

(2017) 01 CHH CK 0043
In the Chhattisgarh High Court
Case No : 439 of 2004

GENERAL MANAGER

APPELLANT

Vs

RAM BALI RAM AND ANOTHER

RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

Payment of Gratuity Act, 1972, Section 4,
Section 7, Section 2(s) - Payment of
gratuity - Determination of the amount of gratuity - Definitions

Citation : (2017) 01 CHH CK 0043

Hon'ble Judges : Sanjay K Agrawal

Bench : Single Bench

Final Decision : Allowed

Judgement

1.] Heard.

The petitioner- SECL seeks to challenge the legality, validity and correctness of the order dated 9th December, 2003 by which learned Appellate Authority, respondent No. 2 herein while setting aside the order of Controlling Authority has held that attendance bonus is component of the wage for the calculation of gratuity within the meaning of Section 2(s) of the Payment of Gratuity Act, 1972 (hereinafter called as PG Act, 1972) and directed accordingly for recalculating the gratuity of respondent No. 1-Employee considering the attendance as a part of wages.

2.] Respondent No. 1 retired from the services of the Respondents-SECL on 31.07.2000; on 20.12.2000 gratuity amount was voluntarily deposited before the Assistant Labour Commissioner (Central) Bilaspur to the extent of Rs.2,37,742/-. Thereafter, respondent No. 1 moved an application before the Controlling Authority under the PG Act, 1972 for recalculation of gratuity stating that attendance bonus is a part of wage and, therefore, should be included for calculating the gratuity.

3.] The Controlling Authority, by its order dated 20.09.2002, has held that the attendance bonus is not a part of wages within the meaning of Section 2(s) of the PG Act, 1972, however, did not enhance the amount and awarded interest Rs. 7,263/- to respondent No. 1-employee.

4.] Feeling aggrieved against the part of order granting interest of Rs.7,263/- to respondent No. 1, the petitioner herein filed an appeal before the Appellate Authority under the PG Act, 1972.

5.] The Appellate Authority, by its impugned order dated 9th December, 2003, has held that respondent No. 1-employee is entitled for interest; and also held that attendance bonus is included in the wages of respondent No. 1 and, therefore, attendance bonus be taken into account for calculating the gratuity of respondent No. 1 and remanded the matter to the Controlling Authority for recalculating the gratuity of respondent No.1-employee.

6.] Calling in question the legality & validity of the order of the Appellate Authority, instant writ petition has been filed challenging the same, in which, return has been filed by respondent No. 1 opposing the averments made in the writ petition.

7.] I have heard learned counsel for the parties and perused the order impugned with utmost circumspection.

8.] Shri Abhishek Sinha, learned counsel appearing for the petitioner would submit as under :- (i) That, the bonus including the attendance bonus is expressly excluded for calculating the gratuity within the definition of Section 2(s) of the PG Act, 1972 and, therefore, attendance bonus by no stretch of imagination can be said to be the part of wages of respondent No. 1.

(ii) The Controlling Authority, in its order dated 20.09.2002 has clearly held that attendance bonus is not the part of wages and as the same was not challenged by respondent No. 1, the said finding has attained finality and, therefore, it was not open for the Appellate Authority to disturb the finding so recorded by the Controlling Authority.

(iii) Respondent No. 1-employee still has not vacated the accommodation, which was allotted to him by the respondents-SECL, till the impugned order was passed. He would further submit that the respondent No. 1-employee is not entitled for interest in view of the judgment of the Supreme Court in the matter of Union of India and another v. K. Balakrishna Nambiar, 1998 AIR(SC) 2958, in which their Lordships have held that interest was not payable in respect of the period of such unauthorized occupation of the government accommodation.

9.] Per contra, Shri Gary Mukhopadhyaya, learned counsel appearing for respondent No. 1 would submit that attendance bonus is given quarterly @ 10% of the basic wage by virtue of National Coal Wage Agreement and, therefore, it will be a part of wages and it has rightly been included as part of wages for payment of gratuity under Section 2(s) of the PG Act, 1972.

10.] I have heard learned counsel appearing for the parties and also gone through the record with utmost circumspection.

11.] In order to decide the dispute raised at the bar, it would be appropriate to notice definition of Section 2(s) of the PG Act, 1972, which states as under:- "(s) "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."

12.] A careful reading of the aforesaid definition of Section 2(s) of the PG Act, 1972 would show that it has expressly excluded bonus, commission, house rent allowance, overtime wages and any other allowance for the purpose of calculating payment of gratuity.

13.] Thus, the legislature in its own wisdom has expressly excluded bonus from the wages for the purpose of computing gratuity of the respondent-employee.

14.] In the matter of Hamdard (Wakf) Laboratories v. Dy. Labour Commissioner and others, 2008 AIR(SC) 968, their Lordships of the Supreme Court while considering the meaning of wages as defined in the different statute has clearly held that rights and otherwise of the parties are to be determined only under the Act and not in terms of any other law and observed as under:- "12. The term "wages" has been defined in Section 2(y) of the Act in the following terms:

"2. (y) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment, and includes-

(i) Such allowances (including dearness allowance) as the workman is for the time being entitled to:

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

(iii) any travelling concession; but does not include-

(a) any bonus;

(b) Any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c) Any gratuity payable on the termination of his service;"

16. Different statutes, enacted by Parliament from time to time, although beneficial in character to the workmen, seek to achieve different purposes. Different authorities have been prescribed for enforcing the provisions of the

respective statutes. The authority under the Payment of Wages Act, 1936 is one of them.

21. Definition of "wages" within the meaning of the Act does not include "bonus". It, however, includes allowance. The Payment of Bonus Act also excludes bonus for the purpose of calculating the amount of bonus to be determined in terms of Section 10 thereof."

22. Presiding Officer of the Labour Court is a judicial authority. He is supposed to know the definition of "wages" as contained in the Act. The rights and obligation of the parties were being determined only under the Act and not in terms of any other law.

26. Bonus either in its ordinary meaning or statutory ones would not include wages."

15.] Division Bench of the Madhya Pradesh High Court in the matter of Kirloskar Brothers Ltd. v. Appellate Authority under Payment of Gratuity Act and others (LPA No. 366 & 367/2001, decided on 8.5.2003 has clearly held that bonus is not included for the purpose of calculating payment of gratuity within the meaning of wages under Section 2(s) of the PG Act, 1972 as under:- "11. Apart from the above the definition of "wages" as appearing in the aforesaid case makes it clear that it shall not include any bonus, commission, house rent allowance, overtime wages and any other allowance. The definition does not leave any amount of doubt in our mind that incentive bonus/production bonus, in any case could not have been included in the wage structure.

12. In view of the aforesaid discussion we are of the considered opinion that the learned single Judge has committed an error in including incentive bonus/production bonus in the structure of wages of the employees. In fact, it specifically excluded any such bonus. The judgment of the Supreme Court in M/s. Harihar Polyfibres (AIR 1984 SC 1680) on which reliance was placed by learned single Judge was certainly misplaced. In M/s. Harihar Polyfibres , as has been mentioned by us above, the Supreme Court was dealing with the definition of wages as appearing in ESI Act which could not have been made applicable to the present cases as the definition of wages is entirely different from the definition of wages as appearing in the ESI Act. Comparison of the two definitions of wages in two different Acts and yet giving benefit to the respondents employees of the "wages" as defined in the other Act, in the present case, was certainly misconceived."

16.] Thus, in view of the aforesaid analysis, I have no hesitation in holding that bonus is not includable while computing the wages of the workman for the purpose of Section 2(s) of the PG Act, 1972.

17.] Accordingly, it is held that learned appellate authority under the PG Act, 1972 is absolutely unjustified in holding that attendance bonus is included as part of wage for the purpose of Section 2(s) of the PG Act; and additional reason

for interference in the order of appellate authority is that the Controlling Authority in its order dated 20.9.2002 has clearly held that attendance bonus is not part of the wages and cannot be computed for the purpose of gratuity and that order has attained finality in absence of challenge by respondent No. 1 before the appellate Authority. Despite non challenge by the respondent No. 1, appellate authority committed further error in adjudicating the dispute, which was not lis before the Appellate Authority, that order cannot sustain for that reason also.

18.] Accordingly, the writ petition is allowed. Impugned order dated 9th December, 2003 is set aside; and it is held that respondent No. 1-employee is not entitled for interest and the attendance bonus was not part of the wages. However, it is made clear that interest, if any, paid to the respondent No. 1-employee shall not be recovered from him. No cost (s).