

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 6383 of 2023

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

For the Petitioner : Mr. Kamal Kumar Chattopadhyay

For the Union of India : Mr. Atarup Banerjee
Mr. Ayanabha Raha

For the Respondent No.4: Mr. Samiran Mondal
Mr. Abhinaba Dan
Mr. Nitish Samanta

Heard on : 20.04.2023

Judgment on : 03.07.2023

Raja Basu Chowdhury, J:

1. The present writ application has been filed, *inter alia*, challenging the orders dated 28th January, 2022 and 27th December, 2022 passed by the Controlling Authority and the Appellate Authority, under the Payment of Gratuity Act, 1972 (hereinafter referred to as the "said Act").

2. It is the petitioner's contention that at all material point of time, the job of handling and transport of food grains and for supply of casual labourers were performed by the handling contractors. The respondent no.4 was originally appointed as contract/casual labourer under the handling contractor under a two year contract period. According to the petitioner, the respondent no.4 is not its employee and had not been employed in terms of the FCI Staff Regulation, 1971 (hereinafter referred to as the "said Regulation").
3. Notwithstanding the fact that at all material point of time, the respondent no.4 having been paid through handling contractors, and a dispute having arisen in connection with the disbursement of wages to the respondent no.4, a writ application was filed before this Hon'ble Court. The *lis* between the parties travelled up to the Hon'ble Supreme Court and finally by and in terms of the order dated 14th January, 2010, the petitioner had been disbursing wages directly to all such contract labourers including the respondent no.4.
4. Despite gratuity not being payable to the respondent no.4, in terms of the said Regulation or in terms of the order passed by the Hon'ble Supreme Court, the respondent no.4 had applied in Form 'N' before the Controlling Authority.

5. The petitioner had duly contested such proceedings. By an order dated 28th January, 2022, the Controlling Authority determined the gratuity payable in favour of the respondent no.4 and issued a notice in Form 'R' calling upon the petitioner to make payment of the gratuity so determined.
6. Being aggrieved, the petitioner filed an appeal before the Appellate Authority by making pre-deposit, as required under the said Act. By an order dated 27th December, 2022, the said appeal was also dismissed.
7. Challenging the aforesaid orders, the aforesaid writ application has been filed.
8. Mr. Chattopadhyay, learned advocate representing the petitioner submits that there was no employee-employer relationship between the petitioner and the respondent no.4. It is claimed that since, the respondent no.4 along with other similarly placed persons which, *inter alia*, includes contract labourers and casual workers, employed by FCI, were not being paid wages at par with the FCI staff, a writ application was filed before this Court, which was registered as WP No. 1491 of 1997. The same ultimately culminated in an order dated 23rd June, 1998, directing the petitioner to make payment of wages to the aforesaid casual labourers/contract

labourers, at par with the wages of class IV staff of the writ petitioner.

9. Although the said order was challenged by filing an intra Court Appeal, since, the petitioner was unsuccessful in the said intra Court Appeal, a Special Leave Petition was filed before the Hon'ble Supreme Court and finally by an order dated 14th January, 2010, the said Special Leave Petition, then converted to a Civil Appeal being No.9472-73 of 2003, was disposed of with a direction to make payment of wages and other dues to the respondent no.4 and other similarly placed persons directly without involving any contractor. By referring to the aforesaid judgment Mr. Chattopadhyay submits that the Hon'ble Supreme Court while directing the petitioner to make payment of the wages directly to the respondent no.4, did not grant any relief to the respondent no.4 and other similarly placed persons, insofar as payment of gratuity is concerned. By further referring to the aforesaid order, it is contended that the Hon'ble Supreme Court did not direct payment of gratuity to the respondent no.4 and other similarly placed persons. This aspect, however, was overlooked and not at all considered by the Controlling Authority or by the Appellate Authority. To this extent, both the Controlling Authority and the Appellate Authority exceeded its jurisdiction.

10. By further placing reliance on the order dated 4th July, 2011, passed in connection with a contempt application, filed before the Hon'ble Supreme Court, it is submitted that the Hon'ble Supreme Court by such order had in no uncertain terms recorded that they were convinced that the order passed by the Hon'ble Supreme Court had been fully complied with. Such satisfaction was recorded without insisting for payment of gratuity. It is still further submitted that the respondent no.4 was never entitled to any gratuity. The direction issued by both the Controlling Authority and the Appellate Authority should be set aside and quashed and the amount deposited by the petitioner with the Appellate Authority should be directed to be refunded.

11. *Per contra*, Mr. Mondal, learned advocate representing the respondent no.4 on the other hand submits that the issue whether the respondent no.4 was an employee of the petitioner can no longer be questioned. By referring to the judgment delivered by the Hon'ble Supreme Court he says that the Hon'ble Supreme Court while taking into consideration all factual aspects, *inter alia*, including the status of the respondent no.4 and other similarly placed persons had categorically and in no uncertain terms directed that the respondent no.4 should be treated as an employee of the petitioner and consequent there upon, had directed the petitioner to make payment of wages directly to the respondent no.4 without

involving any other contractor. The order passed by the Hon'ble Supreme Court on 14th January, 2010 clearly established the master-servant relationship. By further referring to the aforesaid order he says that the Hon'ble Supreme Court was pleased to, *inter alia*, provide that the respondent no.4 and other similarly placed persons should be entitled to retiral benefits, if admissible, under the Regulation. He says that the employees who are directly appointed by the petitioner are all receiving gratuity and as such, the Regulation does not in any way bar payment of gratuity to the employees of Food Corporation of India.

12. Mr. Mondal, by relying on an interim order dated 12th December, 2022, passed by this Court in WPA 23337 of 2022 (Prasanta Mukherjee & Anr. Vs. Food Corporation of India & Ors.) submits that the subsistence of the employer-employee relationship between the petitioner and the respondent no. 4 and other similarly placed persons has already been recognized by this Court.

13. He says that the Controlling Authority cannot be faulted for having issued a direction in Form 'R' calling upon the petitioner to make payment of gratuity. The order passed by the Appellate Authority also cannot be questioned by the petitioner in the manner as has been done. He submits that the writ application should be dismissed with costs.

14. In reply, Mr. Chattopadhyay, learned advocate representing the petitioner submits that the aforesaid finding returned in WPA 23337 of 2022, is prima facie and is interim in nature, subject to final hearing of the writ application. The same cannot come in aid of the respondent no.4.
15. Heard the learned advocates appearing for the respective parties and considered the materials on record. As would appear from the challenge made by the petitioner, it would be evident that the petitioner is attempting to disclaim the right of the respondent no. 4, to be entitled to gratuity.
16. It is an admitted position that the respondent no.4 at all material times been receiving wages, directly from the petitioner, in relation to work, executed for the petitioner. Although Mr. Chattopadhyay has strenuously argued that respondent no. 4 had been initially appointed as a contract labourer under the handling contractor, however, it has been acknowledged and accepted that the petitioner had been making payment of wages directly to the respondent no. 4. Since, according to Mr. Chattopadhyay, the respondent no. 4 had not been employed in terms of the said Regulations, the respondent no. 4 does not qualify to be an employee within the said Regulation, for him to be eligible to claim gratuity.

17. I, however, notice that both the Controlling Authority as also the Appellate Authority, by construing the provisions of the said Act, had concluded that the respondent no. 4 qualifies as an employee within the meaning of Section 2(e) of the said Act. In order to appropriately appreciate the aforesaid finding, Section 2(e) of the said Act, is reproduced herein below.

“Section 2(e) "employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, 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.”

18. While construing the aforesaid provision it must be remembered that the said Act, is a piece of social welfare legislation and the deals with payment of gratuity. Gratuity is a part of retiral benefit and in a sense is a gift especially for the service rendered or the return of favours received.

19. Although the initial engagement of the respondent no.4 was though a handling contractor, however, the petitioner has not denied payment of wages directly to the respondent no.4. Thus, by

analyzing the status of the respondent no. 4 with regard to his employment with the petitioner and the findings returned by the Controlling Authority and the Appellate Authority, it would be apparent and clear that a master servant relation between the respondent no. 4 and the petitioner subsisted, consequentially there cannot be any doubt that the respondent no. 4 qualified to be an employee within the meaning of section 2(e) of the said Act. As noted above, the objection is not with regard to the respondent no.4 receiving wages directly from the petitioner but with regard to his right to receive gratuity, regardless of payment of wages, in as much as the respondent no.4 had not been appointed in terms of the Regulation. Since the master servant relationship is established by payment of wages, it becomes irrelevant whether the respondent no. 4 had been appointed in terms of the said Regulations.

20. The only other point canvassed by the petitioner is that the Hon'ble Supreme Court had disposed off the contempt application by recording satisfaction as regards compliance of its direction, as such the petitioner cannot be saddled with additional liability in the form of payment of gratuity. As would appear from the order dated 14th January 2010, the Hon'ble Supreme Court, while disposing of the appeal by its aforesaid order, did not in any way restrict the right of the respondent no. 4 to receive gratuity. Further the aforesaid order also does not deal with the issue whether the

respondent no. 4, qualifies within the meaning of the term employee as defined in section 2(e) of the said Act.

21. Admittedly the petitioner had paid wages directly to respondent no. 4, for having employed him in the petitioner's establishment. Thus, payment of gratuity is a natural consequence of the order dated 14th January 2010. Such a right to receive gratuity cannot be interfered with in absence of a statutory prohibition. As such the orders passed by the Controlling Authority and the Appellate Authority do not appear to be perverse or without jurisdiction. No case for interference has been made out.

22. The writ application fails. The Controlling Authority is directed to take immediate steps for disbursal of gratuity in favour of the respondent no.4.

23. With the aforesaid observations and directions, the writ application stands disposed of.

24. There shall be no order as to costs.

25. Urgent Photostat certified copy of this order, if applied for, be made available to the parties on compliance of all formalities.

(Raja Basu Chowdhury, J.)