



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

WRIT PETITION NO. 7364 OF 2024

with

WRIT PETITION NO.7367 OF 2024

with

WRIT PETITION NO. 7365 OF 2024

with

WRIT PETITION NO. 7366 OF 2024

with

WRIT PETITION NO. 7368 OF 2024

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WRIT PETITION NO. 7369 OF 2024

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WRIT PETITION NO. 7370 OF 2024

WRIT PETITION NO. 7364 OF 2024

1. The Director (Technical),
Western Coalfields Limited,
WCL Hq. Civil Lines, Nagpur

2. The General Manager,
Majri Area of WCL,
Post Kuchana, Dist. Chandrapur.

...PETITIONERS

...VERSUS...

1. Appellate Authority under the
Payment of Gratuity Act, 1972
& Dy. Chief Labour Commissioner
(Central), Nagpur

2. Controlling Authority under
the Payment of Gratuity Act,
1972 & Assistant Labour
Commissioner (Central), Chandrapur

3. Bharat Motiram Waghmare
C/o Amarnath Yadav,
Joint General Secretary,
Koyla Shramik Sabha (HMS)
Mahakali Colliery, QTR No. 20

Post Babupeth,
Dist. Chandrapur, 442 403 (M.S.)

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3. Ramkhilavan Arjun Verma,
C/o Bhosla Reti Dafai,
Majri Colliery,
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3. Vasant Atmaram Naxine,
C/o Amarnath Yadav,
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3. ChandraModi Shivram Moulikar
C/o Amarnath Yadav,
Joint General Secretary,
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2. Controlling Authority under
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1972 & Assistant Labour
Commissioner (Central), Chandrapur

3. Dilip Namdeo Chilamwar
C/o Amarnath Yadav,
Joint General Secretary,
Koyla Shramik Sabha (HMS)
Mahakali Colliery, QTR No. 20

Post Babupeth,
Dist. Chandrapur, 442 403 (M.S.)

...**RESPONDENTS**

Mr. Anand Jaiswal, Senior Advocate i/b Mr. P.V. Ghare, Advocate for petitioners.

Ms. Neerja Chaubey, Advocate for respondent Nos. 1 and 2.

Mr. A.A. Dhawas with Mrs. Shilpa Giratkar, Advocate for respondent No.3 in all petitions.

CORAM:- M.W. CHANDWANI, J.

DATE :- 07.04.2026

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsels appearing for the parties.

2. The petitioners in all the petitions i.e. a Public Sector Undertaking a subsidiary of Coal India Limited (for short, “Employer”) are same. Respondent no. 3 in each of the petition (for short, “Employee”) is the employee of Non-Executive cadre working for the petitioners. Further, the issue involved in the petitions is identical, therefore, all the petitions are being disposed of vide this common judgment.

3. The petition challenges the impugned order passed by respondent no. 2 – the Controlling Authority under the Payment of Gratuity Act, 1972 and by respondent no.1 – the Appellate

Authority under the Act of 1972, thereby directing the Employer in each of the petition to pay the difference of gratuity amount above Rs. 10,00,000/- along with interest to the Employee in each of the petitions.

4. The Employee in each of the petition retired in the year 2017 between 30.5.2017 to 30.11.2017. At the time of retirement, the ceiling limit for payment of gratuity under Section 4(3) of the Act of 1972 was Rs. 10,00,000/-. Thereafter, by way of the Office Memorandum dated 11.4.2018, the ceiling limit under Section 4(3) of the Act of 1972 was extended by the Government of India from Rs. 10,00,000/- to a maximum of Rs. 20,00,000/- for the Central Public Sector Enterprise (for short, "CPSE") employees. Since, the Office Memorandum dated 11.4.2018 is made applicable from 11.4.2018 i.e. after the retirement of the Employee in each petition, this Office Memorandum will not be applicable to any of them.

5. However, before the said Office Memorandum dated 11.4.2018 was issued, the Government of India had issued an Office Memorandum dated 3.8.2017 i.e. the agreement/settlement

amount of gratuity was enhanced to Rs. 20,00,000/- for the Executive and Non-Unionized Supervisors working for the CPSE. The Employee in each of the petition, feeling aggrieved with payment of Rs. 10,00,000/- as gratuity, filed an application before the Controlling Authority stating that the maximum limit of Rs. 20,00,000/- extended by the Office Memorandum dated 3.8.2017 is applicable to them as well. The Controlling Authority, relying on the said Office Memorandum dated 3.8.2017, directed the Employer in each petition to pay the difference of gratuity amount above Rs. 10,00,000/- to the Employee in each petition. The reliance was mainly placed on the ground that, respondent no. 3 are the employees of the petitioners and hence, the Office Memorandum dated 3.8.2017 should be made applicable to them as well. Thereafter, the Employer in each petition made an unsuccessful attempt before the Appellate Authority under the Act of 1972. Feeling aggrieved with the dismissal of the appeal, the Employer in each petition have filed the present petitions.

6. Heard Mr. Anand Jaiswal, learned Senior Counsel with Mr. Pushkar Ghare, Advocate for petitioners, Mr. Dhawas with Mrs. Giratkar, learned counsels for respondent no. 3 in each of the

petitions and Ms. Neerja Chaubey, learned Counsel for respondent nos. 1 and 2.

7. Mr. Anand Jaiswal, learned Senior Counsel vehemently submitted that the Controlling Authority and the Appellate Authority failed to demarcate the distinction between the Executive and Non-Executive Employee and by applying the Office Memorandum dated 3.8.2017 to the Employee who belong to the Non-Executive cadre, directed the Employer in each of the petition to pay the difference of amount above the ceiling limit of Rs. 10,00,000/-. According to him, the Office Memorandum dated 3.8.2017 is not applicable to them and therefore, the authorities should not have directed the Employer in each petition to pay the amount in excess of the then prevailing ceiling limit of Rs. 10,00,000/-. According to him, if the Employee in each petition feels that they are being discriminated, a proper course of action should have been taken to challenge the Office Memorandum dated 3.8.2017 before the appropriate forum. The sum and substance of the argument of the learned Senior Counsel is that, the authorities cannot exceed the jurisdiction given according to the Act of 1972. At the time of retirement of the Employee in each

petition, the ceiling limit was Rs. 10,00,000/- and the Office Memorandum dated 3.8.2017 does not apply to them. Therefore, it cannot be said that, the ceiling limit of Rs.20,00,000/- mentioned in the Office Memorandum dated 3.8.2017 would be applicable to the Employee in each petition, therefore, he submits that the impugned orders does not stand.

8. Mr. Dhawas and Mrs. Giratkar, learned counsels for respondent no. 3, vehemently submitted that till the date of issuance of the Office Memorandum dated 3.8.2017, all the employees were treated at par with the ceiling limit of Rs. 10,00,000/- which was applicable to the employees. Now, by way of the Office Memorandum dated 3.8.2017, the ceiling limit is exceeded to Rs. 20,00,000/- w.e.f. 1.1.2017 and the Employee in each petition having retired after the said date, they are entitled to gratuity upto Rs. 20,00,000/- whereas, they have been paid only Rs. 10,00,000/-. Therefore, they supported the order passed by the Controlling Authority as well as the Appellate Authority. According to them, even if the Office Memorandum dated 3.8.2017 is for Executive Employee, they cannot discriminate the

employee of one cadre with another cadre vis-a-vis payment of gratuity. According to them, the Controlling Authority as well as the Appellate Authority have rightly exercised jurisdiction and directed to pay the difference of gratuity in excess to ceiling limit of Rs. 10,00,000/- to the Employee in each petition.

They stress on the provisions of Section 4(5) of the Act of 1972 wherein an employee is entitled to receive better terms of gratuity under any award or agreement or contract with the employer. Having help of the Office Memorandum, it has been argued that, the order of the Controlling Authority is proper and therefore, rightly upheld by the Appellate Authority.

9. Axiomatically, if as per Section 4(5) of the Act of 1972 the Office Memorandum or any award, agreement or contract prescribe better terms of gratuity for the employee irrespective of the ceiling limit mentioned in Section 4(3) of the Act of 1972, the employee shall be entitled to the gratuity mentioned in the award, agreement of settlement.

10. The question here is whether the Office Memorandum dated 3.8.2017 will be made applicable to the Employee in each

petition?. Perusal of the Office Memorandum reveals that, it is applicable to Executive and Non Unionized Supervisors and the ceiling limit of gratuity was increased from Rs. 10,00,000/- to Rs. 20,00,000/- for those employees. Notably, none of the Employee in each of the petition fall under the category of Executive Employee or Non Unionized Supervisor, therefore, the Office Memorandum dated 3.8.2017 cannot be made applicable to the Employee in each petition. The learned counsel has taken me through Section 4(3) of the Act of 1972 which prescribe the maximum limit of the gratuity of Rs. 10,00,000/- on the date on which the Employee in each petition retired. Therefore, on the date of retirement, the earlier Office Memorandum as well as Section 4(3) of the Act of 1972 prescribe the limit of payment of gratuity upto Rs. 10,00,000/- which have been paid to the Employee in each of the petition.

11. Perusal of the impugned order reveals that the Controlling Authority and the Appellate Authority failed to make this bifurcation and relying on the definition of employee, wrongly extended the benefit of the Office Memorandum dated 3.8.2017 to the Employee in each of the petition.

12. So far as submission of the learned counsel for the Employee in each of the petition that, this is nothing but discrimination amongst the employee is concerned, in my view, the authorities below were lacking jurisdiction to decide this issue. Needless to mention that, if the Employee in each of the petition have grievance of discrimination, then they can avail appropriate remedy by challenging the Office Memorandum dated 3.8.2017 before appropriate forum; perhaps, may be before the High Court.

13. The learned counsel for the petitioner in each of the petition, at this stage, informs that some of the employees of the petitioners have filed Writ Petition challenging the Office Memorandum dated 3.8.2017 before this Court as well as before different High Courts.

14. Be that as it may, as on today, the Office Memorandum dated 3.8.2017 is not applicable to them, therefore, the impugned orders in each of the petition doesn't stand for any reason and therefore, they are required to be set aside. If the said Office Memorandum dated 3.8.2017 is made applicable to Non-Executive Employee of the petitioner by this Court or by any other High

Court, axiomatically, the Employee in each petition can approach appropriate forum for consequential reliefs in view of above observations.

15. The petition succeeds, accordingly it is allowed.

16. The impugned orders in each of the petition is quashed and set aside. The difference amount deposited by the petitioner in each of the petition with respondent no.1-the Appellate Authority be refunded to petitioner in each petition.

(M.W. CHANDWANI, J.)

Belkhede PS