

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 5948 of 2023

**Food Corporation of India
Vs.
Union of India & Ors.**

For the petitioner	:	Mr. Devajyoti Barman
For the respondent nos.1 to 3	:	Ms. Susmita Saha Dutta Mr. N. Saha
Heard on	:	10.05.2023
Judgment on	:	10.05.2023

Raja Basu Chowdhury, J:

1. The present writ application had been filed, *inter alia*, challenging the order dated 21st September, 2021, passed by the Controlling Authority under the Payment of Gratuity Act, 1948 (hereinafter referred to as the "said Act"), and the order dated 29th July, 2022, passed by the Appellate Authority constituted under the said Act.
2. The petitioner says that the petitioner had engaged the respondent no. 4 from time to time, on no-work-no-pay basis. The respondent no. 4, however, with a malafide intention on 12th December, 2019 had filed an application in Form-'N' before

the Controlling Authority claiming gratuity. The proceeding was contested by the petitioner and on contested hearing, the Controlling Authority by his order dated 21st September, 2021, was, *inter alia*, pleased to determine the gratuity payable to the respondent no. 4. Challenging the aforesaid order, a statutory appeal was filed before the Appellate Authority under the said Act.

3. The Appellate Authority, however, by its order dated 29th July, 2022, was, *inter alia*, pleased to uphold the findings passed by the Controlling Authority and declared that the respondent no. 4 is entitled to gratuity, amounting to a sum of Rs.4,15,925.00/- for the period from 27th July, 2001 to 31st July, 2018. Challenging both the aforesaid orders, the present writ application has been filed.
4. Mr. Barman, learned advocate appearing for the petitioner, claims that the respondent no. 4 had never worked for more than 240 days in a year. He says that the respondent no. 4 was not a permanent worker and that despite there being no dispute about the status of the respondent no. 4 and as regards the nature of his employment, the Controlling Authority determined that the respondent no. 4 shall be entitled to gratuity.
5. It is contended on behalf of the petitioner that the Controlling Authority without returning a finding that the respondent no. 4

had worked for more than 240 days in a year, continuously for a period of 5 years, had directed the gratuity to be disbursed in his favour. The aforesaid procedure adapted by the Controlling Authority according to Mr. Barman is not only contrary to the provisions of the said Act but is against the principles of law and equity. He says that unless a finding is returned by the Controlling Authority with regard to 240 days of continuous service in a year for a minimum period of 5 years no direction could have been issued by the Controlling Authority for payment of gratuity in favour of the respondent no.4.

6. By placing reliance on a judgment delivered by the Hon'ble Supreme Court, rendered in the case of ***Lalappa Lingappa & Ors. AND Mahadu Sitaram & Ors. v. Laxmi Vishnu Textile Mills Ltd.***¹, it is submitted that non-permanent employee such as a *badli* employee is not covered by the substantive part of the definition of "*continuous service*" as defined in Section 2(c) of the said Act and as such, is not entitled to gratuity for the *badli* period. He says that the orders passed by both the Controlling Authority as also by the Appellate Authority cannot be sustained and should be set aside.

7. Mr. Chakraborty learned advocate appearing for the private respondent no. 4, on the other hand, submits that the writ

¹ 1981 AIR (SC) 852

petitioner had acknowledged and accepted that the respondent no. 4 is entitled to gratuity. By placing reliance on the order passed by the Controlling Authority, he says that the petitioner had filed a calculation sheet before the Controlling Authority and had accepted that the respondent no. 4 had worked under the petitioner from 27th July, 2001 to 31st July, 2018. Having thus acknowledged the respondent no. 4 to have worked with the petitioner, it does not lie in the mouth of the petitioner to question the order passed by the Controlling Authority. The petitioner cannot be permitted to blow hot and cold at the same time.

8. By referring to aforesaid disclosure made by the petitioner as is reflected in the orders impugned, he says that the respondent no. 4 had worked for more than 240 days in a year continuously for a period of 5 years and more. As such, the Controlling Authority and the Appellate Authority cannot be faulted for determining gratuity and directing disbursal of gratuity in favour of the respondent no. 4. In the facts stated above, it is submitted that the writ application should be dismissed with costs.
9. Ms. Saha Dutta, learned advocate, enters appearance on behalf of the respondent nos. 1 to 3. She says that there is no irregularity on the part of the Controlling Authority or the Appellate Authority, in directing disbursal of the gratuity in

favour of the respondent no. 4, and the orders would speak for themselves.

10. Heard the learned advocates appearing for the respective parties and considered the materials on record.

11. I find that the petitioner, *inter alia*, contends that the private respondent no. 4 is a non-permanent worker. At the same time, I also notice that the orders passed by the Controlling Authority and the Appellate Authority under the said Act, are, *inter alia*, based on admission made by the writ petitioner. It would appear from the order passed by both the Controlling Authority as well as the Appellate Authority that the petitioner had submitted a gratuity statement in respect of the respondent no. 4, showing the date of joining of the respondent no. 4 as 27th July, 2001 and the date of retirement as 31st July, 2018, and the last drawn wages as Rs.42,408/- (Basic Rs.18,600/- + DA Rs. 23,808/-).

12. On the basis of such disclosure made by the petitioner, the Controlling Authority had returned a finding that the applicant had worked under the petitioner for 17 years, i.e., from 27th July, 2001 to 31st July, 2018. As such it cannot be said that the Controlling Authority did not return a finding that the respondent no. 4 had worked for more than 240 days continuously for more than 5 years. The petitioner having

accepted that responded no. 4 to have worked for more 17 years, in my view, cannot be permitted to challenge the same at this stage.

13. I find that Mr. Barman, learned advocate appearing for the petitioner, has relied on a judgment delivered by the Hon'ble Supreme Court in the case of **Lalappa Lingappa** (supra) to, *inter alia*, contend that the respondent no. 4 is not covered by the substantive part of the definition of "continuous service" in Section 2(c) of the said Act.

14. I, however, find that the Hon'ble Supreme Court in paragraph 18 of the aforesaid judgment has been, *inter alia*, pleased to observe as follows:

"18. The Report of the Badli Labour Enquiry Committee, Cotton Textile Industry, 1967, no doubt shows that the badli employees are an integral part of the textile industry and that they enjoy most of the benefits of the permanent employees; but there may not be any continuity of service as observed by this Court in the Delhi Cloth Mills case (AIR 1970 SC 919) (supra). The badli employees are nothing but substitutes. They are like spare men who are not employed while waiting for a job : Colon v. Glasgow, 36 Scott LR 652. Vallabhdas Kanji (P) Ltd v. Esmail

Koya, 1978 Lab IC 809 (Ker) taking the view to the contrary, does not appear to lay down a good law. Accordingly, we uphold the view that the badli employees are not covered by the substantive part of the definition of continuous service in Section 2 (c), but came within Explanation I and, therefore, are not entitled to payment of gratuity for the badli period, i.e., in respect of the years in which there was not work allotted to them due to their failure to report to duty.”

15. From the aforesaid, it would appear that although it may be true that a *badli* worker may not come within the substantive part of Section 2(c) of the of the said Act, as it stood prior to the Payment of Gratuity (Second Amendment) Act, 1984, yet in the present case, the writ petitioner, having itself, on its own showing admitted and acknowledged before the Controlling Authority and the Appellate Authority that the respondent no. 4 had worked for more than 17 years, in my view, cannot question the entitlement of the respondent no. 4 to receive gratuity. In any event Section 2(c) of the said Act having since been amended, as noted above, the aforesaid judgment also does not come in aid of the petitioner.
16. There does not appear to be any irregularity in procedure adopted by the Controlling Authority or the Appellate Authority

in passing the orders impugned. No case for interference has been made out.

17. The writ petition being WPA 5948 of 2023, therefore, fails and is accordingly ***dismissed***.

18. Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)

Saswata
Assistant Registrar (Court)