

Form No.J(2)

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

**WPA 19121 of 2022
With
WPA 19124 of 2022
With
WPA 19126 of 2022
With
WPA 19135 of 2022
With
WPA 19139 of 2022
With
WPA 19140 of 2022
With
WPA 19144 of 2022
With
WPA 19146 of 2022
With
WPA 19149 of 2022
With
WPA 19150 of 2022**

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

For the Petitioner : Mr. Kamal Kumar Chattopadhyay

For the Union of India : Ms. Avipsa Sarkar

For the Workers : Mr. Samiran Mondal
Mr. Abhinaba Dan
Mr. Nitish Samanta

Heard on : 20.04.2023

Judgment on : 03.07.2023

Raja Basu Chowdhury, J:

1. Since it has been jointly submitted by the learned advocates for the parties that the issues involved in the aforesaid applications are common, and since all documents are already on record, by consent of the parties the aforesaid applications have been taken up for consideration together. The petitioner, who is common in all applications, has challenged the orders 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 was performed by the handling contractors. The respondent no.4 in each of the aforesaid applications were originally appointed as contract/casual labourer under the handling contractor under a two year contract period (hereinafter referred to as the “workers”). According to the petitioner, the workers are not its employees 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 workers having been paid through handling contractors, and a dispute having arisen in connection with the disbursal of wages to the workers, 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 workers.
4. Despite gratuity not being payable to the workers, in terms of the said Regulation or in terms of the order passed by the Hon'ble Supreme Court, the workers had applied in Form 'N' before the Controlling Authority.
5. The petitioner had duly contested such proceedings. By the orders which are impugned, the Controlling Authority determined the gratuity payable in favour of the respective workers and issued separate notices in Form 'R' calling upon the petitioner to make payment of the gratuity so determined.
6. Being aggrieved, the petitioner filed individual appeals before the Appellate Authority by making pre-deposit, as required under the said Act. Unfortunately the same were dismissed.

7. Challenging the aforesaid orders, the aforesaid writ applications have been filed.
8. Mr. Chattopadhyay, learned advocate representing the petitioner submits that there is no employee-employer relationship between the petitioner and the workers. It is claimed that since, the workers 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 workers 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 workers, did not grant any relief to the workers 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 workers 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 workers were 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 workers in the respective writ applications, on the other hand submits that the issue whether the workers are employees 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 workers and other similarly placed persons had categorically and in no uncertain terms directed that the workers should be treated as employees of the petitioner and consequent there upon, had directed the petitioner to make payment of wages directly to the workers 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 workers 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. v. Food Corporation of India & Ors.) submits that the subsistence of the employer-employee relationship between the petitioner the workers 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 directions 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 workers.

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 workers to be entitled to gratuity.

16. It is an admitted position that the workers 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 workers 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 all such workers. Since, according to Mr. Chattopadhyay, the workers had not been employed in terms of the said Regulations, they do not qualify to be employees within the said Regulation, for them 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 respective workers 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 workers were though handling contractors, however, the petitioner has not denied payment of wages directly to the workers. Thus, by analyzing the status of the workers with regard to their employment with that of 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 respective workers and the petitioner subsisted, consequentially there cannot be any doubt that the workers individually 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 workers receiving wages directly from the petitioner but with regard to their right to receive gratuity, regardless of payment of wages, in as much as the workers have not been appointed in terms of the Regulation. Since the

master servant relationship is established by payment of wages, it becomes irrelevant whether the respective workers 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 workers to receive gratuity. Further the aforesaid order also does not deal with the issue whether the workers individually 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 the respective workers, for having employed them 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 applications fail. The Controlling Authority is directed to take immediate steps for disbursal of gratuity in favour of the individual workers, being the respondent no.4 in the respective applications.
23. With the aforesaid observations and directions, the aforesaid writ applications stand 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.)