above said judgment, the Writ Petitioner is entitled for gratuity, if the termination of employment is after 5 years of continuous service, as per Section 4(1)(b) of the Payment of Gratuity Act.

14. Considering the facts and circumstances of the case as well as the decision of the Hon'ble Supreme Court in Rajasthan State Road Transport Corporation Limited's case referred supra, this Court is inclined to set aside the order passed by the respondent department, dated 11.05.2009 and accordingly the same is quashed. The petitioner is entitled for gratuity amount as per Section 4 (1) (b) of the Payment of Gratuity Act. Accordingly this Writ Petition stands allowed. The Respondent/ Department is directed to settle the gratuity amount with appropriate interest in accordance with law as expeditiously as possible within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

vum



To

The Director General of Coast Guard,
Tatrakshak Mukhalaya,
Coast Guard Head Quarters,
National Stadium Complex,
New Delhi - 110 001.

+lcc to Mr.T.L.Thirumalaisamy, Advocate, S.R.No.2590
+lcc to Mr.Ravi, Advocate, S.R.No.2117

W.P.NO.14440 OF 2009 AND
M.P.NOS.1 AND 2 OF 2009

VG-II(CO)
PBS/21/02/2022