

(2010) 03 JH CK 0011
In the Jharkhand High Court

Mahendra Jha

APPELLANT

Vs

General Manager, Central Coaldields Limited (C.C.L.), The
Project Officer, Pundi Project, C.C.L. Ltd., Regional Labour
Commissioner (C) and Assistant Labour Commissioner
(Central)

RESPONDENT

Date of Decision : 22-03-2010

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2A

Citation : (2010) 03 JH CK 0011

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—This writ petition has been filed mainly for quashing the order dated 19.1.2003 (Annexure-2) passed by the Regional Labour Commissioner (Central Region), Dhanbad-cum-Appellate Authority under payment of Gratuity Act 1972 allowing the appeal of the management-respondents.

2. Petitioner filed an application for payment of gratuity claiming that his initial date of appointment was 01.06.1959. The case of the respondents was that the date of initial appointment of the petitioner was 1.9.1972; and that he was not entitled to claim Gratuity for the period prior to 1.9.1972. The said application was disposed of by order dated 31.3.2003 holding that petitioner is entitled to receive Rs. 1,42,847/- (Rupees One Lakh Forty Two Thousand Eight Hundred and Forty Seven) only as difference of Gratuity holding that the initial date of appointment of the petitioner was 1.6.1959. The said order was challenged by the management-respondents by filing appeal before the appellate authority, which was registered as Case No. PG Appeal/(38)/2003. After hearing the parties, the appeal has been allowed and the said order dated 31.3.2003 of the controlling authority was set aside holding that the petitioner is not entitled to get difference of Gratuity. This order is under challenge in this writ petition.

3. The Relevant portion of the appellate order reads as follows:

After going through the submission made by both the parties and documents filed by them before the Controlling Authority, it is observed that the decision of the Controlling Authority does not to be correct due to following:

- i. The Respondent has failed to submit any document about his date of appointment as 1.6.59 as established by the Controlling Authority in his direction dated 31.3.2003.
- ii. In form "N", the Respondent has written his date of appointment as 15.6.60 and no documents produced in respect thereof.
- iii. In the service register the date of appointment of the ex-employee is clearly written as 1.9.72.
- iv. The so-called letter dated 16.2.81 to the Regional Commissioner (B), Coal Mines Provident Fund, Burdwan is nowhere indicates that his date of appointment was 1.6.59, this letter simply indicates on the application of the Respondent, they have asked for certain Ledger card, D.A., Pen-I and Pen-II etc. for issuing Pass Book.
- v. The respondent has further submitted letter dated 4.7.62 of Satgram Colliery which certified that he worked in the said colliery from 1.6.1959 to 2.7.62, except brief gap from 20.2.61 to 4.3.61. This also is a secondary evidence of the service rendered by him in the Satgram Colliery for the period of 3 years and 1 month
- vi. The Respondent has also submitted xerox copy of letter dated 7.9.64 vide which, he was offered appointment as Mining Sirdar-cum-short fifer by East Laikdih Colliery Company Private Ltd.
- vii. The other document is a certificate dated 16.3.66 about his training under Rule 26 of the Mines Rescue Rules, 1959 at the Mines Rescue Station, Dhansar.
- viii. Another document is some personal letter written by somebody to him.

None of the above documents indicate that he has been working in Kuju Colliery right from 1.6.1959 to 30.8.72 or in collieries which were under the same owner.

Even if his period of service rendered as per certificate dated 4.7.62 is taken into account, he served from 1.6.59 to 2.7.62 at Satgram colliery, while he was offered fresh appointment at another colliery East Nimcha colliery vide letter dated 7.6.1964, this gap in between 3.7.62 to 7.9.64 has not been explained.

In view of the provisions contained u/s 2A of the P.G. Act, 1972 for continuity of service, the Respondent cannot be said to be in continuous service from 1.6.59 to 6.9.64.

There is nothing on record/produced by the Respondent before the Controlling Authority about his service rendered from 7.9.64 to 30.8.72.

The workman has put in about more than 27 years of service with the Applicant and no document or any correspondence produced, which may indicate that at any point of time, he raised the dispute regarding date of his initial appointment with the Appellant. The respondent himself claiming his date of appointment as 15.6.60 while the Controlling Authority holding the same as 1.6.59.

In view of the above, I hold that the Respondent has failed to justify/substantiate his continuous service from 1.6.59 (as established by the Controlling Authority)/15.6.60 to 30.8.72 to become eligible to claim gratuity for the above period from the Appellant-employer.

I therefore, allow this appeal and set aside the direction of the Controlling Authority for payment of gratuity from 1.6.59. The respondent is entitled for gratuity from 1.9.72 to 15.11.99 i.e. for 27 years @ Rs. 450.62 as last drawn wages per day, therefore, the total gratuity amount works out to Rs. 182501.10 (27 x 15 x 450.62), which has already been paid to the Respondent by the Appellant.

In the result, the appeal is allowed and order dated 31.3.2003 of the Controlling Authority is set aside and the Respondent is not entitled to get any gratuity towards the difference of gratuity.

4. I am satisfied that the appellate authority has rightly allowed the appeal on taking into consideration relevant aspect of the matter which were not considered by the controlling authority. The appellate authority has also met with the reasonings of the controlling authority while allowing the appeal.

In my opinion no grounds are made out for interference with the impugned order. This writ petition is accordingly dismissed. However, no costs.