

24-09-2024
ct no. 13
sl. no. 106
sp

MAT 2397 of 2023
CAN 1 of 2024
CAN 2 of 2024

Food Corporation of India
Vs.
Union of India and others

Mr. Devajyoti Barman,
Ms. Sanjukta B. Mullick
... for the appellant.

Mr. Kisor Ray
... for the respondent no. 4.

1. The challenge in the instant appeal is to a judgment and order dated 12th September, 2023 passed by a Single Bench of this Court in WPA 1663 of 2023.

2. By the impugned judgment, the learned Single Bench has upheld the order of the controlling authority dated 1st October, 2019 and the appellate authority dated 28th February, 2023 under the provisions of the Payment of Gratuity Act, 1972.

3. The facts relevant to the case are that the respondent workman was one of 49 persons who

was directed to be absorbed within three months from the date of actual award of the CGIT dated 9th June, 1999.

4. The award came to be finally affirmed by the Hon'ble Supreme Court by judgment and order dated 9th December, 2014 in Civil Appeal No. 10856 of 2014.

5. Since the Tribunal, High Court and the Supreme Court, in the award and orders referred to hereinabove, had not ordered back wages and the date from which they would be absorbed, the workman approached the Hon'ble Supreme Court with the application being IA 1 and 2 of 2016 in C.A. 10856 of 2014. The Hon'ble Supreme Court by its order dated 11th May, 2016 at paragraph 5 and 6 has held as follows:

“5. A primary circumstance that would required to be taken into account while determining a claim for grant of back wages would be the gainful employment of the person claiming such back wages. In the counter affidavit filed by the Food Corporation of India a letter dated 26th June, 2015 issued to the Management of the Food Corporation of India, Kolkata office, by the workmen has been

enclosed which would go to show that the concerned workmen had worked as casual workers from 3rd July, 1991 to 31st May, 2009. They were prevented from joining duties for the period 1st June, 2009 to 31st December, 2010. For the subsequent period i.e. from 1st January, 2011 till their joining in the post (s) they had worked through a contractor as security guards.

6. In the light of the above facts evident from the letter dated 26th June, 2015 the entitlement of the applicants of the back wages could be, at best, for the period from 1st June, 2009 to 31st December, 2010 and not for any other period during which they were gainfully employed.”

6. The claim for back wages was therefore restricted primarily on the ground that the workmen were deemed to be working as casual employees from 3rd July, 1991 till 31st May, 2009.

7. Pursuant to the decision of the Hon’ble Supreme Court, the FCI had by order dated 15th July, 2015 directed absorption of, inter alia, the respondent workman notionally with effect from 9th June, 1999. The workman had actually worked from 5th April, 2016. He superannuated from service on 31st July, 2017.

8. Upon superannuation, the workman applied before the appellant

for release of gratuity from 9th June, 1999 till the date of his superannuation. The appellant refused the same. The respondent workman approached the controlling authority under the Payment of Gratuity Act, 1972 by filing an application under the Form –N.

9. After due enquiry and procedure, the controlling authority found that the respondent workman was entitled to gratuity for the entire period of service from 9th June, 1999 till the date of superannuation, i.e., roughly for a period of 18 years. Upon an appeal being preferred by the appellate authority, the order of the controlling authority was confirmed on 28th February, 2023. The appellant challenged the order of the controlling authority and appellate authority before a Single Bench of this Court by way of WPA 16623 of 2023. The writ petition was dismissed by order dated 12th September, 2023 and hence the instant appeal.

10. Mr. Devajyoti Barman, learned counsel appearing for the FCI has raised a three-fold argument before this Court. It is submitted by a reference to Section 2A(ii) of the Payment of Gratuity Act, 1972 that the workman was required to demonstrate before the controlling authority that he has actually rendered 240 days of continuous service for the period from 9th June, 1999. The controlling authority did not arrive at any such finding. The order of the controlling authority is, therefore, in violation of Section 2A(ii) of the Act of 1972.

11. Mr. Barman next argues that since payment of gratuity is linked to actual work rendered by a workman, the period of less than 2½ years of actual work rendered by the workman would not entitle him to gratuity in terms of Section 4 of the Act of 1972.

12. It is thirdly argued by Mr. Barman that when the Supreme Court has declined back wages to the

claim vide order dated 11th May, 2016 (supra), the workmen are estopped from claiming any gratuity for the period of notional engagement from 9th June, 1999.

13. This Court has carefully considered the arguments of Mr. Barman and the cases cited. There is a fundamental flaw in the argument of the FCI.

14. By the letter dated 15th July, 2015, the workman was absorbed notionally by the FCI with effect from 9th June, 1999. This is an admitted and undisputed position. Mr. Barman's argument that the period from 9th June, 1999 till the date of actual joining of the workman being 5th April, 2016 would only be reckoned for the purpose of seniority pay scale and not for any other terminal benefits cannot be sustained in law.

15. Admittedly, the workmen were treated as retrenched workmen, entitled to permanent absorption, by the Hon'ble Supreme Court

distinguishing the decision in the case of ***Uma Devi (3) Vs. State of Karnataka*** reported in **(2006) 4 SCC 1.**

16. Even without a formal direction from the CGIT, the High Court and the Supreme Court, the FCI has fairly and justly calculated the length of service of the workman which commenced from 9th June, 1999 albeit without any back wages. The Supreme Court has clarified that the workman would be entitled to back wages only for the period from 1st June, 2009 to 31st December, 2010 since it was deemed that they were engaged casually for the remaining period.

17. It is now well-settled that even a retrenched workman is entitled to gratuity. Reference in this regard is made to the decision of ***State of Punjab Vs. Labour Court*** reported in **1981 SCR 953.**

18. Once having notionally treated the respondent workman on service since 9th June, 1999, the

appellants are duty bound in law and particularly, under the Act of 1972 to pay gratuity to the workman. The question of any further enquiry as to whether the workman has rendered 240 days of continuous service with the appellant or has served for a minimum period of 5 years, does not and cannot arise in the facts and circumstances of the case.

19. It is in this light that the decision in the case of ***Sri Digvijay Woollen Mills Ltd. Appellant Vs. Mahendra Prataprai Buch, Respondent*** reported in **1984 SC 106** would have no manner of application. Consequently, the decision of the Division Bench of the Madras High Court in the case of ***P. Malligarjunan & Others. Appellant Vs. The Joint Commissioner of Labour, (Appellate Authority under the Payment of Gratuity Act, 1972), Coimbatore & Others, Respondent*** reported in **2021 SC (Mad) 1890** would also not be applicable.

20. Equally not applicable is the decision of the Supreme Court in the case of ***Chief Engineer, Ranjit Sagar Dam & Anr., Appellants Vs. Sham Lal, Respondent*** reported in ***(2006) 9 SCC 124***. The said decision concerns the burden of proof being on the workman to show that he worked 240 days in a year for a period of 5 years. The said provisions are rendered inapplicable and academic in view of the decision of the Supreme Court upholding and the FCI itself, notionally absorbing the workman from 9th June, 1999.

21. Once a person is notionally absorbed from a particular day, the said day becomes crucial and vital for the length of actual service rendered by such workman with the industry concerned. Gratuity is one of the most vital components of terminal benefits payable to a workman or any other employee. It may end up being the only source of sustenance post superannuation.

22. In view of the above discussions made hereinabove, this Court does not find any infirmity in the impugned judgment and order dated 12th September, 2023 passed by a Single Bench of this Court in WPA 1663 of 2023.

23. Hence, the appeal is dismissed.

24. The workman shall be entitled to gratuity as per the applicable rules together with interest @ 10% per annum from the date of superannuation till the date of actual payment.

25. In view of the above, CAN 1 of 2024 and 2 of 2024 shall stand disposed of.

26. Interim orders, if any, shall stand vacated.

27. There shall be no order as to costs.

28. Let the T.C.R. be returned, if any, to the Court below.

29. The registry shall communicate a copy of this order to the Court below.

30. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)