



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

WRIT PETITION NO.6177/2023

Maharashtra State Mining Corporation, Nagpur .vs. Vishwanath Atulchandra
Champati and Others

AND

WRIT PETITION NO.6125/2023

Maharashtra State Mining Corporation, Nagpur .vs. Devendra Sitaram Rangari
and Ors.

AND

WRIT PETITION NO.6147/2023

Maharashtra State Mining Corporation, Nagpur .vs. Moreshwar Narayan
Kshirsagar and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. S. Khubalkar, Advocate for petitioners.

Mr. V. P. Marpakwar, Advocate for respondent No.1.

CORAM : ANIL L. PANSARE, J.

DATE : SEPTEMBER 24, 2024

The issue involved in these petitions is identical and, therefore, is being decided by common judgment. For convenience, facts of Writ Petition No.6145/2023 are noted.

2. Petitioner – Maharashtra State Mining Corporation (hereinafter referred to as the, “Corporation”), is aggrieved by order dated 28.12.2022 in Case No.ALCN-48(79)2021-PGA passed by respondent No.2, Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the “Act of 1972”)as also order dated 13.07.2023 passed by respondent No.3, Appellate Authority in Appeal No. N/48(03)/2023-PG.

3. Respondent No.1 was employee of the Corporation. Vide Government Resolution dated 24.10.2001, issued by Government of Maharashtra, Industry, Energy and Labour Department, age of superannuation of employees working with the Corporation, was reduced from 60 years to 58 years. This Government Resolution was challenged by the employees' union before this Court in Writ Petition Nos.2004/2002 and 5223/2004. The employees sought to quash and set aside the Government Resolution with consequential relief of back-wages till they reach the age of 60 years along with hike in their gratuity, provident fund and other terminal benefits. The respondent herein stood retired on superannuation pending petitions. Ultimately, the Division Bench in the aforesaid writ petitions found merit in the challenge and set aside the Government Resolution.

4. The question then arose as to what consequential benefit could be granted since the respondent herein had retired pending writ petition. The Division Bench has rendered following finding:

“20. The petitioners have reached age of superannuation during pendency of petitions and challenge raised by them pointing out correct age or their legal right to continue till then, is very much pending. Petitioners, however, have not worked after reaching the age of 58 years and, in this situation, normally when there are no mala fides pleaded, the principle of "no work no pay" should apply. However it is to be noted that pension is not the condition of service and hence by denying them wages for period beyond 58 years till their reaching age of 60 years, a substantial loss will be caused to them. Their service conditions has been violated and they were/are

legitimately expecting to work till 60 years of age. We also find that it is State Government which has taken impugned decision and forced it upon the Mining Corporation.

21. We, therefore, grant 50% of wages to petitioners from the date on which they have been sent out after reaching age of 58 years till they attained the age of 60 years. Half of this, i.e. 25% shall be paid to petitioners by their employer namely, Maharashtra State Mining Corporation while remaining half shall be paid by State Government.”

5. Learned counsel for the petitioner submits that the Division Bench has granted 50% wages to the employees. The other prayers which include hike in the gratuity, provident fund and other terminal benefits were not granted, meaning thereby that the said reliefs were refused. Thus, according to him, gratuity was not payable to the employees for two years i.e. from 58 to 60 years.

6. Respondent No.2, however, has considered the claim of employees under Section 7(4) of the Act of 1972 read with Rule 11 (4). Respondent No.2 then has considered the judgment passed by this Court in Writ Petition No.5223/2004 particularly paragraphs 20 and 21 and held that this Court has quashed the resolution and issued directions for payment of 50% wages for the remaining period of two years by considering the concerned employees to be in employment and accordingly the gratuity for additional two years has been granted.

7. Counsel for the petitioner submits that the respondent No.2 committed serious error by observing that this Court has considered the employees to be in service for two years.

According to him, this Court has not rendered such finding. The relief was granted on the ground that though employees were not in service, they were kept out for no fault of theirs. Resultantly, the Division Bench has awarded compensation in the form of 50% wages. Had the Division Bench taken a view that the employees continued in service, it would have granted 100% wages. He then submits that merely because the Division Bench has granted concession to the employees, that cannot be taken as a ground to claim gratuity. He refers to Section 2A of the Act of 1972, which defines 'Continuous Service' to mean uninterrupted service. He has also referred to clauses (a) and (b) of Section 2A to contend that the gratuity is payable for the period the employee has actually worked under the employer. His emphasis is on the words, "actually worked". He submits that since the employees have not actually worked after the age of 58 years, they are not entitled for gratuity.

8. As against, counsel for the employees submits that the employees had filed contempt petition against the Corporation for non compliance of the order passed by Division Bench, which was registered as Contempt Petition No.93/2020. The Division Bench found that the Corporation has substantially complied the order and has clarified that if the petitioners are entitled for any further amount, they are free to pursue such remedy as is available in law. The counsel submits that the contention of the petitioner that the Division Bench in Writ Petition No.2004/2002 has not granted relief of gratuity, stands neutralized by the liberty granted to the employees in the contempt petition. Thus, according to him, no interference is called for in the impugned judgment.

9. Having given thoughtful consideration to the submissions made by both the sides, I am of the view that there is substance in the contentions of the counsel for the employees to the extent of maintainability of claim. In contempt petition, liberty was granted to the employees to claim further amount in accordance with law.

10. The question is whether in the facts and circumstances of the case, the gratuity is payable to the employees? Admittedly, the employees have not worked during the period they were between the age of 58 to 60 years. However, their claim for gratuity can be sourced from the order passed by Division Bench in Writ Petition No.2004/2002. The Division Bench has granted 50% wages to the petitioners from the date on which they have been sent out after reaching the age of 58 years till they attained the age of 60 years. Thus, 50% wages were granted to the employees against their prayer of 100% back-wages. The Division Bench has also considered the well settled principles of no work no pay. It noted that employees were not at fault and were willing to work but for the Government Resolution imposed on the Corporation, they were prevented, for no fault of theirs. In the aforesaid background, 50% wages were granted to the employees which, to my mind, were nothing but the wages and once wages are granted to the employees, they will be entitled for the gratuity in terms of Section 7(4) of the Act of 1972 read with Rule 11(4) of the Payment of Gratuity (Central) Rules, 1972. Thus, the employees will be entitled to gratuity viz-a-viz 50% wages granted to them for the period of two years from the age of 58 years to 60 years.

11. The counsel for the petitioner has invited my attention to the judgment passed by the Hon'ble Supreme Court in *State of Haryana and Ors. Vs. O. P. Gupta and Ors.; (1996) 7 SCC 533*, to contend that employees will not be entitled for gratuity on the principle of no pay for no work.

12. I have gone through the judgment to find that the facts are altogether different. The notional promotion was given to the respondent employees therein. The employees had admittedly not worked on the highest post for the said period, though were notionally promoted. In the aforesaid background, the Supreme Court held that the person will not be entitled to any pay and allowance during the period for which he did not perform duties on higher post although after due consideration he was given a promoted place in the gradation list having been deemed to be promoted to the higher post with effect from the date his junior was promoted. The Court further held that he will be entitled only to promotion from the deemed date. He was not entitled to payment of arrears of salary. Thus, the Supreme Court has held that the person under notional promotion who has not performed the duties of higher post is not entitled to arrears of salary.

13. Such is not the case before this Court. The employees were not permitted to work despite their willingness. The Division Bench has, in fact, considered the principle of 'no pay for no work' but having found that the employees were not at fault thought it proper to award 50% wages. Once it is found that the employee was entitled for 50% wages, there appears no

reason why should gratuity be not paid under the provisions of the Act of 1972.

14. The authorities below, however, have erroneously considered their employment to be continuous service up to 68 years and have granted gratuity at 100% with interest at 10% per annum, that too by relying upon judgment passed by Division Bench. In this regard, counsel for the petitioner is correct in contending that this Court has not rendered a finding that service of employee stands continued till 60 years. This Court, considering the fact that the employees were not at fault, took a holistic view and thus granted relief of 50% wages.

15. Resultantly, the employees will be entitled to gratuity on 50% wages and nothing more. The impugned orders would, therefore, require modification.

16. Accordingly, the petitions are partly allowed. Orders dated 28.12.2022 in Case Nos.ALCN-48(79)2021-PGA, ALCN-48(80)2021-PGA and ALCN-48(86)2021-PGA passed by respondent No.2, and orders dated 13.07.2023 passed by respondent No.3 in Appeal Nos.N/48(03)/2023-PGA, N/48(01)/2023-PGA and N/48(02)/2023-PG are quashed and set aside to the extent of granting 100% gratuity for two years.

17. I am informed that the petitioner has deposited the amount of gratuity before the appellate authority i.e. respondent No.3. It shall permit employees to withdraw 50% of the said amount along with interest at the rate of 10% per annum. Remaining amount shall be paid back to the Corporation.

18. At this stage, counsel for the petitioner submits that employees have filed proceedings before the appropriate Court seeking benefits of the Sixth Pay Commission. The Court/authority below may get influenced by the order passed by this Court.

19. I do not find any reason for such apprehension inasmuch as the instant order is restricted to the gratuity payable to the employee under the Act of 1972. However, for the purpose of clarification, it is hereby noted that the observations made in the order are made for the purpose of assessing correctness of amount of gratuity payable to the employees

(Anil L. Pansare, J.)

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