

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

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**WPA 21014 OF 2007
Steel Authority of India Limited IISCO Steel Plant
Vs.
Md. Mohiuddin & Ors.**

With

**WPA 21017 of 2007
Steel Authority of India Limited IISCO Steel Plant
Vs.
Md. Khalid**

With

**WPA 21039 of 2007
Steel Authority of India Limited IISCO Steel Plant
Vs.
Asok Kumar Bandopadhyay & Ors.**

With

**WPA 21043 of 2007
Steel Authority of India Limited IISCO Steel Plant
Vs.
Shibapada Banerjee**

With

**WPA 21051 of 2007
Steel Authority of India Limited IISCO Steel Plant
Vs.
Kanan Das & Ors.**

For the Petitioner : Mr. Saptangshu Basu, Sr. Adv.,
Mr. Lakshmi Kanta Pal,
Mr. Bandhu Brata Bhulaadvocates

Reserved on : 12.06.2024

Judgment on : 21.06.2024

Hiranmay Bhattacharyya, J.:-

1. WPA 21014 of 2007 is at the instance of the employer and is directed against the order dated November 23, 2006 passed by the Appellate authority under the Payment of Gratuity Act, 1972 affirming the order of the Controlling Authority dated February 24, 2005.
2. The Employer has filed 4 other writ petitions. Such writ petitions involve similar facts and there are minor factual differences with regard to the date of the order passed by the Controlling Authority and the Appellate Authority, the date of joining and the amount directed to be paid to the employee on account of balance amount of gratuity. The writ petitions involve common questions of law. As such all the writ petitions were heard analogously and the same are disposed of by this common judgment and order.
3. In order to avoid repetition and for the purpose of convenience, the facts of WPA 21014 of 2007 is summarised hereunder and the same is treated to be the lead case.
4. Respondent No. 1 / Employee filed an application in Form N under Rule 10(1) of the Payment of Gratuity (Central) Rules, 1972 (for short “the 1972 Rules”) before the Controlling Authority for determination and realization of gratuity amount for continuous service from 12.10.1971 to 31.03.2003 under the writ petitioner/Employer and for other reliefs.
5. Writ petitioner contested the said application before the Controlling Authority contending that the 1st respondent was an “apprentice” appointed under the Apprentice Act, 1961 (for short “the 1961 Act”) and he was absorbed as a new entrant on 12.10.1974 and was paid the gratuity amount on the basis of date of appointment as recorded in the service records.

6. The Controlling Authority, by an order dated 24.02.2005, determined that a sum of Rs. 19,766/- is payable to the 1st respondent as balance amount of gratuity. Being aggrieved by the order of the Controlling Authority, the writ petitioner/Employer preferred an appeal and the Appellate authority by an order dated 23.11.2006 dismissed the appeal.
7. Being aggrieved by the order of the appellate authority, the Employer has approached this Court.
8. Mr. Basu, learned Senior Advocate for the writ petitioner contended that an “apprentice” is excluded from the definition of “employee” under the Payment of Gratuity Act, 1972 (for short “the 1972 Act”) and, therefore the period of apprenticeship training undergone by the 1st respondent cannot be included within the expression “continuous service” as defined under Section 2(c) of the 1972 Act. He drew the attention of the Court to a copy of the “Service Record Card” of the Employee wherein the date of appointment of the 1st respondent on 12.10.1971 was as “Full Term Apprentice” (FTA). Mr. Basu contended that the Appellate authority excluded the “Service Record Card”, which is an admissible evidence, while arriving at the final decision. He submitted that the documents produced by the 1st respondent in support of his case are inadmissible in evidence. According to Mr. Basu, the decisions of the Controlling Authority and the Appellate authority call for interference as the same are based on inadmissible evidence as well as non consideration of an admissible evidence.
9. In spite of the notice, the 1st respondent was unrepresented.
10. Heard the learned advocate for the petitioner and perused the materials placed.

11. “Employee” has been defined in section 2(e) of the 1972 Act. Section 2(e) is extracted hereinafter as the same would be relevant for deciding the issue involved in this writ petition.

“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.”

12. From the definition of “employee” it is evident that an apprentice is excluded therefrom. “Apprentice” has not been defined in the 1972 Act.
13. The Apprentices Act, 1961 (for short “the 1961 Act) was enacted to provide for the regulation and control of training of apprentices and for matters connected therewith.
14. Section 2(aa) of the 1961 Act defines “apprentice” to mean a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship.
15. Section 2(aaa) of the 1961 Act defines “apprenticeship training” to mean a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices.
16. Section 18 of the 1961 Act states that apprentices are trainees and not workers save as otherwise provided in the said Act. Section 18, however, excludes the applicability of the labour laws in relation to a person who is an apprentice.

17. There may be persons who is undergoing training but not in pursuance of any contract of apprenticeship. Such persons are trainees but are outside the purview of the 1961 Act.
18. A trainee can be said to be an “apprentice” only if he is undergoing an “apprenticeship training” as defined under section 2(aaa) of the 1961 Act in pursuance of a contract of apprenticeship. Therefore, all apprentices are trainees but all trainees are not apprentices.
19. The Hon’ble Division Bench of the Orissa High Court in the case of ***Orissa Mining Corporation Ltd. (represented by Chairmen-cum-Managing Director) vs. Controlling Authority under Payment of Gratuity Act-cum-Assistant Labour Commissioner and Others*** reported at ***(1994) 11 LLN 1130*** after noting the definition of “employee” under the 1972 Act and “apprentice” under the 1961 Act as well as the definition of “apprentice” in Stroud’s Judicial Dictionary held that a trainee outside the Apprentices Act is to be distinguished from an apprentice undergoing training in a designated trade in pursuance of a contract of apprenticeship. The former is covered by the definition of the term “employee” while the latter is excluded from the definition. It was further held that the heart of the matter in apprenticeship is, therefore, the dominant object and intent to impart on the part of employer and to accept on the part of the person learning under certain agreed terms.
20. In view of the aforesaid discussion, this Court holds that a trainee outside the purview of the 1961 Act is an “employee” as defined under section 2(e) of the 1972 Act and, therefore, cannot be excluded from the applicability of the 1972 Act. Only an “apprentice” undergoing “apprenticeship training” in pursuance of a contract of apprenticeship shall not be entitled to gratuity under the 1972 Act.

21. The issue that falls for consideration in this writ petition is whether the 1st respondent was an apprentice under the 1961 Act or a trainee outside the purview of the said Act for the period from 12.10.1971 to 12.10.1974.
22. The said issue is purely factual. Controlling Authority returned a finding that the 1st respondent was a trainee under the writ petitioner and he had not undergone training in pursuance of a contract of apprenticeship as contemplated under the 1961 Act. The Controlling Authority further noted that the writ petitioner could not submit relevant documents in support of its contention that the 1st respondent was appointed as an “apprentice” under the 1961 Act.
23. Record reveals that the 1st respondent submitted documents in support of his claim that he was a trainee for the relevant period. Therefore the 1st respondent discharged his onus and the onus thus shifted upon the writ petitioner to produce documents in support of its claim that the 1st respondent was an “apprentice” under the 1961 Act for the relevant period. The writ petitioner failed to discharge its onus in that regard before the Controlling Authority.
24. The writ petitioner, however, produced a document purported to be the “Service Record Card” of the 1st respondent for the first time before the Appellate Authority in support of its claim.
25. The Appellate Authority observed that the copy of the service record does not confirm whether the 1st respondent was appointed as an apprentice under the 1961 Act. The aforesaid finding of fact, according to Mr. Basu, was arrived at without considering the effect of material evidence, namely the “Service Record Card”.
26. It is well settled that the scope of interference by a High Court under Article 226 of the Constitution of India with a finding of fact is very limited. A finding of fact recorded by a fact finding authority constituted for such

purpose cannot be interfered with unless the same is totally perverse. While exercising the power of Judicial Review, High Court cannot reappreciate the evidence and substitute its own decision for that of the fact finding authorities. The High Court can interfere with a finding of fact if the decisions of the fact finding authority is based on no evidence or the same is based on some inadmissible evidence or some admissible evidence has been excluded while arriving at a final decision.

27. Keeping the aforesaid well settled preposition of law in mind, this Court shall now proceed to decide as to whether the findings of fact arrived at by the Appellate Authority calls for interference.
28. From the Service Record Card of the 1st respondent, it appears that an endorsement “FTA” has been made against the date of engagement i.e. 12.10.1971. Mr. Basu would vehemently contend that “FTA” stands for “Full Term Apprentice” and, therefore, the said document goes to prove that the 1st respondent was engaged as an Apprentice on 12.10.1971.
29. The Appellate Authority in its order dated November 23rd, 2006 noted that the copy of the Service Record Card of the 1st respondent indicates that the date of appointment on 12.10.1971 as FTA (Full Term Apprentice). It is also recorded in the said order that the Service Record Card does not bear the signature/LTI of the 1st respondent. This factual finding, however, could not be controverted by the learned Senior Advocate of the writ petitioner in course of his argument.
30. That apart, the Appellate Authority also took into consideration the Circular dated 13.1.2003 wherein the issue regarding payment of gratuity to employees during the training period was clarified. The relevant portion of the said Circular is extracted hereinafter.

“Training period of those employees who were engaged as Apprentices (e.g. Full Term Apprentices, Commercial Trainees, Graduate Apprentices, Supernumerary Trainees, Unpaid Trainees, Trainees Pattern Maker) may be considered for the purpose of computation of Final Settlement of Retirement Gratuity where it is followed by regular employment on successful

completion of training without any break of service. This shall not, however, include the period of Apprentices under Apprentices Act”.

31. The Appellate Authority after appreciating the materials on record observed that the copy of the Service Record Card does not confirm whether the 1st respondent was appointed as “Apprentice” under the 1961 Act. For the reasons as aforesaid, this Court is not inclined to accept the submission of Mr. Basu that the aforesaid finding of fact was arrived at without considering the effect of the document produced by the writ petitioner before the Appellate Authority.
32. This Court has already observed that only an apprentice appointed under the 1961 Act is excluded from the applicability of the 1972 Act. The Appellate Authority has rejected the claim of the writ petitioner that the 1st respondent was appointed as an apprentice under the 1961 Act.
33. The Appellate Authority noted that the employee produced documents namely Nomination in Form F and Identity Card issued by the Employer. The Appellate Authority after perusal of the said documents observed that the employer has certified the particulars by putting his signature in Form F and the Identity Card issued by CISF as Security-in-charge contained information pertaining to date of birth, date of employment, Department where posted etc. which were furnished by the company itself. The aforesaid documents relied upon by the Appellate Authority cannot be said to be inadmissible in evidence as argued by Mr. Basu.
34. Section 4 of the 1972 Act deals with payment of gratuity. The mode of calculation of gratuity has been specifically laid down therein which is based on “completed year of service”. “Completed year of service” has been defined in Section 2(c) of the 1972 Act to mean continuous service for one year. “Continuous service” has been defined under Section 2(d) of the said Act to mean continuous service as defined under Section 2A.

35. The Controlling Authority took note of the decision of the Madras High Court in the case of ***Transistor Products (Private) Ltd. vs. P. Ranganathan & Ors.*** reported at ***1980(56) FJR 313 (Madras High Court)*** wherein it was observed that the definition of continuous service itself contemplates that the break in continuous service must be due to the fault of the employee.
36. The Controlling Authority returned a factual finding that the 1st respondent was absorbed automatically into the job after completion of training. It was further observed that even though the 1st respondent had undergone training under the writ petitioner but the same was not in pursuance of the contract of training under the 1961 Act. In the backdrop of the aforesaid findings, the Controlling Authority held that the 1st respondent has to be treated as employee within the meaning of section 2(e) of the 1972 Act and entitled to gratuity for the period of training undergone by him.
37. The writ petitioner could not demonstrate before this Court that there was break of service. Therefore, this Court holds that the 1st respondent rendered continuous service with effect from the date of his joining on 12.10.1971. The Appellate Authority also held that the 1st respondent is entitled to gratuity from the date of his initial joining on 12.10.1971.
38. In the light of the factual finding returned by the Controlling Authority and the Appellate Authority that the training undergone by the 1st respondent was not in pursuance of the apprenticeship training contemplated under the 1961 Act and also that there was no break in service, this Court holds that the 1st respondent was a trainee outside the purview of 1961 Act and was rightly treated to be an employee with effect from his initial date of joining.
39. In view of the discussion made hereinbefore, this Court is of the considered view that the Controlling Authority and the Appellate Authority after considering the materials on record including the Circular dated 13.1.2003 and by applying the correct legal principles rightly held that the 1st

respondent is entitled to gratuity from the date of his initial joining in the company on 12.10.1971.

40. For all the reasons as aforesaid, this Court holds that there is no infirmity in the decision making process. The impugned orders do not call for any interference. The writ petitions accordingly stand dismissed. There shall be, however, no order as to costs.
41. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

(P.A.-Rinki)