



2024 : DHC : 3794



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Reserved on : 30th January, 2024**
Pronounced on: 29th April, 2024
+ **W.P.(C) 10445/2018**

SMT.PASHPATI Petitioner
Through: **Ms.Richa Sharma, Advocate**
(through VC)

versus

THE EXECUTIVE ENGINEER, CPWD Respondent
Through: **Mrs Amrita Prakash CGSC with**
Mr Vishal Ashwani Mehta,
Advocate and Mr Ganga Ram Ex.
Engineer

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

FACTUAL HISTORY

1. The petitioner is the wife of late Shri Deen Dayal ('the deceased' hereinafter) who was initially working with the respondent ('respondent Department' hereinafter) as a muster roll employee on the position of *Beldar* since 16th August, 1986 and worked in the same capacity till 2006, thereafter, his services got regularized *vide* office memorandum ('OM' hereinafter) dated 11th December, 2006.
2. The deceased died on 11th March, 2015 while serving at the regular post in the respondent Department.



3. Thereafter, in the year 2015, the petitioner filed an application seeking gratuity. In the said application, the petitioner claimed for gratuity for the period during which the deceased served with the respondent Department on the muster roll which allegedly amounted to Rs.3,09,915/ along with interest @ 18% per annum, however, she did not receive the same.

4. Aggrieved by non-payment of the claim amount, the petitioner submitted an application before the Controlling Authority for payment of the alleged remaining amount.

5. Pursuant to completion of the proceedings before it, the Controlling Authority allowed the claim of the petitioner *vide* order dated 30th August, 2017 and held that the petitioner is entitled for services rendered during the muster roll period.

6. Thereafter, the respondent department filed an appeal against order dated 30th August, 2017. Pursuant to the completion of the proceedings, the Appellate Authority ('learned Authority' hereinafter) *vide* order dated 5th March, 2018 set aside the order passed by the Controlling Authority and upheld the contentions raised by respondent Department observing that the claim of the petitioner was time-barred.

7. Aggrieved by the same, the petitioner has preferred the instant petition.

PLEADINGS BEFORE THIS COURT

8. In the instant petition, the petitioner has taken the following grounds for supplementing her claim:

A. *Because the Appellate Authority did not consider that the qualifying services of the deceased employee was more than 20*



years on muster roll period and if his total services is calculated then it would be approximately 29 years. Thus, the Appellate Authority was factually incorrect in passing the impugned order which is not at all sustainable in present case.

B. Because the Appellate Authority did not consider that under rule 4 of the payment of Gratuity (Central Rules) 1972 the management was bound to display conspicuously a notice at or near the main entrance of the establishment in bold letters in English and in language understood by the majority of the employees specifying the name of the officer with designation authorized by the employer to receive on his behalf notice under the Act or the rules. That under rule 20 of the payment of Gratuity (Central rules) 1972, the employer was bound to display an abstract of the act and rules in Firm 'U' in English and the language understood by the majority of the employees at conspicuous place at or near the main entrance of the establishment.

C. Because the Appellate Authority under Payment of Gratuity Act has erred in passing impugned order thereby rejecting the claim of the Petitioner only on the ground of delay without considering the merits in its proper perspective that the deceased employee is entitled for payment of gratuity for the services rendered by him during muster roll period which was never disputed by the Respondent management. It is submitted that the Petitioner had put in 11 years of service on the post of Beldar during muster roll period and his service was totally satisfactory to his superior officials.

D. Because the Appellate Authority vide impugned order dated 5.3.2018 erroneously allowed the Appeal and set aside the order passed by the Controlling Authority without considering that considering that the claim of gratuity is continuous wrong and no delay is attracted as well as this Hon'ble Court in MCD Vs Nand Kishore LPA No. 415/2002 has held that non-payment of gratuity is continuing wrong and there is no question of delay in approaching the controlling authority and the claim of gratuity cannot be denied on the ground of delay.

E. Because the Hon'ble Supreme Court in Netram Sahu Vs State of Chhattisgarh & Anr 2018 (5) Scale 19 has held that: -



“16. In our considered opinion, once State regularized the service 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 providing continuous service of 5 years as specified under section 2A 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 regularized. The question as to from which date such services were regularized was of no significance for calculating the total length of service for claiming gratuity amount once the service were regularized by the State.”

F. Because the Controlling Authority vide order dated 25.9.2017 had rightly allowed the claim of the Petitioner on the premise that it is continuous wrong and the Petitioner is legally entitled for gratuity for services rendered during muster roll period. That the Controlling Authority has rightly framed two issues which were answered in favour of the Petitioner workmen.

G. Because the Appellate Authority ought to have considered that services rendered during muster roll period shall be governed by Payment of Gratuity Act 1972 and the intention and object of this special code has been enacted for the beneficial of employees working in factories, mines, oilfields, plantation, ports or other establishment and denying benefits accrued under this Act 1972 shall defeat the entire purpose of this codified law of land. However, in many cases the Appellate Authority granted gratuity amount to similar situated employees of the Respondent department whereas rejecting the claim of the Petitioner without considering merits of case would discriminate the Petitioner thereby violating Article 14 and 16 of Constitution of India.

H. Because the Appellate Authority did not consider that the Hon'ble Supreme Court in Jaswant Singh Gill vs. Bharat Coking Coal Ltd. (2007) 1 SCC 663 wherein the Apex Court held as under: “Gratuity becomes payable as soon as the employee



retires. The only condition therefore is rendition of five years continuous service".

I. Because the Appellate Authority did not consider that *Allahabad Bank & Ors. v. All India Allahabad Bank Retired Employees' Association* (2010) 2 SCC 44 wherein the Apex Court held as under:

“9. A plain reading of the provisions referred to hereinabove makes a abundantly clear that there is no escape from payment of gratuity under the provisions of the Act unless the establishment is granted exemption from the operation of the provisions of the Act by the appropriate Government.

18. No establishment can decide for itself that employees in such establishments were in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under the Act.

19. This Court in *Municipal Corporation Delhi vs. Dharam Prakash Sharma and Ors.*: (1998) 7 SCC 221 observed: “the mere fact that the gratuity is provided for under the Pension Rules will not disentitle him to get the payment of gratuity under the Payment of Gratuity Act. In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect.”

J. Because in view of sub section 3-A of Section 7 of Payment of Gratuity Act 1972 the Petitioner herein is entitled to receive interest on payment of gratuity as it was delayed by the Respondent without any reasonable consideration. The Hon'ble Supreme Court in *Y.K. Singia v. PNB*, (2013) 3 SCC 472 while dealing with provisions of sub section (3-A) of section 7 of Act 1972 uphold that "appellant therein is entitled to interest on account of delayed payment, inconsonance with sub-Section (3A) of Section 7 of the Gratuity Act. We, accordingly, direct the PNB to pay to the appellant, interest at “the rate notified by the Central Government for repayment of long-term deposits”. In same judgment it was further observed by the Apex Court that:-

“19. A perusal of Section 14 leaves no room for any doubt, that a superior status has been vested in the provisions of the Gratuity Act, vis-a-vis, any other enactment including any



other instrument or contract inconsistent therewith. Therefore, in so far as the entitlement of an employee to gratuity is concerned, it is apparent that in cases where gratuity of an employee is not regulated under the provisions of the Gratuity Act, the legislature having vested superiority to the provisions of the Gratuity Act over all other provisions/enactments (including any instrument or contract having the force of law), the provisions of the Gratuity Act cannot be ignored.”

K. Because the Appellate Authority did not consider that the Petitioner herein falls within the definition of 'Employee' as provided under section 2(e) of Payment of Gratuity Act 1972 during relevant time when he had rendered services on muster roll period and provision of section 2(e) of Act is reproduced herein below;- “employee” means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are expressor implied, and whether or not such person is employed in a managerial or administrative capacity, 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.” Thus, on plain reading of the said definition it is clear that the claim of the Petitioner cannot be defeated as for that relevant period for the gratuity is unclaimed pertains to muster roll period.

L. Because the Appellate Authority did not consider that the Govt. of India through Director General (Works) CPWD has issued letter dated 26.6.2006 clarifying regarding the calculation of payment of gratuity of the muster roll employee in CPWD. It is important to submit here that DG (works) CPWD issued letter/order dated 26.6.2006 qua the payment of gratuity to the workmen who have rendered service on muster roll. It is submitted that the circular dated 26.6.2006 was issued by the Director of DG (works) CPWD in respect of payment of gratuity to its casual hand receipt and muster roll workers under the Payment of Gratuity Act 1972, wherein after examining that whether Payment of Gratuity Act 1972 is applicable to



Casual/Hand Receipt/Muster Roll workers of CPWD, it was directed by DG (works) to make payment of gratuity to Casual/Hand Receipt/Muster Roll workers of CPWD under Payment of Gratuity Act 1972.

M. Because the Appellate Authority did not consider that the DG (works) vide letter dated 16.4.2008 had clarified that the payment of gratuity is to be made in two parts (1) for the period of service rendered on muster roll is to be calculated under provisions of Payment of Gratuity Act 1972 (2) for the period of service rendered as regular employee the gratuity is to be made as per provisions contained in CCS (Pension) Rules 1972.

N. Because the Appellate Authority did not consider that in one case the Respondent department has issued letter dated 6.11.2007 whereby death gratuity was paid to the widow of workmen as per rule 50 of CCS Pension Rule 1972 inasmuch as his half services rendered on muster roll was also taken into consideration for the purpose of pension at the time of absorption in regular employment in terms of Rule 14 of CCS Pension Rule 1972.

O. Because the Appellate Authority in Appeal No. ND (36)7/2013-PA vide order dated 7.10.2013 while confirming the order dated 19.12.2012 passed by the Controlling Authority thereby directed the payment of gratuity to the widow for the period of muster roll service rendered by her husband under the provisions of Payment of Gratuity Act 1972.

P. Because the Hon'ble Supreme Court in H. Ganahanume Gowda Vs Karnataka Agro Industries Corporation Ltd. being SLP (C) 4114 of 2002 had observed that Payment of Gratuity with or without interest as the case may be does not lie in the domain of discretion but it is statutory compulsion. Specific benefits expressly given in social beneficial legislation cannot be ordinary denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with penalty of payment of interest on delayed payment of gratuity. In view of sub section (3-A) was added to section 7 by amendment which came in force from 1.10.1987. There is clear mandate in provisions of section 7 to the employer for payment of gratuity within time and to pay interest on delayed



payment of gratuity. There is also provision to recover the amount of gratuity with compound interest in case the amount of gratuity payable was not paid by the employer in terms of section 8 of the Act.

Q. Because the Appellate Authority did not consider that section 4 of the Act says that Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous for not less than five years:-

a. on his superannuation.

b. on his retirement or resignation

c. on his death or disablement due to accident or disease.

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment is due to death or disablement.

It is submitted that the Petitioner has rendered continuous service of 18 years on muster roll without any interruption or break in service. The employment of the Petitioner was continuous and against the perennial work as well as the post on which the Petitioner was initially engaged was sanctioned post.

R. Because the Office of Chief Executive Engineer, CPWD, Shankar Market, Electrical Division, New Delhi wrote letter dated 6.7.2014 to Superintendent Engineer, Electrical, CPWD Division-2, New Delhi, qua recording the entry of Muster Roll period for the purpose of record as well as for admissibility of allowances. It was also mentioned in the letter to follow the conditions laid down in para 2 of DG's letter dated 26.6.2006.

S. Because the Controlling Authority vide order dated 30.8.2017 had rightly allowed the claim of the Petitioner on the premise that it is continuous wrong and the Petitioner is legally entitled for gratuity for services rendered during muster roll period. That the Controlling Authority has rightly framed two issues which were answered in favour of the Petitioner workmen.

T. Because in numerous cases the Appellate Authority granted payment of gratuity to such employees who had rendered their services during muster roll period in the Respondent department and such an order of Appellate Authority as well as Controlling Authority has been implemented by the Respondent



department therefore it would amount to serious discrimination against the Petitioner.

9. In response to the above said grounds, the respondent Corporation has filed the counter affidavit which reads as follows:

PRELIMINARY SUBMISSIONS

"1. That the respondent is a Government Undertaking having office at Pushp Vihar Maintenance Division, CPWD, Pushpa Bhawan, New Delhi. It is submitted that the husband of the petitioner was engaged on muster roll w.e.f. 16.08.1986 as Beldar and his services were regularized on 11.12.2006. The above-mentioned regularization changed the petitioner's status from Muster Roll employee to a regular/Work Charged employee. The husband of the petitioner died on 11.03.2015.

2. That according to the petitioner, her husband worked on muster roll with the CPWD from 16.08.1986 to 31.08.1993, temporary status from 01.09.1993 to 10.12.2006 and his services regularized from 11.12.2006 i.e. for a total period of 18 years 01 months and 18 days.

However, no details of Muster Roll period is available in the office and in the service record of the respondent.

3. That the husband of the petitioner was a regular employee as Beldar at the time of his death under work-charged establishment under the provision of Central Civil Service (Classification, Control and Appeal) Rule in Group 'D' vide directorate O.M. No. 15/3/78 -EC – X dated 27.11.1986. The total length of service is 18 years 1 month and 18 days (ANNEXURE-3) which is less than 20 years. Therefore, Provision contains under Rule 50 and Rule 10(2) CCS Rules 1965 the admissible (as per ANNEXURE-1-4) death gratuity Rs. 2,55,600/- (ANNEXURE-5) had already been paid to the petitioner.

4. That section 2(e) of the Payment of Gratuity Act, 1972 excludes the employees of the Central Govt. and State Govt. receiving pension and gratuity under the Pension Rules

5. That all the pensionary benefits like pension, DORG, Commutation of pension, insurance funds etc have already been paid to workman as per Service Rules.



6. That it is pertinent to mention here that the petitioner has not submitted the complete document/ evidence in support of her claim of her husband having rendered service for the continuous period from 16.08.1986 to 11.03.2015. Moreover, the respondent has also not submitted any documents in support of the claim that the petitioner's husband has drawn the payment on monthly basis or on daily basis.

7. That before the Ld. Assistant Labour Commissioner vide Executive Engineer letter No. 10(Court case)/PVMD-i/868 dated 20.05.2016 and even no. 1366 dated 04.08.2016 wherein it has been mentioned that death' gratuity amounting to Rs.2,55,600/- has been sanctioned by PAO(FZ) for the entire service as per government Rules. Total qualifying service including muster roll, temporary status and regular is 18 years 1 month and 18 days which is less than 20 years and he was eligible for death gratuity for 12 times of emoluments which has been calculated for Rs.2,55,600/- and paid to the petitioner.

PARAWISE REPLY

1. That the contents of para 1 are vehemently denied being wrong. It is correct that the petitioner's husband worked on muster roll with the CPWD from 16.08.1986 to 31.08.1993, temporary status from 01.09.1993 to 10.12.2006 and his services regularized from 11.12.2006 i.e. for a total period of 18 years 01 months and 18 days. However, no details of Muster Roll period is available in the office and in the service record of the respondent.

2. (i-xxi) That the contents of para 2 (i-xxi) are correct to the extent of being matter of record i.e. circulars and Memorandum issued by CPWD, provisions from Payment of Gratuity Act, 1972 and COS (Pension) Rules 1972. But, the petitioner's claim i.e. grant of gratuity for muster, period from 16.08.1986 to 06.06.1991 along with interest @ 18% p.a. is not maintainable and hereby vehemently denied being wrong. The husband of the petitioner was a regular employee as Beldar at the time of his death under work-charged establishment under the provision of Central Civil Service (Classification, Control and Appeal) Rule in Group 'D' vide directorate O.M. No. 15/3/78 -EC - X dated 27.11.1986. The total length of service is 18 years 1 month and



18 days which is less than 20 years. Therefore, under Rule 50 and Rule 10(2) of CCS Rules 1965 the admissible (ANNEXURE 1-4) death gratuity Rs. 2,55,600/- (ANNEXURE-5) had already been paid to the petitioner.

All the pensionary benefits like pension, DCRG, Commutation of pension, insurance funds etc have already been paid to workman as per Service Rules.

It is pertinent to mention here that the petitioner has not submitted complete document/ evidence in support of her claim of her husband having rendered service for the continuous period from 16.08.1986 to 11.03.2015. Moreover the respondent has also not submitted any documents in support of the claim that the petitioners husband has drawn the payment on monthly basis or on daily basis.

As per section 2(e) of the Payment of Gratuity Act, 1972 excludes the employees of the Central Govt. and State Govt. receiving pension and gratuity under the Pension Rules. Before the Ld. Assistant Labour Commissioner vide Executive Engineer's letter No. 10(Court case)/PVMD- 1/868 dated 20.05.2016 and even no. 1366 dated 04.08.2016 wherein it has been mentioned that death gratuity amounting to Rs.2.55,600/- has been sanctioned by PAO(FZ) for the entire service as per government Rules. Total qualifying service including muster roll, temporary status and regular is 18 years 1 month and 188 days which is less than 20 years and he was eligible for death gratuity for 12 times of emoluments which has been calculated (ANNEXURE-4) for Rs.2.55,600/- and paid to the petitioner.

3. That contents of para 3 needs no reply being matter or record.

4. That the contents of para 4 are formal and hence need no comment.

- 10.** Pursuant to conclusion of the proceedings, the learned counsel for the petitioner had also filed a brief synopsis and the same was taken on record and perused by this Court.



SUBMISSIONS

(on behalf of the petitioner)

11. The learned counsel appearing on behalf of the petitioner submitted that the learned Authority erred in passing the impugned order only on the grounds of delay without considering the merits of the case.

12. It is submitted that the learned Authority erred in appreciating the settled position of law and without considering that the claim of gratuity is a continuous wrong and no delay is attracted on the same. Reliance has been placed upon the judgment of this court in *MCD v. Nand Kishore*¹ whereby, the non-payment of gratuity was termed as a continuous wrong.

13. It is submitted that the Controlling Authority had rightly allowed the claim of the petitioner on the premise that the non-payment is a continuous wrong, therefore, setting aside a legally tenable decision is bad in law and liable to be overturned.

14. It is submitted that the learned Authority erred in not appreciating that the petitioner duly falls within the definition of 'employee' as provided under Section 2(e) of the Act during the time when he had rendered services on muster roll in the respondent Department.

15. It is submitted that the learned Authority failed to consider that the letter dated 16th April, 2008 as passed by the DG (works) had clarified that the payment of gratuity is to be made in two parts and the same includes the period of service rendered on muster roll.

16. It is submitted that in order dated 7th October, 2013 passed by the learned Authority in Appeal No. ND (36)7/2013-PA had directed the

¹ 2002 SCC OnLine Del 1352



payment of gratuity to the widow of another similarly placed employee for the services rendered by him on muster roll, therefore, denial of the same to the petitioner is wrong and in direct contravention to the orders passed by learned Authority in cases of similarly placed employees.

17. It is submitted that the learned Authority erred in appreciating that the payment of gratuity is not decided on the discretion of the employer rather the same is a statutory compulsion, therefore, non-grant of the same is illegal and invalid.

18. It is submitted that the office of Executive Engineer of the respondent Department had directed had directed Superintendent Engineer to include the deceased's muster roll period for the record and the admissibility of allowances *vide* letter dated 6th July, 2014, therefore, the respondent Department cannot deny the same at this stage.

19. In view of the foregoing submissions, the learned counsel for the petitioner submitted that the present petition be allowed and reliefs be granted as prayed.

(on behalf of respondent)

20. The learned counsel appearing on behalf of the respondent Department vehemently opposed the present petition submitting to the effect that the learned Authority had rightly allowed the appeal filed by the Department and the same is legally valid.

21. It is submitted that the petitioner failed to submit complete documents/evidence in support of deceased having rendered services for continuous period from 16th August, 1986 till his demise.

22. It is submitted that it is an admitted fact that the deceased was a regular employee of the respondent Department and therefore, governed



by the CCS pension rules, therefore, the payment of gratuity of the deceased was done in accordance with the applicable CCS rules.

23. It is submitted that the deceased was regular employee as Beldar at the time of his death under work-charged establishment under the provision of central civil service (classification, control and appeal) rule in Group 'D'. He was in service for 18 years 01 month and 18 days. Since the deceased's service was less than 20 years, the gratuity of Rs. 2,55,600/- under Rule 50 and Rule 10(2) CCS Rules, 1965 has already been paid. Hence, the petitioner is wrong in holding that she is entitled to grant of gratuity for muster period @18% p.a.

24. It is submitted that the claim of the petitioner is time barred as he has filed the same after a huge delay, therefore, the same is hopelessly time barred for cannot be allowed when the petitioner himself opted for regularization of his services.

25. In view of the foregoing submissions, the learned counsel for the respondent submitted that the present petition being devoid of any merits may be dismissed.

ANALYSIS AND FINDINGS

26. Heard the learned counsel for the parties and perused the records.

27. It is the case of the petitioner that the learned Authority wrongly set aside the well reasoned order passed in favor of the petitioner for payment of gratuity for the services rendered by the deceased during his time as a muster roll employee in the respondent Department. In support of his contention, the petitioner has supplemented the judgment of this Court in *MCD v. Nand Kishore (supra)*, whereby, the Division Bench



held that the non-payment of gratuity would amount to a continuous wrong and therefore, cannot be denied. Furthermore, the petitioner has also drawn an analogy with similarly placed employees where the respondent Authority duly granted gratuity for the period served on the muster roll.

28. In rival submissions, the learned counsel for the respondent Department has rebutted the above said contention of the petitioner by stating that the statutory prescription for grant of gratuity does not allow the respondent Department to pay anything for the period served on muster roll as the petitioner opted for regularization of his services, he cannot demand the payment of gratuity for the period served on the muster roll. Apart from the said contentions, the learned counsel also submitted that the claim for the said gratuity has been filed by the petitioner after a huge delay, therefore, the same being time barred cannot be allowed.

29. Therefore, the limited question for adjudication before this Court is whether the denial of the gratuity for the period served by the petitioner on muster roll is legally tenable or not.

30. The term employee has been defined well within the Act, where the Section 2(e) reads as under:

*(e) "employee" means any person (other than an apprentice) employed on wages, [3] [***] in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, [4] [and whether or not such person is employed in a managerial or administrative capacity, 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].

31. The plain reading of the above cited provision makes it clear that for the purpose of the Act, the term employee means an individual employed on wages in an establishment. The only exception to a person to be not categorized as an employee is that such person should not hold a position in the Central or State Government and the said position being governed by any other Act or Rules providing for payment of the gratuity.

32. As per the factual matrix, before regularization of his services, the deceased had served in the respondent Department on muster roll from the period between 1986 to 2006, therefore, complying with the criteria of being an employee under the Act.

33. The relevant provision i.e. Section 2A of the Act defines the term 'continuous services' where an employee is entitled to gratuity if he has worked for more than 240 days in a given year and completed 5 years of services. Therefore, the petitioner meets both the conditions, i.e. being an employee of the establishment and working for 5 years.

34. During the course of arguments, the learned counsel for the respondent Department vehemently argued that the services of the deceased were regularized from the year 2006, therefore, he cannot be made eligible to get gratuity for the period served on muster roll in the organization.

35. Now coming to the denial of the petitioner's claim by the learned Authority. The relevant extracts of the impugned order denying the gratuity claims of the petitioner reads as under:



On perusal of relevant records submitted by both the parties during the hearing of appeal and arguments thereto along with the records in claim application No. ALC 11/36)01)/20-16AKB, it is evident that there is no dispute as to the period of service rendered by the Shri Deen Dayal from 16/10/1986 to 10/12/2006 as a muster roll employee and from 11/12/2006 to 11/03/2015 as a regular employee of the CPWD. The termination of service because of death of Shri Deen Dayal is also not disputed. It is an admitted fact that a regular employee of the CPWD is a government employee governed by the CCS Pension Rules. The regularisation of Shri Deen Dayal w.e.f. 11/12/2006 is an admitted fact. The half period of total service on muster roll is taken for qualifying service for payment of gratuity as per CCS Rules. Since Shri Deen Dayal was regular employee of the CPWD at the time of his death i.e. 11/03/2015, therefore he was paid the due gratuity as per CCS Rules 1965. The provisions of the Act are not applicable to him. However, he would have been entitled for gratuity for the muster roll period from 16/8/1986 to 10/12/2006 but no such claim was preferred by him subsequent to his regularisation w.e.f. 11/12/2006 till his death. The regularisation conferred the status of regular employee covered under the CCS Rules. The respondent has already received the gratuity as per CCS Rules. Hence at this stage there is no point in claiming the gratuity for the muster roll period from 16/8/1986 to 10/12/2006 on 22/12/2015 by condoning the delay of nine years without any specific reason by the wife of Shri Deen Dayal. The claim application was hopelessly time barred and for no reason when the employee Shri Deen Dayal himself opted for regularization.

The CA has failed to appreciate the facts of the case as no specific reason is given for filing this claim after nine years even when gratuity as per CCS Rules has already been received by the respondent. The claim filed by the respondent for gratuity for the period from 16/8/1986 to 1/12/2006 only for the muster roll period as per provisions of the Act on the basis of wages received by Sri Deen Dayal in 2015 as a regular employee of CPWD, covered



under CCS Rules and after receiving the due gratuity in 2016 as per CCS Rules after nine years is utterly unjustified.

In view of the above I am of the considered opinion that the order dated 30.08.2017/ 08.09.2017 of the CA is devoid of any merit and is liable to be set aside. The appeal is thus allowed.

36. Upon perusal of the impugned order, it is made out that the learned Authority had set aside the order dated 25th September, 2017 passed by the Controlling Authority mainly on the two grounds, i.e. delay in filing of the claim and claiming the gratuity for muster roll period on the basis of last drawn wages as Government employee.

37. Therefore, this Court needs to determine whether the denial of gratuity to the petitioner for the muster roll period on the basis of above grounds can be termed legal or not.

38. Before delving into the said aspect, this Court deems it imperative to discuss the settled position of law regarding the payment of gratuity to an employee. The said position has been discussed by the Hon'ble Supreme Court and this Court time and again where the payment of gratuity being a statutory compulsion has been reiterated by the Courts.

39. In *H. Gangahanume Gowda v. Karnataka Agro Industries Corpn. Ltd.*², the Hon'ble Supreme Court crystalised the principles regarding payment of gratuity and held as under:

7. It is evident from Section 7(2) that as soon as gratuity becomes payable, the employer, whether any application has been made or not, is obliged to determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity. Under Section 7(3), the employer shall arrange to pay the amount of

² (2003) 3 SCC 40



gratuity within 30 days from the date it becomes payable. Under sub-section (3-A) of Section 7, if the amount of gratuity is not paid by the employer within the period specified in sub-section (3), he shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits; provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on that ground. From the provisions made in Section 7, a clear command can be seen mandating the employer to pay the gratuity within the specified time and to pay interest on the delayed payment of gratuity. No discretion is available to exempt or relieve the employer from payment of gratuity with or without interest as the case may be. However, under the proviso to Section 7(3-A), no interest shall be payable if delay in payment of gratuity is due to the fault of the employee and further condition that the employer has obtained permission in writing from the controlling authority for the delayed payment on that ground. Under Section 8, provision is made for recovery of gratuity payable under the Act, if not paid by the employer within the prescribed time. The Collector shall recover the amount of gratuity with compound interest thereon as arrears of land revenue and pay the same to the person entitled. A penal provision is also made in Section 9 for non-payment of gratuity. Payment of gratuity with or without interest, as the case may be, does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with the penalty of payment of interest was the view taken in *State of Kerala v. M. Padmanabhan Nair* [(1985) 1 SCC 429 : 1985 SCC (L&S) 278 : (1985) 50 FLR 145] . Earlier there was no provision for payment of interest on the delayed payment of gratuity. Sub-section (3-A) was added to Section 7 by an amendment, which came into force with effect from 1-10-1987. In the case of *Charan Singh v. Birla Textiles* [(1988) 4 SCC 212 : 1988 SCC (L&S) 947 : (1988) 57



FLR 543] this aspect was noticed in the following words : (SCC pp. 214-15, para 4)

“4. There was no provision in the Act for payment of interest when the same was quantified by the controlling authority and before the Collector was approached for its realization. In fact, it is on the acceptance of the position that there was a lacuna in the law that Act 22 of 1987 brought about the incorporation of sub-section (3-A) in Section 7. That provision has prospective application.”

8. In the background of this legal position, now we turn to the facts of the present case. The appellant was under suspension from 15-3-1999 to 21-5-1999. On attaining the age of superannuation, he retired from services of the respondent Corporation on 1-1-2000. The learned Single Judge, after considering the rival contentions, disposed of the writ petition issuing directions to the respondent Corporation to settle the full salary and allowances for the period of suspension, gratuity, cash equivalent to leave salary, deferred leave, concession amount etc. As regards the claim of interest on gratuity, the learned Single Judge held as under:

“Since there was a doubt as to whether the petitioner is entitled to the gratuity, cash equivalent of leave salary etc., in view of the divergent opinion of the courts during the pendency of an enquiry proceeding of a retired employee, in my view, the petitioner is not entitled to the relief of interest for the belated payment of gratuity and other amounts.”

9. It is clear from what is extracted above from the order of the learned Single Judge that interest on delayed payment of gratuity was denied only on the ground that there was doubt whether the appellant was entitled to gratuity, cash equivalent to leave etc., in view of divergent opinion of the courts during the pendency of enquiry. The learned Single Judge having held that the appellant was entitled to payment of gratuity was not right in denying the interest on the delayed payment of gratuity having due regard to Section 7(3-A) of the Act. It was not the case of the respondent that the delay in the payment of gratuity was due to the fault of the employee and that it had obtained permission in writing from the controlling authority for the delayed payment on that ground. As noticed above, there is a clear mandate in the provisions of Section



7 to the employer for payment of gratuity within time and to pay interest on the delayed payment of gratuity. There is also provision to recover the amount of gratuity with compound interest in case the amount of gratuity payable was not paid by the employer in terms of Section 8 of the Act. Since the employer did not satisfy the mandatory requirements of the proviso to Section 7(3-A), no discretion was left to deny the interest to the appellant on belated payment of gratuity. Unfortunately, the Division Bench of the High Court, having found that the appellant was entitled to interest, declined to interfere with the order of the learned Single Judge as regards the claim of interest on delayed payment of gratuity only on the ground that the discretion exercised by the learned Single Judge could not be said to be arbitrary. In the first place in the light of what is stated above, the learned Single Judge could not refuse the grant of interest exercising discretion as against the mandatory provisions contained in Section 7 of the Act. The Division Bench, in our opinion, committed an error in assuming that the learned Single Judge could exercise the discretion in the matter of awarding interest and that such a discretion exercised was not arbitrary.

40. Upon perusal of the aforesaid paragraphs, it is clear that the Section 7 of the Act mandates employers to determine and notify gratuity amounts promptly and the same shall be paid within 30 days of becoming payable, otherwise, the delay shall attract interest.

41. In the above cited judgment, the Hon'ble Supreme Court also made it clear that the payment of gratuity is a socially beneficial measure and cannot be ordinarily denied by the employer.

42. In support of their contention of being rightly eligible for gratuity for the period served on muster roll, the learned counsel for the petitioner also supplemented the OM dated 26th June, 2006 issued by the DG works, CPWD. The said OM reads as under:



“1. Some of the field units of CPWD have requested this Directorate to clarify, as to whether the payment of Gratuity Act, 1972 is applicable to the Casual/Hand-receipt/Muster-roll workers of CPWD. The matter has been examined/considered in this Directorate, in consultation with the M/o Urban Development & M/o labour and it has been clarified that the Payment of Gratuity Act, 1972 is applicable to Casual/Muster-roll/ Hand receipt/daily-rated workers of CPWD

2. Accordingly, you are requested, to make the payment of Gratuity to the Casual/Muster-roll/Hand-receipt/daily-rated workers of CPWD, as admissible under the Payment of Gratuity Act, 1972. The Current/pending Court cases on the similar issue, if any, may be defended/got settled from the respective Courts, accordingly. These clarifications may please be brought to the notice of all concerned

3. This issues with the approval of M/o Urban Development vide their U.O. No. 1142/06-EW-2 dated 9.5.2006.”

43. The plain reading of above cited OM clarifies that the official concerned of the respondent Department had issued the said OM to clarify that the Act shall be extended to the employees working on muster roll in the respondent Department.

44. Therefore, the question regarding non-payment of the same does not arise as the employees working in the said category are duly entitled for payment of the gratuity if they fulfill the minimum threshold, i.e. 5 years of working.

45. In the pleadings, even though the respondent Department has claimed that there is no proof regarding continuous employment of the respondent from the year 1986 to 2006, however, the same fact being non-disputed before the learned Authority makes it clear that the said contention regarding lack of evidence is a mere dilatory tactic on part of the respondent Department.



46. Now coming to the question of delay in filing the claim, as said earlier, the employer is duty bound to provide for the payment of gratuity accrued towards an employee, however, filing of such claim by the employee does not prescribe any time period in the statute.

47. In *M.C.D v. Nand Kishore (supra)* the Division Bench of this Court categorically held that the non-payment of gratuity is a continuing wrong and therefore, the question of delay does not arise. The relevant paragraph reads as under:

“2. The respondent was employed as driver in the Health Department on 10th December, 1957. He retired from service on 30th Jyun, 1998. The appellant paid a sum of Rs. 1,09,098/- to the respondent as gratuity. The respondent not being satisfied with the amount of gratuity paid to him, filed an application before the Controlling Authority under the Payment of Gratuity Act, 1972. The Controlling Authority held the respondent entitled for an additional sum of Rs. 47,301/- which was short paid to him by the appellant. The main grievance of the appellant is that the Controlling Authority did not take into consideration delay of the respondent in filing the application under the Payment of Gratuity Act, 1972 and the rules framed thereunder. The grievance of the appellant is misconceived as the non-payment of gratuity due to the respondent was a continuing wrong and there was no question of any delay in approaching the Controlling Authority. Accordingly, we do not see any reason to interfere with the order passed by the Controlling Authority or the impugned order passed by the learned Single Judge. In the circumstances, the appeal fails and is therefore dismissed.”

48. A similar opinion was given by the Kerala High Court in the case titled *Neelakandan Namboothiri v. State of Kerala*³ whereby the Court

³ 2001 SCC OnLine Ker 60



held that the Act being a social legislation needs to be interpreted in a liberal manner. The relevant parts of the same reads as under:

“6. Rule 7 of the Payment of Gratuity Rules of course make reference to application to be filed, and within a prescribed time. But these cannot of course be taken as over reaching the provisions of S. 7(2) of the Act. Perhaps the impact of the Amending Acts (22 of 1987 with effect from 1 October, 1987 and 25 of 1984 with effect from 1 July, 1984 has not been taken notice of by the rule-making body. Whether or not an application is filed, now it is unambiguously laid down that an employer has a duty to pay gratuity. If he disputes it he has to advise the employee of his proposal. The delay can start to run from that point of time. In the aforesaid view, I do not think that the claim of the second respondent has to be rejected on the issue of limitation.

7. Being a beneficial piece of legislation it has to get a liberal interpretation and the intention of the statute becomes highly relevant when an issue for rejection of a claim is pressed. Establishments which employ less than ten persons are normally outside the purview of the Act. The statute requires for calling of nominations from the serving employees, and by implication, maintenance of complete and proper records including wages that are payable from time to time, and also furnishing of yearly returns to the inspectors appointed. These are indicative of the mandatory requirement to pay the dues admissible to an employee, who at times may not be aware of his rights. The right being statutory, cannot be equated to a debt, and principles of Limitation Act strictly are not applicable. As pointed out earlier, the liability can be seen only as an obligation which the employer has to obligatorily discharge. Therefore the delay in making an application cannot be permitted to be capitalised. Further in the present case there was no claim that the employee was advised to a rejection of his application, and therefore, in fact the question of delay did not arise. For the only reason that the enforcement authorities did not satisfactorily deal with the issue the matter need not be remitted back, since I have on examination found that delay



was not permissible to be pleaded because of the default of the employer.”

49. The perusal of aforesaid cases makes it crystal clear that the non-payment of gratuity being a continuing wrong does not attract the provisions of limitation.

50. From the above cited paragraphs, it is evident that the statute mandates calling for nominations from the employees, maintaining proper records, and furnishing yearly returns, imply an obligation for employers to pay due wages and the same cannot be made subject to the Limitation Act, 1963. Furthermore, the employers are obligated to discharge their duties without delay, regardless of any potential lack of awareness on the employee's part regarding their rights, and any delay cannot be capitalized upon by the employer.

51. It is also imperative to mention that the above cited cases clarify that the intention of the enactment of the Act was to benefit the people and therefore, the same is termed as a social legislation, hence, denying claim on the grounds of delay in filing such claim would amount to injustice to an employee.

52. Now coming to the facts of the instant case, the judicial dictum as well as the material on record clearly depicts that the services rendered by the deceased can be categorized in two parts, where the time period between the year 1986 to 2006 would be covered under the Act and the period thereafter, i.e. upon regularization would be counted as per the CCS Rules governing the pensionary benefits of the Government employees.



53. At last, this Court also deems it appropriate to draw an analogy with the similar claims filed by the other employees. In **CPWD v. Ghanshyam Singh**⁴ a similar issue was adjudicated by the Co-ordinate Bench of this Court in following manner:

“4. Impugning the award, Mr. Nikhil Bhardwaj, learned counsel for the petitioner states that the learned Labour Court, while directing the petitioner to count the muster roll services of the respondents for quantifying the gratuity payable to them, has relied on an OM dated 14th May, 1968 without appreciating the fact that the said OM had ceased to be operative after the CCS (Pension) Rules, 1972 were notified. He further states that even otherwise, the said OM only provides for counting the periods during which the workman is paid from the contingency fund and does not include the period during which he is paid wages from work charge fund, as is the case of the respondents who were paid from the work charge fund while working on muster roll. He, therefore, prays that the impugned Award be set aside.

5. On the other hand, Mr. Manoj Joshi, learned counsel for the respondents while supporting the impugned Award, states that there is no infirmity in the Award as the learned Labour Court has not only noticed the effect of Rule 14 of the CCS (Pension) Rules, 1972, but also considered the fact that the DOPT had issued a detailed OM dated 14th May, 1968 directing inclusion of the period during which a workman has rendered services on muster roll for the purposes of gratuity, which position has been reiterated by issuance of a Circular dated 26th June, 2006. He, thus, states that the learned Court was justified in directing the petitioner to pay gratuity to the respondents by counting the period during which they have worked on muster roll. He also places reliance on the decision in Union of India v. Bhagwan Shahai, (2015) 216 DLT 404, wherein this Court while dealing with the claims for pension of similarly placed workmen in the service of CPWD, had directed continuity of their service on muster roll while computing the period for which they are entitled to get gratuity.

⁴ 2019 SCC OnLine Del 7229



6. *I have heard the learned counsel for the parties and with their assistance, perused the record. In my view, once the Director General (Works), CPWD himself issued a circular as late as on 26th June, 2006 clarifying that gratuity under the Payment of Gratuity Act, was payable not only to casual workers but also to daily rated and muster roll workers, there is no reason as to why the respondents should be deprived of the benefit of gratuity for their period of service on muster roll. Even otherwise, the Payment of Gratuity Act does not differentiate in the casual or regular period of service and in fact includes all types of service. There is nothing to show that the intention of the legislature was to exclude muster roll service while computing the gratuity of an employee who is subsequently regularised. The Act being a piece of Social Welfare Legislation cannot be interpreted so narrowly so as to exclude the muster roll service of employees like the respondents who have subsequently been regularised.*

7. *For the aforesaid reasons, I find absolutely no perversity or infirmity in the impugned Award dated 21st June, 2011. It is further directed that in case the gratuity of any of the respondents has become due during the pendency of the present writ petition, the same will be released immediately along with applicable interest in terms of the impugned Award."*

54. The perusal of the above cited extracts makes it evident that the similarly placed employees were also granted reliefs by including their services on muster roll for calculation of the gratuity amount due to them.

55. While dismissing the petition of the respondent Department, the Co-ordinate Bench also held that the Act being a piece of social welfare legislation cannot be interpreted so narrowly and therefore, denial of the same would amount to defeating the purpose of enactment of such legislation.



56. In the aforesaid case, the Court had also referred to the letter dated 26th June, 2006 issued by the respondent Department whereby, it was duly agreed that the payment of gratuity would include the calculation of the muster roll period.

57. Therefore, this Court is of the view that the denial of gratuity to the petitioner for the period served on the muster roll by the deceased in the respondent Department is illegal and violation of the rights of the workman.

CONCLUSION

58. The social benefit legislations have been enacted by the legislature of this country after keeping in mind the constitutional mandate for providing such benefits to the citizens of this Country. Therefore, the denial of the said rights would not only amount to violation of legal right, but the same also tantamount to the violation of the fundamental rights of the citizens.

59. The benefit of social legislation can only be fully extended to the employees when non-adherence to the same by the employer are considered as continuous wrong, therefore, providing the employee a right to demand the same at an appropriate stage.

60. In the instant case, the material on record, ie. the letter dated 26th June, 2006 as well as order passed by this Court in ***CPWD v. Ghanshyam Singh (supra)*** makes it clear that the period of services rendered by the petitioner on muster roll cannot be excluded for calculation of the gratuity amount.

61. In light of the foregoing discussion on facts and the settled position of law, this Court is of the view that the learned Authority ought to have



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calculated the gratuity amount for the period between 1986 to 2006, and rejection of the same on ground of delay amounts to violation of rights granted to the petitioner by way of enactment of social legislation.

62. In view of the same, this Court deems it appropriate to allow the present petition and set aside the impugned order dated 5th March, 2018 passed by the Appellate Authority, New Delhi. The respondent Department is directed to calculate the claim of the petitioner on the basis of the services rendered on muster roll from the period 1986 to 2006 and decide the same expeditiously.

63. Pending applications, if any, stands dispose of.

64. Judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

APRIL 29, 2024
SV/AV