
(2009) 07 AHC CK 0069
In the Allahabad High Court

Maliana Co-operative Cane Development Union Ltd.	APPELLANT
Vs	
Tej Ram Sharma and Others	RESPONDENT

Date of Decision : 13-07-2009

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4(2)

Citation : (2010) 1 AWC 292 : (2009) 123 FLR 393 : (2010) 1 LLJ 738

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.U. Khan, J.—Heard learned Counsel for the petitioner. No one has appeared on behalf of respondent No. 1 the contesting respondent workman.

2. Respondent No. 1 Tej Ram Sharma was an employee of the petitioner. He worked with them for 34 years and retired on 31.10.1983. Gratuity was not paid to him hence he filed application under Payment of Gratuity Act, 1972 before Controlling Authority, Meerut under the said Act in the form of Case No. P.G.A. 24/85. The controlling authority decided the matter on 13.3.1986 partly in favour of the petitioner and partly in favour of the workman holding that provisions of the Act were applicable upon the petitioner. However, the claim of the workman that gratuity must be calculated treating him to be employee of regular establishment u/s 4(2) of the Act (@ 15 days wages per year) was not accepted and gratuity was calculated @ 7 days wages per season treating the petitioner to be seasonal establishment under second proviso to Section 4(2) of the Act. Ultimately through order dated 1.4.1986 the controlling authority directed payment of Rs. 5,398.90. It was further directed that if the amount was not paid within 30 days then 9% per year compound interest shall be payable. Against the said order both the parties filed appeals being Appeal Nos. 24/86 and 26/86. Additional Labour Commissioner (O.S.), U.P./Appellate Authority under the Act dismissed both the appeals on 22.9.1990 hence this writ petition. As no one has appeared on behalf of respondent-workman hence it cannot be ascertained as to

whether the workman also filed some writ petition against the impugned order in so far as they are against him.

3. Learned Counsel for the petitioner has argued that provisions of the Act are not applicable upon the petitioner for the reason that its employees are governed by the provisions of U.P. Co-operative Societies Act and the Cane Societies Employees Service Regulations, 1975 and that the workman was a seasonal employee. It has also been argued that it was not proved by the workman that for how many days he had worked in each season.

4. In Co-operative Cane Development Union Ltd. Vs. Nahar Singh and Others, , it has been held that the burden to prove that the workman was not in continuous service is upon the employer. In Member Secretary, Cooperative Bank Centralised Services Care of U.P. Cooperative Bank Limited Vs. Appellate Authority, Bhoj Raj Singh and Chairman, District Cooperative Bank Ltd., it has been held that U.P. Co-operative Bank Limited is governed by the provisions of Payment of Gratuity Act.

5. Under the definition of employee given u/s 2(e) of the Act even workers of seasonal establishments are employees. Same is the position u/s 20A defining continuous service. The only difference is that by virtue of Section 4(2) second proviso, such employees are entitled to get gratuity at the rate of 7 days wages for each season (as against 15 days wages per year for other employees) and this is what has been done by the authorities below. The said proviso is quoted below:

provided further that in the case of an employee who is employed in a seasonal establishment and is not so employed throughout the year the employer shall pay the gratuity at the rate of 7 days wages for each season.

In this regard reference may be made to Aspinwall and Co., Kulshekar, Mangalore Vs. Lalitha Padugady and others etc. etc.,

6. Accordingly, there is no merit in this writ petition hence it is dismissed.

7. Under interim order dated 4.2.1991 passed in this writ petition operation of the impugned orders was stayed. In the stay application it was stated that the amount had been deposited by the petitioner. As the payment of the deposited amount was withheld due to stay order hence petitioner is liable to pay interest @ 9% per year as directed by the impugned order passed by the controlling authority. However, as the amount had been deposited hence petitioner shall be liable to pay only simple interest and not compound interest.