



\$~47-57

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 12885/2021

MANAGEMENT OF CPWD

.....Petitioner

Through:

versus

SHRI UPENDRA KUMAR & ORS.

.....Respondents

Through: Mr.Manoj Joshi and Ms.Richa Sharma,
Advocates for respondent No.1

Mr.Anubhav Gupta, Panel Counsel for GNCTD

Mr.Shiven Varma, Advocate

+ W.P.(C) 6094/2022 and CM APPL. 18317/2022

MANAGEMENT OF CPWD

.....Petitioner

Through:

versus

SH. JAIPAL SINGH & ANR.

.....Respondents

Through: Mr.Manoj Joshi and Ms.Richa Sharma,
Advocates for respondent No.1

Mr.Anubhav Gupta, Panel Counsel for GNCTD

Mr.Shiven Varma, Advocate

+ W.P.(C) 9412/2022 and CM APPL. 28162/2022

THE MANAGEMENT OF EXECUTIVE ENGINEER P. DIVISION

.....Petitioner

Through:

versus

SH. OTTA

.....Respondent

Through: Mr.Manoj Joshi and Ms.Richa Sharma,
Advocates for respondent No.1

Mr.Anubhav Gupta, Panel Counsel for GNCTD

Mr.Shiven Varma, Advocate



- + W.P.(C) 13039/2022 and CM APPL. 39517/2022
MANAGEMENT OF CPWDPetitioner
Through:
versus
SMT.LATA SINGH & ANR.Respondents
Through: Mr.Manoj Joshi and Ms.Richa Sharma,
Advocates for respondent No.1
Mr.Anubhav Gupta, Panel Counsel for GNCTD
Mr.Shiven Varma, Advocate
- + W.P.(C) 6922/2022
CENTRAL PUBLIC WORKS DEPARTMENTPetitioner
Through:Mr.Sushil Kumar Pandey, SPC with
Ms.Neha and Mr.Vaibhav Soni, Advocates
versus
SHRI RAMRespondent
Through: Mr.Manoj Joshi and Ms.Richa Sharma,
Advocates for respondent No.1
Mr.Anubhav Gupta, Panel Counsel for GNCTD
Mr.Shiven Varma, Advocate
- + W.P.(C) 9427/2022 and CM APPL. 28196/2022
THE MANAGEMENT OF EXECUTIVE ENGINEER P. DIVISION
.....Petitioner
Through:
versus
SH. KISHORIRespondent
Through: Mr.Manoj Joshi and Ms.Richa Sharma,
Advocates for respondent No.1
Mr.Anubhav Gupta, Panel Counsel for GNCTD
Mr.Shiven Varma, Advocate
- + W.P.(C) 9694/2022 and CM APPL. 35419/2022
MANAGEMENT OF C.P.W.D.Petitioner



Through:

versus

SMT. MUNNI BAI

.....Respondent

Through: Mr.Manoj Joshi and Ms.Richa Sharma,
Advocates for respondent No.1

Mr.Anubhav Gupta, Panel Counsel for GNCTD

Mr.Shiven Varma, Advocate

+ W.P.(C) 9713/2022

MANAGEMENT OF C.P.W.D.

.....Petitioner

Through:

versus

VINOD KUMAR TRIVEDI

.....Respondent

Through: Mr.Manoj Joshi and Ms.Richa Sharma,
Advocates for respondent No.1

Mr.Anubhav Gupta, Panel Counsel for GNCTD

Mr.Shiven Varma, Advocate

+ W.P.(C) 10487/2022 and CM APPL. 30266/2022

EXECUTIVE ENGINEER, CPWD, H DIVISIONPetitioner

Through: Mr.Vijay Joshi, Mr.Shubham C., and
Mr.Hemant Goyal, Advocates

versus

SMT MALIN SINCE DECEASED THROUGH SHRI RAM

.....Respondent

Through: Mr.Manoj Joshi and Ms.Richa Sharma,
Advocates for respondent No.1

Mr.Anubhav Gupta, Panel Counsel for GNCTD

Mr.Shiven Varma, Advocate

+ W.P.(C) 11008/2022 and CM APPL. 32164/2022

MANAGEMENT OF CPWD

.....Petitioner

Through:

versus



SH. BHORI LAL AND ORS

.....Respondents

Through: Mr.Manoj Joshi and Ms.Richa Sharma,
Advocates for respondent No.1

Mr.Anubhav Gupta, Panel Counsel for GNCTD

Mr.Shiven Varma, Advocate

+ W.P.(C) 1229/2023

THE MANAGEMENT OF PUBLIC WORKS DEPARTMENT

.....Petitioner

Through:

versus

SHRI INDERLOK MAL & ANR.

.....Respondents

Through: Mr.Manoj Joshi and Ms.Richa Sharma,
Advocates for respondent No.1

Mr.Anubhav Gupta, Panel Counsel for GNCTD

Mr.Shiven Varma, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

02.05.2025

%

1. By way of the present petitions, the petitioners seek to challenge certain orders passed by the Appellate Authority, Deputy Chief Labour Commissioner. Vide the impugned orders, the Appellate Authority has confirmed the orders of the Controlling Authority granting gratuity for the period when the respondents/workmen were employed on the Muster Roll.
2. The common ground of challenge raised is that the Payment of Gratuity Act, 1972 (hereinafter, the "Act") is not applicable upon the respondents. It is submitted that the respondents would rather be subject to Central Civil Service (Pension) Rules, 1972. Reference is made to O.M. F.



No. 22/47/2018-EC-X dated 22.04.2022 to argue that management is liable to pay only 50% of service rendered under Muster-Roll period for gratuity.

3. The petition has been opposed by the respondents by contending that it is settled law that Muster Roll workers are entitled to count their services for computing qualifying service for payment of gratuity. It is submitted that the Act does not distinguish between full time or part time employees. Insofar as O.M. dated 22.04.2022 is concerned, it is submitted that the same has been noted by the Division Bench of this Court in LPA 359/2021 titled as The Executive Engineer CPWD v. Ghanshyam Singh & Ors, decided on 23.08.2022 which held that Muster Roll services have to be taken into account.

4. It is now a settled position of law that the Payment of Gratuity Act casts a statutory duty upon the employer to pay gratuity. It is a retirement benefit given for long service. A bare perusal of the language of the Act makes it evident that the Act does not distinguish or discriminate between employees who are on a Muster Roll vis-a-vis a Permanent Roll. The definition of “employee” given in Section 2(e) uses the term ‘any person’. Section 4(5) of the Act is a non-obstante clause which leaves the door open for the employee receive better terms of gratuity under any award or agreement or contract with the employer. Section 14 of the Act gives an overriding effect to the Act over other enactments. The Act being a social welfare legislation has to be interpreted broadly.

5. Gainful reference is made to the decision of a Co-ordinate Bench of this Court in National Bal Bhawan v. Vandana, reported as **2019 SCC OnLine Del 11399** wherein it was held that the definition of “employee” in the Act does not create any specific category of employees for its



applicability. It held as under:-

“7. Undisputedly, the respondents were offered appointment by the petitioner in its own rights. There is a relationship of employer and employee amongst the petitioner and the respondents is also not in question. Petitioner is an establishment under the Act, 1972, also not being in question and sub-Section (e) of Section 2 of the Act, 1972 not coming to the aid to the petitioner, there is no reason as to why, the respondents would not be covered within the purview of the Act, 1972.

8. In the other limb of his submissions, though Mr. Rajappa, ld. counsel for the petitioner contended that the respondents were part time employees and therefore, the Act, 1972 was not applicable to the respondents, he fails to point out any statutory provision, rule or regulation, in support of such submissions. The Court does not find merit even in the submission so made. An employee is an employee, whether on casual, ad-hoc or part time basis. The definition of employee in the Act, 1972 also does not speak of any specific categories of the employees for its applicability, be it, regular, ad-hoc, part time, casual etc. etc. As for the payment of gratuity under the subject Act, to assess the quantum thereof, it provides for the definition of wages in sub-Section (s) of Section 2, which reads as under:

“wages” means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.”

9. The combined reading of sub-Section (e) and sub-Section (s) of Section 2 of the Act, 1972 leaves no doubt that the gratuity is payable to the employees defined under the subject Act and is to be assessed on the basis of the wages/emoluments, within the ceiling limit as provided there-under.”

6. Another Co-ordinate Bench in CPWD v. Ghanshyam Singh, reported as **2019 SCC OnLine Del 7229**, held that employees could on Muster Roll count their period towards payment of gratuity. It was held that:-

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. The aforesaid decision came to be challenged in LPA 359/2021 wherein the Division Bench vide judgement dated 23.08.2022 upheld the decision of the Single Judge. Notification dated 26.06.2006 issued by Directorate General of CPWD was analysed and the following observation was made:-

“10. A perusal of the aforesaid circular which has been issued by the Directorate General of Works makes it clear that for the purpose of computing qualifying service for payment of gratuity under the Payment of Gratuity Act, 1972 not only Muster Roll workers but Casual Workers, Hand Receipt Workers & Daily Rated Workers shall also be entitled for counting of their services and therefore, in the considered opinion of this Court, the order passed by the learned Single Judge does not warrant interference by this Court.”

The Court also analysed the circular dated 22.04.2022 which forms the basis of the demand for taking only 50% of the service rendered under temporary status and observed the following:-

“12. The aforesaid Office Memorandum makes it clear that the past service rendered on Muster Roll, Hand Receipt, or Temporary status shall be taken into account for the purpose of computing qualifying service in respect of pension, meaning thereby, time and again the employers have taken a decision to take into account the Muster Roll services rendered as a Muster Roll employee/ temporary status/ Hand Receipt status for the purpose of grant of gratuity and, therefore, this Court does not find any reason to interfere with the order passed by the learned Single Judge.”



8. The above decision in Ghanshyam Singh (Supra) has not been challenged and attained finality. The petitioners have failed to show any other decision in which taking only 50% of the Muster Roll service period has been upheld. In view of the catena of judgements and discussion held above, it cannot be said that the impugned orders suffer from any infirmity or perversity.

9. The petitions are dismissed alongwith pending applications.

MANOJ KUMAR OHRI, J

MAY 2, 2025

na