
(2019) 07 JH CK 0078

In the Jharkhand High Court

Case No : Writ Petition (L) No. 5366, 5525, 5541, 5550 Of 2010

Bharat Sevashram Sangha

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 01-07-2019

Acts Referred:

Payment Of Gratuity Act, 1972 — Section 2(A)(1), 2(e), 4

Citation : (2019) 07 JH CK 0078

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Indrajit Sinha, Sunil Kumar, Himanshu Kr. Mehta, Amritanshu Singh

Final Decision : Dismissed

Judgement

Heard counsels for the parties.

In all the four cases only two issues have been raised before this Court.

(1) Whether the petitioners are covered under the definition of employee under section 2(e) of the Payment of Gratuity Act or not.

(2) Whether the petitioner had completed five years continued service or not as this is requirement under section 4 of the Payment of Gratuity Act.

All the employees are non-teaching staffs of the petitioner- employer and are working as a Sevak Karmchari. So far as legal provisions are concerned quoted hereinbelow:-

"2(e) "employee" means any person (other than an apprentice who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment, to which this Act applies, 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.

2-A. Continuous service. For the purposes of this Act,

(1) An employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing in the employees of the establishment), lay-off strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.

(2) Where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer.

(a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.

(i) one hundred and ninety days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(ii) two hundred and forty days, in any other case;

(b) for the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than.

(i) ninety-five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(ii) one hundred and twenty days, in any other case.

4. Payment of gratuity. (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

[Provided further that in the case of death of the employee, gratuity payable to

him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.]

So far as definition of employee is concerned that has been amended. Amended definition has been explained by Hon'ble Apex Court in judgment reported in (2019) 4 SCC 513, in the case of Birla Institute of Technology Vs. The State of Jharkhand and Ors.

In view of above interpretation given by Hon'ble Apex Court, the respondents-employees are covered under the definition of employee.

So far as second issue regarding continuous service is concerned, finding of fact has been recorded by the Original Authority as well as Appellate Authority that the claimant-workmen were working in the establishment for around 30 years. Section 2(A) (1) of the Payment of Gratuity Act defines continuous services.

From mere perusal of the definition, it is evident that by operation of law it is deemed that employees are in continuous service unless and until the period of unauthorised absence is excluded by specific order passed by the employer.

In the present case, no such order has been brought on record by the employer. This fact has not been disputed that the employees have worked for 30 years. Rather only plea has been taken that employees have not worked continuously in the establishment.

In view of finding of above facts and discussion, this Court finds no merit in present writ petitions, resultantly the same are, hereby, dismissed.