



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

WRIT PETITION NO.1225 OF 2019

Abdul Rauf Abdul Rahim Turk .Vs. The Divisional Controller, M.S.R.T.C. Bhandara
Division, Bhandara

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri D.C.R. Mishra, Advocate for petitioner.

Shri V.H. Kedar, Advocate for respondent.

CORAM : ANIL S. KILOR, J.

DATED : 09/01/2024

1. Heard.
2. A short question involved in this writ petition is whether the amount claimed by the petitioner towards gratuity can be recovered under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the ID Act") by filing a proceeding before the Labour Court or it should be before the Controlling Authority under Section 10 of the Payment of Gratuity Act, 1972 (hereinafter referred to as "Gratuity Act") ?
3. The learned labour Court while deciding the application moved by the petitioner under Section 33-C(2) of the ID Act has held that, in view of the judgment of the Hon'ble Supreme Court of India in the case of *State of Punjab ..vs.. The Labour Court, Jullundur and others*, reported in **AIR 1979 Supreme Court 1981**, the application under Section 33-C(2) of the ID Act is not maintainable

and the labour Court has no jurisdiction to entertain and dispose of such application.

4. The learned counsel for the petitioner points out that the said judgment of the Hon'ble Supreme Court of India in the case of *State of Punjab* (Supra) deals with the issue about gratuity claimed under the Gratuity Act and has observed that in such matter the Gratuity Act is a complete code and therefore, the Controlling Authority would be the Competent Authority to pass the order as regards the payment of gratuity.

5. It is submitted that, in the present matter, the petitioner is not claiming the amount of gratuity under the Gratuity Act but he is claiming it under the service Rules and Regulations of the respondent-Corporation under which the petitioner is receiving the gratuity since 1964 i.e. much prior to coming into force the Gratuity Act.

6. It is pointed out from the reply of the Corporation that, even the Corporation has stated in the reply that the payment of gratuity has been made to the petitioner as per the Rules and Regulations. He, therefore, submits that, as he is not claiming gratuity under the Gratuity Act, asking the petitioner to approach the Controlling Authority under the Gratuity Act, is not justifiable.

7. The learned counsel for the petitioner has placed reliance on the judgment of the Coordinate Bench of this Court in the case of *Tularam S/o Adkuji Bhogare ..vs.. Maharashtra State Co-operative Tribal Development Corporation Limited, Nashik and others*, reported in **2017 (2) Bom.LC 719** in support of his contention.

8. On the other hand, Shri Kedar, learned counsel for the respondent opposed the petition and submits that the learned labour Court has rightly held that the application for payment of gratuity would lie only before the Controlling Authority under the Gratuity Act and not before the labour Court under Section 33-C(2) of the ID Act. He, accordingly, prays for dismissal of the present writ petition.

9. In light of the rival contention of the parties, I have perused the record and the impugned judgment and order.

10. An application under Section 33-C(2) of the ID Act filed by the petitioner shows that, he has not claimed the amount of gratuity under the Gratuity Act. However, he is claiming the amount under the Rules and Regulations of the Corporation. In an application for review of the impugned judgment, filed by the petitioner before the labour Court, it is specifically stated that, the petitioner was receiving the gratuity even prior to coming into force the

Payment of Gratuity Act, 1972, since 1964 as per the settlement.

11. Thus, considering the pleading made by the petitioner in his application under Section 33-C(2) of the ID Act, in the review application and also the pleading of the Corporation in the reply to the application under Section 33-C(2) of the ID Act, it is evident that, no claim is made under the Gratuity Act but the whole case is based on the Rules and Regulations of the Corporation. However, the above referred factors have not considered by the learned labour Court while denying to entertain the claim of the petitioner under Section 33-C(2) of the ID Act.

12. The Hon'ble Supreme Court of India in the case of *State of Pujab* (Supra) has held that, the Payment of Gratuity Act enacts a complete code containing detailed provisions covering all the essential features of a scheme for payment of gratuity. It is further held that, Parliament intended that proceedings for payment of gratuity due under Payment of Gratuity Act must be taken under that Act and not under any other.

13. Thus, it is evident that, if an employee claiming gratuity under the Gratuity Act, he has to follow the mandate of Gratuity Act by approaching to the Controlling Authority. In the present matter, as it is the case of the petitioner that, he is not claiming gratuity under the

Gratuity Act, the application under Section 33-C(2) of the ID Act is maintainable even as held by the Coordinate Bench of this Court in the case of *Tularam S/o Adkuji Bhogare* (Supra).

14. In the circumstances, I pass the following order:

- i) The writ petition is **disposed of**.
- ii) The impugned judgment and order dated 12.09.2017 passed by the Judge, Labour Court, Bhandara in Application (IDA) No.09 of 2011 and order below Exh.1 dated 17.12.2017 passed by the Judge, Labour Court, Bhandara in Misc. Application (IDA) Review No.01 of 2017, are hereby quashed and set aside
- iii) The matter is remanded back to the learned labour Court to decide the same on merit, in accordance with law.
- iv) It is made clear that except the point of jurisdiction this Court has not dealt with the matter on merit.

Writ Petition is **disposed of** accordingly. No order as to costs.

JUDGE