Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :
THE HON'BLE JUSTICE RAJA BASU CHOWDHURY

WPA 19499 2023
Food Corporation of India & Ors.
Versus
Union of India & Ors.

with

WPA 16508 of 2023
Rabindranath Saha
Versus
Food Corporation of India & Ors.

For the Workman (WPA 16508 of 2023)	:	Mr. Pinaki Ranjan Chakraborty Ms. Ankita Ghosh
For the FCI	:	Mr. Debajyoti Barman Ms. Sanjukta Basu Mallick
For the Union of India	:	Mr. Atarup Banerjee Mr. Ayanava Raha
Heard on	:	01.09.2023
Judgment on	:	30.11.2023

Raja Basu Chowdhury, J:

1. The present writ petitions, *inter alia*, concern challenge to the determinations made both by the Controlling Authority as also by the Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the "said Act"). Two separate writ petitions

have been filed. One by the Food Corporation of India (hereinafter referred to as the "employer") and the other by Rabindranath Saha (hereinafter referred to as the "workman").

2. It is the contention of the workman that he had joined the employer sometimes in January, 1988 and since then had been continuously rendering service until his superannuation on 28th February, 2021. Since, according to the workman the gratuity was not disbursed in his favour, he had applied in Form-'N' before the Controlling Authority. On contested hearing, by an order dated 30th May, 2022, the Controlling Authority was, *inter alia*, pleased to determine the gratuity payable to the workman and by issuing a notice in Form-'R' had called upon the employer to make payment of the amount of gratuity, so determined.

3. Both the workman as also the employer preferred two separate appeals from the aforesaid order. While the workman was aggrieved with regard to the period for which determination had been made, the employer was aggrieved as regards the very determination, itself. As according to the employer, the gratuity was not at all payable to the workman. Records would further reveal that by an order dated 30th March, 2023, the Appellate Authority while declining to interfere with the aforesaid order, insofar as the same concerns the challenge made by the employer, however, while deciding the challenge of the workman directed the employer to reconsider the matter in the light of the documents submitted by the workman,

having regard to the disbursement of gratuity made in favour of one, Sudhir Das.

4. Both the employer as also the workman have filed two separate writ petitions challenging the aforesaid orders. While the workman has prayed for determination of gratuity from the date of his initial appointment, the employer has challenged the order passed by the Appellate Authority.

5. Mr. Barman, learned advocate appearing for the employer submits that the workman was employed on *no-work-no-pay* basis. The workman had never discharged his duties for more than 240 days in a year. As such, in terms of the statutory provision, the workman is not entitled to payment of gratuity. By drawing attention of this Court to the written statement filed on behalf of the employer, it is submitted that notwithstanding, there being no admission on the part of the employer, the Controlling Authority on an erroneous premise had determined the gratuity payable to the workman by treating the joining date of the workman to be 27th July, 2001. The aforesaid determination has been made on the basis of a purported admission never made by the employer.

6. The employer did not admit that the workman had joined the employer on 27th July, 2001. According to Mr. Barman, the finding returned by the Controlling Authority is perverse and based on no evidence. The same cannot be sustained.

7. In support of his contention that without rendering more than 240 days of continuous service in a year no gratuity is payable, Mr. Barman has placed reliance on the following judgements:

   - ***Lalappa Lingappa v. Laxmi Vishnu Textile Mills Ltd.,*** reported in **(1981) 2 SCC 238**
   - ***Mafatlal Fine Spinning and Manufacturing Company Ltd. v. Ramachhar Benimadhav Mishra.,*** reported in **1996 SCC OnLine Guj 304**
   - ***Sita Ram v. Moti Lal Nehru Farmers Training Institute,*** reported in **(2008) 5 SCC 75**

8. In the circumstances as noted above, it is submitted that the orders passed both by the Controlling Authority as also by the Appellate Authority cannot be sustained and the same should be set aside.

9. Mr. Chakraborty, learned advocate representing the workman, on the other hand, by placing reliance on the application in Form-'N' filed by the workman submits that workman had joined the employer on 8th January, 1988 and after rendering more than 33 years of service, he had had been superannuated. Although, the employer was under an obligation to make payment of gratuity, the same having not been paid, the workman was compelled to approach the Controlling Authority by filing an application in Form-'N'. Although, the said application was contested by the employer, there is no specific denial by the employer as regards the date of joining of the workman.

10. By drawing the attention of this Court to the written statement filed on behalf of the employer, it is submitted that the employer in

paragraph 5 had only made a statement that the workman was never in continuous work and had worked intermittently. While making such statement, the employer chose not to disclose the records. The aforesaid statement was made by the employer with the sole object of denying the workman his right to be entitled to gratuity. There is no assertion made by the employer that the workman did not work for more than 240 days in a year.

11. Mr. Chakraborty submits that notwithstanding the aforesaid, the Controlling Authority on the basis of an admission made by the employer, had determined the gratuity on and from 27th July, 2001. According to Mr. Chakraborty, the workman is entitled to gratuity from the date of joining, the factum whereof, had not been denied by the employer and it is for such reason that an appeal was preferred.

12. Although, the Appellate Authority was under an obligation to decide the said issue, the Appellate Authority instead of deciding the same, has remanded the matter to the employer. Despite the aforesaid direction, the employer has chosen not to take any steps in the matter. Mr. Chakraborty, however, submits that although, the workman has sought for enforcement of the aforesaid direction issued by the Appellate Authority, since, the same has no sanction of law, this Court should direct the Appellate Authority to decide the same. While distinguishing the judgments relied upon by Mr. Barman, it is submitted that since, there is no denial in the

pleadings as regards the workman not rendering continuous service of 240 days, the aforesaid judgments cannot assist the employer and are otherwise distinguishable on facts.

13. Mr. Banerjee, learned advocate representing the Union of India, by placing reliance on the provisions of the said Act, submits that a perusal of the provision of Section 2A read with Section 4 of the said Act, leaves no room for doubt as regards the entitlement of the workman. Having regard to the same, he submits that no case for interference by this Court has been made out. He, however, submits that ordinarily, unless the parties are in a position to demonstrate that there had been violation of the principles of natural justice or judgments rendered are perverse, or based on no evidence, no interference is called for. In the given facts the employer has failed to make out a case and as such this Court in exercise of its extraordinary jurisdiction, is not called upon to interfere with the determination already made.

14. Heard the learned advocates appearing for the respective parties and considered the materials on record.

15. Since, the objection raised by the employer goes to the very question as to whether the workmen shall be entitled to payment of gratuity, I shall deal with the same first.

16. The basis of the objection raised by the employer lies in the claim that the worker was not a permanent labour but a contract labour under a handling contractor under Modern Rice Mill, which was

taken over by Food Corporation of India, after its closure. The employer claims that the workman was a casual labour on *no-work-no-pay* basis, and never continuously worked but worked intermittently. It is, however, not the case of the employer that after its taking over, on the closure of the said rice mill, that any contractor was involved.

17. In this case it is noticed that the Controlling Authority has, on the basis of materials on record, returned a factual finding on the basis of a calculation sheet disclosed by the employer that the date of joining of workman is 27th July, 2001 and the date of superannuation is 28th February, 2021. Despite the employer claiming the aforesaid finding to be erroneous, has, however, never attempted to dislodge the basis of such finding. The aforesaid calculation sheet or the disclosure made therein do not form subject matter of challenge. There is also no averment in that regard. Independent of the above, the order reveals that the workman had submitted copies of Form-16, bank statements, income tax returns and EPFO statement to prove the last salary paid by the employer. The aforesaid documents along with calculation sheet disclosed by the employer clearly established that the factual finding returned by the Controlling Authority is based on some evidence and the same cannot be said to be based on no evidence, at all.

18. The aforesaid factual finding returned by the Controlling Authority which was upheld by the Appellate Authority, thus,

cannot be said to be based on no evidence, and therefore, in my view cannot be interfered with. The Constitution Bench judgment delivered by the Hon'ble Supreme Court in the case of ***Syed Yakoob v. K.S. Radhakrishnan & Others,*** reported in **AIR 1964 SC 477**, do not sanction interference of a factual finding by this Court in exercise of powers under Article 226 of the Constitution of India, when the same is based on some evidence. Having regard to the aforesaid, no interference to the aforesaid factual finding is called for.

19. Having regard to the aforesaid, the factual finding returned by the Controlling Authority, which is based on some evidence as noted above, in my view, cannot be interfered with.

20. The judgments delivered in the case of ***Lalappa Lingappa*** *(supra)* and ***Mafatlal Fine Spinning and Manufacturing Company Ltd.*** *(supra)* deal with the case of badli workers. The same are otherwise distinguishable on facts. Insofar as the case of ***Sita Ram*** *(supra)* is concerned, it also does not assist the employer in the light of the factual finding returned by the Controlling Authority. In the light of the above, the challenge made by the employer fails. On the issue as regards the right of the workman to seek enforcement of the order passed by the Appellate Authority in directing the employer to have a relook in the matter, it must be noted that the Appellate Authority was obliged to finally decide the appeal. It is the workman's case that he had rendered 33 years of service with effect

from 8th January, 1988. The Controlling Authority had rejected the aforesaid contention and had granted partial relief to the workman based on the factual finding noted above. Despite the Appellate Authority obliged to consider all issues raised in the appeal in the light of documents disclosed by the workman, the same had not been considered. Instead the same had been remanded back to be looked into by the employer, which in my view is not permissible. Although, the workman has sought for enforcement of the aforesaid order passed by the Appellate Authority, by the employer, however, having regard to the submissions made by Mr. Chakraborty and since, the aforesaid direction is not legally sustainable, I am of the view no useful purpose will be served by directing the employer to reconsider the same.

21. Since, no decision as regards the claim made by the workman has been returned by the Appellate Authority, I remand this matter back to the Appellate Authority for it to decide the same. While remanding the matter back to the Appellate Authority to decide the same, it is made clear that the aforesaid direction for remand is limited, to the decision on the entitlement of the workman for the period between 8th January, 1988 and 26th July, 2001, i.e. the period for which the Controlling Authority had declined to grant relief.

22. The decision in this regard must be taken by the Appellate Authority upon giving opportunity of hearing to the parties. Since,

the matter has been pending for several years and since, the aforesaid forms part of the retiral dues, I direct that the aforesaid proceeding be concluded within a period of 3 months from the date of communication this order without granting any unnecessary adjournment to the parties. Insofar as the gratuity determined by the Controlling Authority is concerned, to the extent upheld by the Appellate Authority, and not interfered with by this Court, the same be disbursed in favour of the workman, if not already disbursed, who shall receive the aforesaid amount without prejudice to his rights and contentions in the appeal.

23. With the aforesaid directions and observations, the aforesaid writ petition is accordingly disposed of.

24. There shall, however, be no order as to costs.

25. Urgent certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)