

10.01.2025
Court No.13
Item Nos.8 to 12
AP

FMA 1190 of 2024
Steel Authority of India Limited
Vs.
Sri Shiba Pada Banerjee and Ors.

With
FMA 1191 of 2024
Steel Authority of India Limited
Vs.
Md. Khalid and Ors.

With
FMA 1192 of 2024
Steel Authority of India Limited
Vs.
Sri Kanan Das and Ors.

With
FMA 1193 of 2024
Steel Authority of India Limited
Vs.
Sri Asok Kumar Bandopadhyay and Ors.

With
FMA 1214 of 2024
Steel Authority of India Limited
Vs.
Md. Mohiuddin and Ors.

Mr. Saptangsu Basu, Senior Advocate
Mr. Lakshmi Kanta Pal
Mr. Bandhu Brata Bhula

.... For the Appellant in all the appeals.

Ms. Susmita Saha Dutta
Mr. Niladri Saha

.... For the Respondent Nos.2, 3 & 4
in FMA 1190 of 2024.

Mr. Swapan Kumar Nandi
Mr. Rajesh Kumar Saha

.... For the Respondent Nos.2, 3 & 4
in FMA 1191 of 2024.

Mr. Siddhartha Lahiri
Mr. Tapan Bhanja

.... For the Respondent No.4
in FMA 1192 of 2024.

Mr. Indrajeet Dasgupta
Ms. Rajesh Kumar Shah

.... For the Respondent Nos.2, 3 & 4
in FMA 1193 of 2024.

Ms. Chandri Alam
Mr. Amal Kumar Datta

.... For the Union of India
in FMA 1214 of 2024.

1. These appeals are directed against a judgement and order dated 21st June, 2024 passed by a Single Bench of this Court. By the said impugned judgement, the Single Bench refused to interfere with the order of the “Controlling Authority” under the Payment of Gratuity Act, 1972 as confirmed by the order of the “Appellate Authority”.

2. Learned Single Bench was of the view that Factual findings of the Controlling and the Appellate Authorities do not call for interference under Article 226 of the Constitution of India. The Single Bench further found that the reasoning applied by the controlling authority and the appellate authority was sound and correct in law.

3. This Court has very carefully heard Mr. Saptangsu Basu, learned Senior Advocate appearing on behalf of the appellant/Steel Authority of India Limited (hereinafter referred to “the SAIL”) and has also carefully considered the pleadings filed before the two authorities under the Act of 1972 and the respective orders. This Court, however, finds that the moot

question has not been addressed by the two authorities and the Single Bench, in granting relief to the respondents/workmen.

4. The brief facts relevant to the case are that the Indian Iron and Steel Company (hereinafter referred to “the IISCO”), a Government company, now merged with the SAIL floated a VRS scheme for its employees. In terms of the said scheme, the applicants fulfilling the conditions thereof and applying thereunder were allowed a special lump sum payment in addition to all their dues including gratuity, subject to they are being entitled to the same. The appellant paid gratuity to all applicants for VRS including the applicants before the controlling authority.

5. The dispute in question before the two quasi judicial statutory authorities was whether the admitted period spent by the workman concerned as apprentices under the IISCO, was to be construed as part of the service period, for the purpose of computation of gratuity under the Act of 1972.

6. Admittedly, a large number of apprentices were engaged by the erstwhile IISCO. They were required to undergo a mandatory period of three in such capacity. The said period of three years could be extended in the event of shortfall due to illness or competency issues.

7. In FMA 1191 of 2024 the respondent employee/Md. Khalid spent a period of about 3 years 15 days of apprenticeship. He claimed gratuity for the said period of 3 years and 15 days, which was denied to him. This was the issue before the two Statutory Authorities below and the learned Single Bench i.e. as to whether the period spent under apprenticeship could be included in the length of service for the purpose of computation of gratuity under the Payment of Gratuity Act, 1972.

8. Before the controlling authority, the appellant could not produce any documents to indicate the date of initial appointment of the respondent/workman as apprentice.

9. The controlling authority relied upon several judgments of the Madras High Court and held that an apprentice must be treated as a trainee. Since upon confirmation as permanent employee the period of training is also included in the length of service, the controlling authority allowed the claim of the workman.

10. Before the appellate authority, however, the appellant has produced following three sets of documents:-

(a) Copy of the service record of the workmen respondents showing that they were described as

a Full Term Apprentice (FTA) for a period of 3 years 15 days from June 1978.

(b) A joint application before the Deputy Labour Commissioner, Asansol in respect of other proceedings, where the workmen respondents described themselves as a FTAs.

(c) Pay Slip for the period of apprenticeship describing the same as stipend.

11. Based on the above, it is argued that the respondent/workman was not entitled to gratuity for the said period of 3 years of apprenticeship. The Appellate Authority was not satisfied and confirmed the order of the Controlling Authority.

12. Mr. Saptangsu Basu, learned Senior Counsel for the appellant would argue before this Court that since the appellant is a Government Company, directly under the control the Ministry of Steel and Mines, they were required to appoint apprentices strictly in terms of the Apprentices Act, 1961. Since the definition of employee under Section 2(e) of the Act of 1972 excludes apprentices, the period spent as apprentice cannot be considered for payment of gratuity.

13. This Court however notes as follows:-

Section 4 of the said Act of 1961 is set out hereinbelow:-

4. Contract of apprenticeship.—(1) No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such person or, if he is a minor, his guardian has entered into a contract of apprenticeship with the employer.

(2) The apprenticeship training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into under sub-section (1).

(3) Every contract of apprenticeship may contain such terms and conditions as may be agreed to by the parties to the contract:

Provided that no such term or condition shall be inconsistent with any provision of this Act or any rule made thereunder.

[(4) Every contract of apprenticeship entered into under sub-section (1) shall be sent by the employer within thirty days to the Apprenticeship Adviser until a portal-site is developed by the Central Government, and thereafter the details of contract of apprenticeship shall be entered on the portal-site within seven days, for verification and registration.

(4A) In the case of objection in the contract of apprenticeship, the Apprenticeship Adviser shall convey the objection to the employer within fifteen days from the date of its receipt.

(4B) The Apprenticeship Adviser shall register the contract of apprenticeship within thirty days from the date of its receipt.]

(6) Where the Central Government, after consulting the Central Apprenticeship Council, makes any rule varying the terms and conditions of apprenticeship training of any category of apprentices undergoing such training, then, the terms and conditions of every contract of apprenticeship relating to that category of apprentices and subsisting immediately before the making of such rule shall be deemed to have been modified accordingly.]”

14. Even Section 5 of the said Act of 1961 conceives of a novation of the contract of apprenticeship on the eventualities occurring thereunder.

15. It is therefore clear and explicit from Section 4 and 5 of the 1961 Act that for a person to be described as apprentice under the Act of 1961 there must be a written contract of apprenticeship between the employer and the workman concerned. In the event the workman is minor, the contract is required to be entered into by the lawful guardian of the employee with the employer. It is an admitted position that there is no contract of apprenticeship in terms of Section 4 (1) between the appellant and the respondent/workman.

16. In the absence of any written contract of apprenticeship in terms of Section 4(1) of the Act of 1961, the respondent/workman could not have been treated as an apprentice much less by the appellant which is a Government company.

17. The respondent/workman concerned must, therefore, be treated as a trainee and/or probationer.

18. It is now well settled that upon confirmation of a trainee and/or probationer, the period spend on training and/or probation is included within the tenure of service rendered to an employer. In other words, the date of actual payment would revert back to the date of first engagement as trainee/probationer.

19. In view of the above discussion, the entitlement of the workmen/respondents for gratuity for the period spend as FTA/trainee/probationer is upheld.

20. It is essentially in the backdrop of the aforesaid findings that the judgments relied upon by the Controlling Authority, Appellate Authority and the Single Bench would come into play.

21. The respondent/workman in each of the aforesaid appeals and all others FTAs, who have accepted the VRS scheme of the erstwhile IISCO, which is now merged into SAIL, shall be entitled to gratuity for the entire period spend as FTA/trainee/probationer.

22. The impugned judgement is upheld and as modified by the observations made above.

23. All the aforesaid appeals shall stand dismissed.

24. Consequently, all connected pending applications, if any, shall also stand dismissed.

25. There shall be no order as to costs.

26. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)