

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 2879 OF 2018

1. Mrs. Anjana Mehta Wd/o deceased Dr. Surendraprasad Mehta, Aged about Major, Occ. Nil R/o Plot No.95, Welcome Society, Gorepeth, Nagpur-10
2. Smt. Shilpa D/o deceased Dr. Surendraprasad Mehta (Smt. Shilpa D/o deceased Dr. Surendraprasad Mehta W/o Barankumar Mandal, Aged about Major, Occ. Nil R/o 9/2, 9th Main, 4th Cross, N.G.R. Layout, Marathahalli, Bangalaores-560037
3. Ku.Swati D/o deceased Dr. Surendra Mehta, Aged about Major, Occupation Nil R/o Plot No.95, Welcome Society, Gorepeth, Nagpur 440 010

...Petitioners

// VERSUS //

1. Coal India Limited, A Government of India undertaking, registered as Company under Companies Act, 1956 having Registered Office at 10, Netaji Subhash Road, Kolkatta through the Chairman-cum-Managing Director, Coal India Limited, Kolkatta.
2. Western Coal Fields Limited, A subsidiary Company of Government of India Limited, A company incorporated under Companies Act, 1956 through its Chairman-cum-Managing Director, Coal Estate, Civil

Lines, Nagpur 440 010

3. Western Coal Fields Limited, A subsidiary Company of Government of India Limited, A company incorporated under Companies Act, 1956 through its Chief General Manager, Chandrapur Area, Chandrapur
4. The Learned Appellate Authority under the payment of Gratuity Act, 1972 & Deputy Chief Labour Commissioner (Central), Nagpur
5. The Learned Controlling Authority under the Payment of Gratuity Act, 1972 & Assistant labour Commissioner (Central), Chandrapur. ... Respondents

Shri S.A.Pathak, Advocate for the petitioners.

Shri A.M.Ghare, Advocate for the respondent nos. 1 and 2.

CORAM : ANIL S. KILOR, J.

DATED : 30th JANUARY, 2023.

ORAL JUDGMENT :

By way of this writ petition, the challenge is raised to the impugned judgment and order dated 12th September, 2016 passed by the Appellate Authority under the Payment of Gratuity Act and Deputy Chief Labour Commissioner (Central) Nagpur reversing the judgement and order dated 12th October, 2015 of the Controlling Authority under the Payment of Gratuity Act, 1972 & Assistant Labour Commissioner (Central), Chandrapur allowing the claim of the petitioner for payment of gratuity.

2. Ms. Pathak, learned counsel for the petitioners submits that in this case as the notice under Form “M” was not issued by the employer to the petitioners rejecting the claim for payment of gratuity which is mandatory under Rule 8 Sub-Rule 1 clause (a) of the Payment of Gratuity Act, 1972 (in short referred as “Act, 1972”), the learned Controlling Authority held in favour of the petitioners. However, learned Appellate Authority without commenting on the said aspect reversed the order of the Controlling Authority. Accordingly, she submits that the impugned order is erroneous and the matter needs to be remanded back to the Appellate Authority for fresh consideration.

3. On the other hand, Shri Ghare, learned counsel for the respondents submits that considering the facts of the present case, whether notice was issued under Form “M” or not it will not vitiate as the order passed by the learned Industrial Court, the petitioners are not at all entitled on merit to receive gratuity.

4. I have perused the petition and the documents filed alongwith the petition and the impugned order.

5. The learned Controlling Authority Court, allowing the claim of the petitioner for grant of gratuity under Section 7(3)(a) of the Act, 1972, has observed that the employer who has forfeited the gratuity amount for the acts of “moral turpitude”, it is obligatory that before forfeiture, acts involving moral turpitude have to be communicated to the concerned employee in for “M” under sub-rule (1) of Rule 8 of the Act,

1972. It is further observed that the respondents failed to comply with the said procedure.

6. On perusal of the order of the Appellate Court, it is evident that the Appellate Court has not dealt with the said issue and even did not reverse the findings that the compliance of sub-Rule 1 of Rule 8 is obligatory. Admittedly, there was no notice issued by the employer under form "M". Considering the scheme of the Act, 1972 and the Rules made thereunder after making application by the employee for gratuity, it is bounden duty of the employer to pay the amount if the claim is found admissible on verification and if the claim of the gratuity is not found admissible, to issue notice in Form "M".

7. Since the learned Appellate Authority & Deputy Chief Labour Commissioner (Central), Nagpur has omitted to deal with the said issue while reversing the order of the Controlling Authority, I am of the opinion that the matter needs to be remanded back to the learned Appellate Authority & Deputy Chief Labour Commissioner (Central), Nagpur to decide the same afresh. Accordingly, I pass the following order.

- i. Writ petition is partly allowed;
- ii. The impugned order dated 12th September, 2016 passed by the Appellate Authority under the Payment of Gratuity Act and Deputy Chief Labour Commissioner (Central) Nagpur is hereby quashed and set aside.

iii. The matter is remanded back to the Appellate Authority & Deputy Chief Labour Commissioner (Central), Nagpur to decide the appeal afresh after hearing both the parties and taking into the consideration observations made herein above.

[ANIL S. KILOR, J.]

Digitally signed
by
SACHINDANAND
K NAIR
Date: 2023.02.10
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