

(2012) 09 KAR CK 0045

In the Karnataka High Court

Case No : Writ Petition No. 15856 of 2012

Assistant Executive Engineer

APPELLANT

Vs

The Deputy Labour Commissioner and Appellate Authority
and The state of Karnataka

RESPONDENT

Date of Decision : 04-09-2012

Acts Referred:

Citation : (2013) 137 FLR 292

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : K.S. Bharath Kumar, in Writ Petition No. 15856 of 2012 C/W WP Nos. 15855 of 2012, 15857 of 2012, 8421 of 2012, 8420 of 2012, 15854 of 2012 and 15853 of 2012, for the Appellant; Jagadeesh Mundargi, AGA for R1, R2 and R4 and Sri. K. Govindaraj, for R3 in Writ Petition No. 15856 of 2012 C/W WP Nos. 15855 of 2012, 15857 of 2012, 8421 of 2012, 8420 of 2012, 15854 of 2012 and 15853 of 2012, for the Respondent

Judgement

Subhash B. Adi

1. Applications are filed for impleading the State in all the petitions. The said applications are not opposed by the respondents. Accordingly, IA.2/2012 in WP Nos. 15856/12, 15857/12, 15854/12 & 15853/12 and IA No. 1/2012 in WP Nos. 8421/12 and 8420/12 are allowed. Petitioner is permitted to implead the State as respondent No. 4 in all the writ petitions. Learned Government Pleader is directed to take notice for respondent No. 4 in all the writ petitions.

2. The petitioner - Assistant Executive Engineer, Cauvery Neeravari Nigam Ltd. has filed these writ petitions inter-alia calling in question the order of the Controlling Authority dated 28.2.2011 confirmed by the Appellate Authority by order dated 14.2.2012 under the provisions of Payment of Gratuity Act (hereinafter referred to as "the Act" for short).

3. The petitioner's case is that, respondent No. 3 in all the petitions had filed claim petition before the Controlling Authority inter-alia claiming that their

services were regularised in the Irrigation Department of the State of Karnataka and were provided with pensionary benefit after the retirement. However, for the period for which they had worked as daily wagers till their services were regularised, no gratuity was paid to them.

4. The Controlling Authority as well as the Appellate Authority concurrently held that, the respondent No. 3 in all the petitions have not been paid gratuity for the period for which they had worked as daily wagers and accordingly, for the said period the gratuity amount was calculated and was accordingly ordered to the respondent No. 3 in all these writ petitions. It is against the order of the Controlling Authority as well as the Appellate Authority these writ petitions are filed by the petitioner.

5. Learned counsel for the petitioner submitted that respondent No. 3 in all the petitions are claiming gratuity for the period for which they had worked as daily wagers under the State Government. These respondents were neither the employees of Nigam nor they worked under Nigam. Even before the formation of the Nigam, the respondent No. 3 in all these writ petitions were retired. Hence the claim petition against the petitioner was not maintainable.

6. Further, the terminal benefits are paid in terms of the provision of the Karnataka Civil Service Rules, as such, the claim petition of respondent No. 3 in all the petitions is not maintainable before the Controlling Authority, in view of the provisions of Section 1(3)(b) and also Section 2(e) of the Act. He submitted that, in terms of Section 1(3)(b) of the Act, only factory, mine, oilfield, plantation, port, railway company or shop or establishment alone are covered and not in other departments. He also relied on Section 2(e) of the Act i.e. the definition of "employee" and submitted that under the definition of "employee", the employee of Central Government/State Government who are governed by any other Act or Rules for payment of gratuity are excluded. Admittedly, the claim made by the respondent No. 3 in all the petitions for the services rendered as daily wagers was under the State Government. Hence, they are governed by the provisions of KCSRs and as such, the claim petitions ought not have been entertained.

7. Learned counsel appearing for respondent No. 3 submitted that as per Section 1(3)(b) of the Act, the shops and establishment means even the establishments of the State Government, such establishments are also covered under the Act. He relied on the decision reported in State of Punjab Vs. Labour Court Jullunder and Others, in the matter of "STATE OF PUNJAB v. LABOUR COURT, JULLUNDER AND ORS." and submitted that the "establishment" means industrial establishment as defined u/s 2(ii)(g) of the Payment of Wages Act, which also includes construction, development, maintenance of roads, buildings, bridges, canals relating to the operations connected with navigation, irrigation, water supply or relating to generation, transmission, distribution of electricity or any other form of power is being carried out on this interpretation, the Apex Court has held that the provisions of Gratuity Act are applicable even to the industrial

establishment. Relying on this decision, he submitted that the Irrigation Department is also an industry, hence, Payment of Gratuity Act is applicable.

8. He also relied on a judgment of Madras High Court reported in K. Natarajan Vs. The Tamil Nadu Civil Supplies Corporation, in the matter of "K. NATARAJAN v. TNCSC & ORS." and submitted that in case of a daily wager who was later on made permanent, the Madras High Court held that, such employee is entitled for payment of gratuity for the period for which he worked as a daily wager. He further relied on another decision of Himachal Pradesh High Court reported in 2012 II LLJ 458 (HP) in the matter of "CSKHP KRISHI VISHVAVIDYALAYA v. NAG & ANR." and submitted that, on interpretation of provisions of Section 2(e) of the Act, the Himachal Pradesh High Court has held that the employees who have worked even under pension package, for the period for which they worked as daily wagers, they are also entitled for payment of gratuity.

9. Learned Government Advocate submitted that, the employees of the State Government are expressly excluded under the provisions of Section 2(e) of the Act. All the State Government employees are governed by the KCSRs. The payment of gratuity is calculated under the provision of KCSRs, including for the period for which they worked as daily wagers or monthly wagers, as such when there is express exclusion of the employees of the State Government who are covered by separate enactment or Rules, Payment of Gratuity Act is not applicable as such employees will not come within the definition of "employee" u/s 2(e) of the Act and if he is not an employee. Section 4 of the Act is not applicable.

10. In the light of the above, the point that arises for consideration is:

Whether the daily wager who has subsequently been made permanent and who is governed by the KCSRs, is entitled to claim gratuity for the period for which he had worked on daily wages?

11. The facts which are not in dispute are that, all the claimants were working as daily wagers, their services were regularised by the State Government and they retired even before the formation of Cauvery Neeravari Nigam, as such, they cannot claim that they were employees of the Nigam.

12. As far as the State Government is concerned. Section 2(e) of the Act, a definition of employee which reads as under:

(e) "employee" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any Rules providing for payment of gratuity.

13. From the perusal of the definition of "employee" as defined u/s 2(e) of the Act, it expressly excludes the employees of the State and Central Government who are governed by the provisions of any other Act or Rules. The case of respondent No. 3 is that, though they were governed by the KCSRs, but they are entitled for payment of gratuity for the period for which they had worked as daily wagers and for which they had not been given pensionary benefit.

14. The decision relied on by the learned counsel for respondent No. 3 in the matter of "STATE OF PUNJAB v. LABOUR COURT, JULLUNDER AND ORS.", wherein the Apex Court, on interpretation of Section 1(3)(b) of the Act has held that the definition of "establishment" in any other law i.e. under the Payment of Gratuity Act includes the employment in connection with the operation in connection with navigation, irrigation or water supply or generation, transmission, distribution of electricity or any other form of power is being carried on. Such establishment are covered within the meaning of "establishment" referred to in Section 1(3)(b). However, the Apex Court had not dealt with as to whether the State Government or Central Government employees who are governed by any other enactment or Rules governing the payment of gratuity.

15. Another decision that was relied on by the learned counsel for respondent No. 3 was in the matter of "K. NATARAJAN v. TNCSC & ORS." it was a case where the payment of gratuity was denied only on the ground that the employees had only for 2 years in permanent service. For the purpose of calculating the qualifying service, the Madras High Court held that the period for which they had worked as casual employees also has to be considered for payment of gratuity. The other decision relied on by the learned counsel for respondent No. 3 in the matter of "CSKHP KRISHI VISHVAVIDYALAYA v. NAG & ANR." was also dealing with the issue of payment of gratuity for which no provision was made.

16. He also relied on another decision of the Division Bench of this Court in WA No. 2761/2000 dated 6.12.2000. However, the said matter does not relate to as to whether the State Government employees who are governed by the KCSRs.

17. Section 4 of the Act requires that the claimant must be an employee and on termination of his employment from the services, he becomes entitled for the payment of Gratuity, which would be calculated in terms of Section 4 of the Act. The definition of "employee" as referred to above excludes employees under the Central Government and State Government if they are governed by any other Act or Rules in the matter of payment of gratuity.

18. It is not in dispute that the respondent No. 3 in all the cases have been given the pension under the provisions of KCSRs on their retirement as they retired as State Government employees. The only question is whether there is any provision which provides for payment of gratuity for the period for which they had worked as daily wagers. Rule 248A of the KCSRs reads as under:

248-A. (1) Persons borne on the work-charged establishments of Government

either on daily or monthly wages system when appointed to regular pensionable service under Government shall count for pension or gratuity one-fourth of their service rendered on the work-charged establishments subject to a maximum of three years.

(2) Persons borne on the work-charged establishments of Government on time scales of pay who were in Service on 1st July, 1978 and have been or are absorbed in regular pensionable service under Government after that date shall count their work-charged service to the extent indicated below, for purposes of pension and gratuity:

(i) For the first ten years - 50% of service;

(ii) For the remaining period - full service.

19. Reading of this Rule clears the doubt that even if the employee had worked on daily wages or monthly wages and later on if they were absorbed on a pensionary service under the State Government, the services they had rendered as daily wagers or monthly wagers would be counted for payment of gratuity in accordance with the said Rules. When there is a specific Rule providing for payment of gratuity, the claim petition should have been made against the State Government before the appropriate forum. The Controlling Authority under the Payment of Gratuity Act is not vested with power to order for payment of gratuity in respect of employees under the State who are governed by the Act and Rules governing the payment of gratuity. The learned counsel for the petitioner submits that the payment of gratuity under the KCSRs is not in consonance with the provisions of Gratuity Act, however, that is not the matter which requires to be gone into in this petition. Since the said law is applicable to the cases of the respondent No. 3 in all these cases, they have to seek their relief only under the law that is applicable. If the claimants are aggrieved by any Rule, it is open for them to challenge the said Rule. Since there is specific provision under the KCSRs governing the payment of gratuity even for the daily wagers and such employees being excluded under the definition of "employee" u/s 2(e) of the Act, their claim petitions before the Controlling Authority under the Act were not maintainable.

20. Both the authorities have not looked into the relevant provisions of law in entertaining the claim petitions. Hence, the orders passed by the Controlling Authority as well as the Appellate Authority are liable to be quashed.

Accordingly, petitions are allowed. Order of the Controlling Authority produced at Annexure-C in all the petitions confirmed by the Appellate Authority produced at Annexure-D in all the petitions stand quashed. Liberty is reserved to the claimants - respondent No. 3 in all the petitions to work out their remedy before the appropriate forum. Amount in deposit before the respondent No. 2 is permitted to be withdrawn by the petitioner.

21. Learned Government Pleader for respondent No. 4 is permitted to file memo

of appearance within two weeks. In view of the disposal of the writ petitions, IA No. 1/2012 filed for vacating stay in WP Nos. 15856/12, 15857/12, 15854/12 & 15853/12 does not survive for consideration and are accordingly, dismissed.