IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 28594 of 2022
Calcutta Jute Manufacturing Company Ltd.
Versus
Dwarika Yadav & Ors.

For the Petitioner	:	Mr. Soumya Majumder, Sr. Adv. Mr. S.K. Singh, Mr. Ravi Kumar Dubey.
For the Respondent No. 1	:	Ms. Senjuti Sengupta, Mr. Rananesh Guha Thakurta.
Hearing concluded on	:	28.02.2025
Judgment on	:	28.03.2025

SHAMPA DUTT (PAUL), J. :

1. The present writ application has been filed, inter alia, challenging the order dated 25th August, 2022 passed by the Appellate Authority under the Payment of Gratuity Act, 1972.

2. It is the petitioner's case that a proceeding had been initiated at the instance of the respondent no.1 before the Controlling Authority by filing an application in Form-N. Such application though belated was accepted by the Controlling Authority. The petitioner had duly contested such proceeding before the Controlling Authority and ultimately by an order dated 27th October, 2016, the Controlling Authority was, inter alia, pleased to dispose of the application by directing the petitioner to make payment of a sum of Rs.54,588/- along with admissible interest in terms of Section 7(3A) of the said Act, within 30 days from the date of receipt of such order.

3. Being aggrieved by the aforesaid order, the respondent no.1 had preferred an appeal under Section 7(7) of the said Act. By an order dated 25th August, 2022, which is impugned in the present writ application, the Appellate Authority under the Said Act was, inter alia, pleased to enhance the amount of gratuity payable in favour of the respondent no.1.

4. Mr. Soumya Majumder, learned senior counsel representing the writ petitioner submits that the Controlling Authority while taking into consideration the objection raised by the petitioner herein had, inter alia, concluded that despite the respondent no.1 herein having joined the petitioner on 31st March, 1980, the respondent no.1 could not demonstrate that he had performed his duties for more than 240 days or more in a year till he was made regular on 10th December, 1995, and as such the aforesaid period was not considered as continuous service for calculating the gratuity dues in terms of Section 2A(2) of the said Act.

5. It was also, inter alia, recorded in the aforesaid order that the respondent no.1 did not perform more than 240 days of work, in the year 1995, 2000, 2002, 2004 and 2005.

6. As such proceeding on the aforesaid premise, the Controlling Authority computed the gratuity payable to the petitioner for having rendered 10 years of continuous service, with his last drawn wages of Rs.363.92 per day.

7. Mr. Majumder submits that his client was at all material times ready and willing to comply with the aforesaid direction, however, since the respondent no.1 preferred an appeal, his client could not comply with the same. He submits that the Appellate Authority on an erroneous findings has treated the service rendered by the respondent no.1 from the period 10th December, 1995 to 23rd July, 2013 as continuous service, and proceeding on such findings has modified the order passed by the Controlling Authority so as to enhance the amount of gratuity payable to the respondent no.1.

8. Per contra, Mr. Rananeesh Guha Thakurta, learned advocate representing the respondent no.1 submits that the petitioner was originally obliged to make payment of gratuity. The petitioner having failed to make payment of the gratuity to the respondent no.1, an application in Form-I was filed by the respondent 1 with the petitioner. Despite making such application since no steps were taken by the petitioner, the respondent no.1 was compelled to file an application in Form-N before the Controlling Authority under the said Act. It is on the basis of the application filed by the respondent no.1 that the Controlling Authority had taken up the matter for consideration and ultimately had decided, though erroneously, the amount payable to the respondent no.1.

9. Since the computation made by the respondent no.1 was erroneous, the respondent no.1 preferred an appeal. Filing of such appeal according to Mr. Guha Thakurta could not have acted as a stay for the petitioner not to make payment of the amount already determined by the Controlling Authority. He says that no irregularity has been committed by the Appellate Authority in directing the petitioner to make payment of the enhanced gratuity amount which is payable to the respondent no.1.

10. Affidavits in the present case has been filed. Written notes of argument has also been filed.

11. Vide the order under challenge the appellate authority under Payment of Gratuity Act, 1972 held as follows:-

> *"It is worth mentioning that in Essen Deinki Vs Rajiv Kumar the Hon'ble Supreme Court [Essen Deniki Vs*

*Rajiv Kumar (AIR 2003 SC 38), 1981-I-LLJ-308 (SC)] held that **the proof of working for 240 days in a year is on the workman** and viewed that the High Court has committed a manifest error in reversing the order of the Labour Court.*

The crux of the judgments on 1981-I-LLJ-308(SC) Lalaapa Lingappa & Ors Vs Laxmi Vishnu Textile Mills, Shoholapur and 1991-III-LLJ-475 (Gujarat)-Mafatlal Fine Spg. & Mfg. Co. Ltd. Vs Ramaachhaar Benimadav Mishra is that it is necessary for a badli worker to have completed 240 days of service in a given year so as to be entitled for gratuity for that period.

In state of Maharastra Vs Dattatraya Digamber Birajdar the workman voluntarily left the employment of the appellant to join another establishment. After about 8 years, workman submitted an application for reference in terms of sec 10 of Industrial Dispute Act, 1947 before the Deputy Labour Commissioner, Aurangabad. However, the Apex Court held that Labour Court and High Court had erroneously stated that the burden to prove engagement of 240 days lay on the employer.

In this instant case, the appellant had failed to adduce adequate evidences before the Ld. Controlling Authority to prove that he performed 240 days or more in the years of service from 31.03.1980 (date of joining as claimed by the appellant which was shown in ESI Identity Card).

On the other hand, according to Sec 2A(1) under the Payment of Gratuity Act, 1972, the Respondent Company has failed to adduce any evidence regarding issuance of an order from the Respondent Company on break in service of the Appellant workman on 2000, 2002 and 2004-2008.

*Under this circumstances, the Appellate Authority is **modifying** the point mentioned by the Ld. Controlling Authority in his order dated*

27.10.2016 regarding this instant case that the appellant workman has not rendered continuous service to the Respondent Company ***from 10.12.1995 to 23.07.2013 i.e. 18 years of continuous service.***

In accordance with fortnight pay slip (Exhibit-C) the wages (Basic+DA) of Sri Dwarika Yadav was Rs.7142.7 for 13 days (since there are 13 working days in a fortnight). Hence, his last drawn wages was Rs.549.41 per day.

Now the Principal Amount of Gratuity admissible to Sri Dwarika Yadav for rendering 18 years of continuous service to Respondent Company from 10.12.1995 to 23.07.2013 is Rs.549.41 x 15 x 18 = Rs. 148340.70/-.

Again Sri Dwarika Yadav, Appellant is entitled to receive interest in terms of Section 7(3A) of the Payment of Gratuity Act, 1972, at the rate of 10% on the Principal Amount of Rs 148340.70/- for the period from 24.07.2013 to 24.08.2022 i.e 9 years 1 month.

Therefore, Interest = 148340.70 x 10/100 x 109/12 = Rs. 134742.81-."

12. Learned counsel for the Respondent No. 1 has relied upon the following judgments:-

i. *Bank of India vs Central Government Industrial Tribunal & Ors., 2010 SCC OnLine Cal 1718.*

ii. *Phoenix Mills Ltd. vs Balasaheb Dagdoo Hinge & Ors., in Writ Petition No. 491 of 1996, Bombay High Court, decided on June 17, 1996.*

iii. *Netram Sahu vs State of Chhattisgarh & Anr., (2018 (157) FLR 477), decided on March, 23, 2018.*

iv. *Murlidhar Ratanlal Exports Ltd. vs State of West Bengal & Ors., 2014-II-LLJ-74 (Cal), decided on 26th February, 2014.*

v. *The K.C.P. Employees' Association, Madras vs The Management of K.C.P. Ltd., Madras & Ors., in Civil Appeals Nos. 2142-43 of 1970, decided on January 24, 1978.*

13. Section 25D of the Industrial Disputes Act, lays down:-

> ***"25D. Duty of an employer to maintain muster-rolls of workmen.-*** *Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the* ***duty of every employer to maintain for the purposes of this Chapter a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours."***

14. In ***Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, in Misc. Application No. 1150 of 2019, decided on 27 April, 2022,*** the Supreme Court held:-

> *"……….25. It is settled principle of law that while considering the order/judgment of Constitutional Court, this Tribunal is required to keep in mind entire spectrum of the orders as well as background of the case. It is not proper to cull out a single para or a sentence from the order/judgment so as to defeat the very purpose of the order so passed by Hon'ble Supreme Court. If the orders dated 11/5/2018, 7/9/2018 and 10/9/2018 are taken into consideration, it is crystal clear that claims of all such workmen and Union/s who worked as Badli workers during the period from 20/5/1985 to 4/3/1991 are required to be*

considered by this Tribunal. Although I am in full agreement with the submission made on behalf of the PART B Management/LIC that ***initial onus is always upon the workmen concerned to prove that they were in the employment of the Management at the relevant time, however this Tribunal cannot ignore the fact that UC has not filed on record any document/record relating to employment of various workmen rather has simply taken a plea that same being old record is not traceable."*** *22 The Dogra Report noted that LIC had admitted that 321 workers were found to be eligible for absorption in terms of the Srivastav Award. The report found fault with LIC for making contradictory claims that 321 workers were eligible for absorption when the records of workers were allegedly old and not traceable.* ***The Dogra Report drew an adverse inference against LIC for having failed to maintain the records in pursuance of the burden cast upon it by Section 25-D of the ID Act,*** *particularly when the reference was pending since 1991. Paragraph 29 of the report is extracted below:*

"29) During the course of arguments as well as in the reply filed on behalf of the Management/LIC, it is clear that Management has admitted that till date 321 Nos. of employees were found to be eligible in terms of the Award and they were considered eligible for absorption. It is not understandable to this Tribunal as to what were the basis for the Management/LIC for coming to the conclusion that only 321 Nos. of workmen/employees were found to be eligible and covered by the Award of CGIT in ID case No.27/1991, when the Management has come up with a plea that record relating to the workmen being old record is not traceable. ***It is worthwhile to mention here that Section 25-D of the ID***

Act specifically provides that it is the duty of every Employer to maintain a muster roll and to provide for the making of entries therein by the workmen who may present themselves for work at the establishment. *This Tribunal has to keep in mind a vital fact that since the reference bearing ID No.27/1991 is pending before various Courts since 1991,* ***the Management/LIC was/is required to keep the record in safe custody when the case of such a huge magnitude was PART B pending before the Courts. In such circumstances, this Tribunal is constrained to draw adverse inference against the management."*** *23 Based on the above hypothesis, the report proceeded to decide "prima facie" the claims of the Unions and individual workers. While taking up the claims made by the All India Life Insurance Employees Association and its affiliate, Life Insurance Employees Association, Delhi, the report notes that 6998 claims had been filed (as contained in Annexure A). Upon scrutiny, LIC drew the attention of the CGIT to the fact that 3592 duplicate entries were found in the claims which were submitted (as contained in Annexure A-1). Noting that the "Unions have not seriously disputed the same", the Dogra Report concludes that "such claimants are to be given benefit of absorption only once". The Dogra Report also notes that workers who had started working beyond the cut-off date of 4 March 1991 would not be covered in the enquiry. This observation in the Dogra Report was in view of the order of this Court in the contempt proceedings arising out of the review of TN Terminated Employees Association (supra) on 7 September 2018, which had specifically observed that whether the benefit of the Srivastav Award should be given to those who had been engaged as badli workers after 4 March 1991 was a matter for interpretation by this Court. Hence, for the time being, CGIT had been directed to limit its enquiry* *only to the claims for the period between 20 May 1985 and 4 March 1991 (as contained in Annexure A-2). In this context, the Dogra Report held that those workers who had commenced work after 4 March 1991 would not be covered by its enquiry.*

In State of Haryana & Ors. etc. etc. v. Piara Singh & Ors. etc. etc., (JT 1992(5) S.C. 179), the Supreme Court indicated how regularization of adhoc/temporary employees in Government and Public Sector Undertakings should be effected. While PART D laying down the guidelines in this behalf, this court observe in paragraph 43 as under:-

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible.

Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate.

The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee.".........”

15. In the present case, the respondent no. 1 has served continuously as a badli/casual worker as per company’s standing order for **33 years from 10.12.1995 to 23.07.2013 (18 years)** as held by the appellate authority in permanent posts and **has produced documents in support.** The appellate authority also **affirmed the findings of the controlling authority** regarding admissibility of claim of the respondent no. 1 herein for **the period from 31.03.1980 to 10.12.1995 (15 years), so 18+15=33 years.**

16. **The petitioner/company was bound to produce the documents as required to be maintained though under Section 25D of the Act. *(Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, (Supra)).* Maintaining of such records by the employer is beneficial to employees/workman in such cases, as the claim herein is under the gratuity act, one of the beneficial legislations.**

17. The employee has now superannuated after 33 years and if such conduct of the employer is ignored, there shall be clear abuse of the process of law.

18. The benefit is under a beneficial legislation and an employee who has **admittedly worked for 33 years** and has rendered his continuous service towards the work to be carried out by a regular employee thus **will have definitely put in work for the number of days required to make him entitled to such benefits.** He even is a member of the PF scheme.

19. The facts as seen proves that **the employee has provided selfless service towards permanent posts and as such has**

carried out work of a regular employee for the period required each year to entitle him to the said benefits, which led to his employment for 33 years.

20. Having done so, the least that he is entitled to, are the retiral dues (social security) which includes gratuity and such benefits should be made to the employee without any hindrance as the employee has **given his whole life to serve the company.**

21. Thus the order under challenge being in accordance with law requires no interference by this Court. The total amount of gratuity along with interest till payment, be made within 30 days from the date of communication of this order.

22. The amount (Rs. 83,752/- along with interest) deposited with the learned Registrar General, High Court, Calcutta be released in favour of the Respondent no.1, after the expiry of the appeal period (30 days).

23. WPA 28594 of 2022 stands dismissed.

24. All connected applications, if any, stand disposed of.

25. Interim order, if any, stands vacated.

26. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]