

(2012) 12 JH CK 0084
In the Jharkhand High Court
Case No : Writ Petition (S) No. 1977 of 2008

Project Officer, Swang Colliery

APPELLANT

Vs

Shri Shanti Ranjan Sen

RESPONDENT

Date of Decision : 12-12-2012

Acts Referred:

Citation : (2013) 1 JLJR 183

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Ananda Sen and Amit Kr. Verma, for the Appellant; Shekhar Prasad Sinha, for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard the counsel for the parties. The petitioner is seeking quashing of the order dated 30.8.2007 passed in P.G. Appeal No. 20 of 2007 by the Appellate Authority under the Payment of Gratuity Act, 1972 whereby the petitioner's appeal has been dismissed and the order of the Controlling Authority dated 8.1.2007 in Case No. 36(31)/06 has been upheld.

2. Petitioner is aggrieved, as according to the impugned order the petitioner-employer has been directed to pay the gratuity amount to the respondent-employee treating his date of appointment as 1.7.1961 instead of 19.1.1966. The petitioner-employer relies upon the Service Register (Annexure-1) showing the date of first appointment of the respondent-employee as 19.1.1966 and his date of birth as 27.4.1942 in which the respondent-employee himself has put his signature. The petitioner-employer further relies upon Annexure-2 which is Form-B Register also showing the date of employment of the respondent as 19.1.1966.

3. On the other hand the applicant-employee on his retirement on 30.4.2002 made an application before the Controlling Authority under the Payment of Gratuity Act for directing the employer to pay the gratuity amount to the employee-Respondent. Since, the employer raised a question on the claim of

date of appointment made by the employee being 1.7.1961, the Controlling Authority asked the C.M.P.F. to supply any proof of such record relating to the employee showing his date of appointment as 1.7.1961. The order dated 8.1.2007 has been passed by the Controlling Authority, Assistant Labour Commissioner (Central), Hazaribagh under the Payment of Gratuity Act, 1972 acting upon the communication dated 17.8.2006 by the C.M.P.F. that the employee has become member of C.M.P.F. w.e.f. 1.7.1961 and regularly contributing towards the fund. Accordingly, the employer was directed to pay gratuity from the date of appointment i.e. 1.7.1961 instead of 19.1.1966 and release further amount of Rs. 46,020/- as the difference of gratuity to the applicant-employee. The petitioner had already deposited the amount of gratuity totalling Rs. 2,39,070/- towards gratuity to the employee. The employer-petitioner, thereafter, preferred an appeal before the Appellate authority under the Act of 1972, which was again decided against him acting upon the same C.M.P.F. letter showing the respondent-employee's date of appointment as 1.7.1961. The same has been assailed by the petitioner by stating that contrary to the records maintained by the petitioner-employer i.e. the Service Register and Form-B Register, which are annexed herein to the writ petition showing the employee's first date of appointment as 19.1.1966, the C.M.P.F. has not produced any documents in support of their assertion showing the date of appointment of the employee's as 1.7.1961. Counsel for the petitioner has, therefore, assailed the order of Appellate Authority as well as original order as being passed contrary to the records and, therefore, suffers from error apparent on the face of the record.

4. Respondent has appeared but has not filed any counter affidavit nor refuted the contention in the writ petition, although he had appeared before the Appellate Authority earlier also.

5. I have heard counsel for the parties and gone through the relevant materials on record including the impugned order. From the Service Register and Form-B excerpts brought on record vide Annexures-1 and 2 to the present writ application, it appears that the employee himself had accepted the first date of appointment showing therein as 19.1.1966 and signed by the employee himself. The employer, based upon the records maintained in their office relating to the entry of the service of the employee concerned has proceeded to calculate the gratuity amount due to him on his retirement on 30.4.2002 as Rs. 2,39,070/- . The employee, however after his retirement has staked his claim as his date of entry into service being 1.7.1961, which was not supported by any document on his behalf instead when the C.M.P.F. was asked to furnish any record of the same a letter has been issued by the C.M.P.F. in 2006 showing that the employee was the member of C.M.P.F. as in 1961. However, the C.M.P.F. authorities have not produced any documents to substantiate the same.

6. In the wake of aforesaid facts, it appears that the stand of the employer-management-petitioner, herein based upon the documents brought on record

showing his date of appointment as 19.1.1966 does not stand refuted by any other cogent evidence produced either by the employee or by the C.M.P.F. The impugned order, therefore, suffers from error apparent on the face of record. Accordingly, the impugned order directing the petitioner-management to pay further difference of amount of gratuity totalling Rs. 46,020/- to the employee concerned treating his date of appointment as 1.7.1961 cannot be accepted and the impugned orders are accordingly, quashed to the extent that petitioner has been directed to pay the employee the difference of gratuity amount treating the employee's date of appointment as 1.7.1961. The employee has already received the gratuity amount paid treating his date of appointment as 19.1.1966 and, therefore, no interference is required in that regard, so far as the amount already been paid. The writ petition is accordingly, allowed.