



W.P.No.16179 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 19.06.2023

ORDERS PRONOUNCED ON : 18.07.2023

CORAM:

THE HONOURABLE Mr.JUSTICE BATTU DEVANAND

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- 1.KVLN.Acharyulu
- 2.N.L.Narasiman
- 3.B.Saibaba
- 4.V.Sita Rama Prasad
- 5.Nanduri Ramam (Alias Ramanujacharyulu)
- 6.T.Srinivasa Raju
- 7.S.Raju
- 8.E.Simhachalam
- 9.N.A.Satyanarayana
- 10.BVS.Nageswara Rao
- 11.Kattamuri Sreeramalu
- 12.A.Chinna Appala Naidu
- 13.M.Sathyanarayana Murthy
- 14.Ch.Nagaraju
- 15.D.Venugopal
- 16.Ch.Jagga Rao

.. Petitioners



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Vs.

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- 1.The Chairman/Managing Director,
Food Corporation of India,
Head Quarters,
No.16-20, Barakhamba Lane,
New Dehi.
- 2.The General Manager (IR-S),
Food Corporation of India,
Head Quarters,
No.16-20, Barakhamba Lane,
New Delhi.
- 3.The Executive Director (South),
Food Corporation of India,
Zonal Office, No.3, Haddows Road,
Nungambakkam, Chennai-6.
- 4.The Deputy General Manager (IR-S),
Food Corporation of India,
Zonal Office No.3, Haddows Road (South),
Nungambakkam, Chennai-6.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records connected in No.IR/DL/6(1)/86-Estt.Pension/Part File, dated 16.01.2020 passed by the third respondent and quash the same insofar as the petitioners are concerned and direct the respondents to grant gratuity by counting past service along with regular service based on the Apex Court Order dated 23.03.2018 reported in 2018 (5) SCC 430 (Netram Sahu -VS- State of Chhattisgarh & Another).



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For Petitioner : Mr.K.Sanjay

For Respondents : Mr.RM.Muthukumar
Standing Counsel

ORDER

This writ petition has been filed seeking to quash the order of the third respondent dated 16.01.2020 and consequently direct the respondents to consider the previous service rendered by the petitioners as Casual Labours for payment of gratuity and other terminal benefits for which they rendered service as Gunny Watchman prior to the date of regularization.

2. A counter affidavit has been filed on behalf of the respondents.

3. Learned counsel for the petitioners submits that the petitioners were initially appointed as Gunny Watchman on daily wages basis from 1976 to 1979 by the respondents and posted at various places including Andhra Pradesh, Telengana and Tamil Nadu. Their services were regularized from 25.11.1999 onwards as Watchman as per the settlement arrived between the Management and the employees. After that, some of



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them got promotion and rest of them are continuing in the same post. In the present case, most of the petitioners are going to retire from service within a short period and some of them already retired from service.

4. Learned counsel for the petitioners would submit that as per the Payment of Gratuity Act, 1972, the petitioners are entitled for gratuity, as they were all rendering continuous service for more than 35 years, but the respondents have granted a meagre gratuity amount to the retired employees by calculating the regular service from the year 1999 alone and the past service rendered by the petitioners as Gunny Watchman prior to 1999 was not considered for the purpose of granting gratuity. Learned counsel for the petitioners made several contentions to substantiate the case of the petitioners.

5. Learned counsel for the petitioners further submits that the action of the respondents, in rejecting the representations of the petitioners on the same issue showing that it is devoid on merit, is illegal, arbitrary, unjust and as such, it is liable to be set aside with a



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consequential direction to the respondents to grant gratuity by counting past service rendered by them as per the law declared by the Apex Court in its order dated 23.03.2018 in *Netram Sahu Vs. State of Chhattisgarh* reported in **(2018) 5 SCC 430** and prayed to allow the writ petition.

6. On the other hand, learned Standing Counsel appearing for the respondents submits that as per the provisions of Payment of Gratuity Act, the petitioners are all entitled for gratuity from 25.11.1999 as per the mutually agreed settlement held between the Management and the Gunny Watchman. The petitioners are all contract labourers initially and they were regularized from 1999. The settlement of terminal benefits was paid in accordance with the settlement arrived at between the respondents and the petitioners and the payment was settled in all terms as agreed by the Gunny Watchman likewise the petitioners. Learned counsel would submit that in compliance of the order in W.P.No.23037 of 2019 by this Court, the second respondent herein passed an order dated 25.11.2019 after duly considering the representations of the petitioners along with the proposal of the fourth respondent on merits and as such



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there is no any illegality or irregularity in passing the impugned order by the third respondent. The learned counsel has drawn the attention of this Court to Section 4(1) of the Payment of Gratuity Act which is extracted herein under:

“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”

7. The learned counsel has also drawn the attention of this Court to Section 2-A of the Payment of Gratuity Act which is extracted herein under:

“2-A. Continuous service.—For the purposes of this Act,—

(1)an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules



or regulations governing the employees of the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act;

(2) where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer—

(a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days, in the case of any employee employed below the ground in a mine or in an establish-ment which works for less than six days in a week; and

(ii) two hundred and forty days, in any other case;”



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8. Learned counsel for the respondents further submits that in view of the above provisions of law, the petitioners have fulfilled the conditions laid in Section 4 read with sub-clause (2)(a)(ii) of Section 2A only on 25.11.1999 and as such they are eligible for gratuity only from 25.11.1999 and thereby, the contention of the petitioners do not hold merit and the writ petition is liable to be dismissed.

9. This Court has considered the submissions made by the learned counsels and the material available on record carefully.

10. The only issue, to be considered in this case, is whether the past service rendered by the petitioners as Gunny Watchman prior to the date of their regularization, i.e., from 25.11.1999 has to be considered for payment of gratuity or not.

11. On careful examination of the facts and circumstances of the case and the reliance placed by the learned counsel for the petitioner, in the considered opinion of this Court, it is appropriate to extract the



relevant paragraphs of the judgment of the Hon'ble Apex Court in

Netram Sahu (supra) as extracted herein under:

“13. The submission of the learned counsel for the respondent State was that the appellant could not be held eligible to claim the gratuity amount because out of the total period of 25 years of his service, he worked 22 years as daily wager and only 3 years as regular employee. It is for this reason, the learned counsel urged that the appellant could not be said to have worked continuously for a period of 5 years as provided under the Act so as to make him eligible to claim gratuity.

14. We do not agree with this submission of the learned counsel for the respondent State for more than one reason:

14.1. First, the appellant has actually rendered the service for a period of 25 years;

14.2. Second, the State actually regularised his services by passing the order dated 6-5-2008;

14.3. Third, having regularised the services, the appellant became entitled to claim its benefit for counting the period of 22 years regardless of the post and the capacity on which he worked for 22 years;



14.4. Fourth, no provision under the Act was brought to our notice which disentitled the appellant from claiming the gratuity and nor any provision was brought to our notice which prohibits the appellant from taking benefit of his long and continuous period of 22 years of service, which he rendered prior to his regularisation for calculating his continuous service of five years.

15. In our considered opinion, the High Court committed an error in placing reliance on the decision of this Court in State of Karnataka v. Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] to deny the relief of grant of gratuity to the appellant. In the case at hand, the High Court should have seen that the services of the appellant was actually regularised by the State and, therefore, the law laid down in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] could not be relied on. Indeed, even the decision of Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] makes a distinction in cases and where the services stand regularised, the ratio of Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] to deny the



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relief would not apply.

16. In our considered opinion, once the State regularised the services of the appellant while he was in State services, the appellant became entitled to count his total period of service for claiming the gratuity amount subject to his proving continuous service of 5 years as specified under Section 2-A of the Act which, in this case, the appellant has duly proved.

17. In the circumstances appearing in the case, it would be the travesty of justice, if the appellant is denied his legitimate claim of gratuity despite rendering “continuous service” for a period of 25 years which even, according to the State, were regularised. The question as to from which date such services were regularised was of no significance for calculating the total length of service for claiming gratuity amount once the services were regularised by the State.

18. It was indeed the State who took 22 years to regularise the service of the appellant and went on taking work from the appellant on payment of a meagre salary of Rs 2776 per month for 22 long years uninterruptedly and only in the last three years, the State started paying a salary of Rs 11,107 per month to the appellant. Having regularised the services of the



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appellant, the State had no justifiable reason to deny the benefit of gratuity to the appellant which was his statutory right under the Act. It being a welfare legislation meant for the benefit of the employees, who serve their employer for a long time, it is the duty of the State to voluntarily pay the gratuity amount to the appellant rather than to force the employee to approach the Court to get his genuine claim.

19. In view of the foregoing discussion, we cannot agree with the reasoning and the conclusion arrived at by the High Court which is legally unsustainable. It is really unfortunate that the genuine claim of the appellant was being denied by the State at every stage of the proceedings up to this Court and dragged him in fruitless litigation for all these years.

20. Indeed, this reminds us of the apt observations made by M.C. Chagla, C.J. (as he then was) in Firm Kaluram Sitaram v. Union of India [Firm Kaluram Sitaram v. Union of India, 1953 SCC OnLine Bom 39 : AIR 1954 Bom 50]. The learned Chief Justice in his distinctive style of writing while deciding the case between an individual citizen and the State made the following pertinent observations: (SCC OnLine Bom para 19)



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“19. Now, we have often had occasion to say that when the State deals with a citizen it should not ordinarily reply on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent Judges, as an honest person.”

21. These observations apply in full force against the State in this case because just case of the appellant was being opposed by the State on technical grounds. As a consequence, the appeal succeeds and is allowed. The impugned judgment/order passed by the High Court (Single Judge and Division Bench) are set aside and the orders of the controlling authority and appellate authority are restored with costs of Rs 25,000 payable by the State to the appellant. Costs to be paid by the State along with the payment of gratuity amount.”

12. On careful perusal of the judgment extracted herein above, in my view, the issue raised in the present writ petition is identical to the issue adjudicated by the Hon'ble Apex Court, wherein it is held that it would be the travesty of justice, if the appellant therein is denied his legitimate claim of gratuity, despite rendering of “continuous service” for



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a period of 25 years which even, according to the State were regularized.

It is also held that the question as to from which date such services were regularized was of more significance for calculating the total length of service claiming gratuity amount once their services were regularized by the State.

13. In the present case also, the petitioners are working from the year 1976 to 1979 as Gunny Watchman as Casual Labours and their service was regularised with effect from 25.11.1999 and as such it is clear that the petitioners continuously working for all these period. Thus, the action of the respondents in denying the service rendered by the petitioners as “continuous service”, though served around 30 to 35 years, would be the travesty of justice as held by the Apex Court.

14. For the above stated reasons, in the considered opinion of this Court, the action of the respondents in rejecting the claim of the petitioners to consider their past services rendered as Gunny Watchman prior to the date of regularization of their services by the respondents for



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payment of gratuity is illegal, unjust and contrary to the settled law. As such the order impugned in this writ petition is liable to be set aside.

15. For the aforementioned reasons, this Writ Petition is allowed with the following directions:

- i. The impugned order passed by the third respondent in proceedings No.IR/DL/6(1)/86-Estt.Pension/Part File, dated 16.01.2020 is hereby set aside; and
- ii. The respondents are directed to grant gratuity to the petitioners by counting past services rendered by them as Gunny Watchman prior to the date of regularization of their services, i.e., from 25.11.1999 and settle the same within a period of four weeks from the date of receipt of a copy of this order.

No costs.

18.07.2023

Note: Issue order copy on 21.07.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes

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BATTU DEVANAND, J.

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To

1.The Chairman/Managing Director,
Food Corporation of India,
Head Quarters,
No.16-20, Barakhamba Lane,
New Dehi.

2.The General Manager (IR-S),
Food Corporation of India,
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4.The Deputy General Manager (IR-S),
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Zonal Office No.3, Haddows Road (South),
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Order made in
W.P.No.16179 of 2020

Dated : 18.07.2023