

**(2008) 04 CHH CK 0018**  
**In the Chhattisgarh High Court**  
**Case No : Writ Petition No. 1154 of 2005**

Ram Bhajan Agrawal

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

**Date of Decision :** 23-04-2008

**Acts Referred:**

**Citation :** (2008) 4 MPJR 27

**Hon'ble Judges :** Satish K. Agnihotri, J

**Bench :** Division Bench

**Advocate :** Sahilendra Soni, for the Appellant; M.P.S. Bhatia, Deputy G.A. For Respondents No. 1 and 2 State and Mr. Rajeev Shrivastava, Advocate For Respondents No. 3 and 4, for the Respondent

**Final Decision :** Allowed

## Judgement

Satish K. Agnihotri, J.

By this petition, the Petitioner seeks a writ in the nature of mandamus commanding the Respondents authority to pay remaining part of gratuity amount with 18% interest per annum.

The indisputable facts, in nutshell, are that the Petitioner initially joined the services of the Respondent No. 4 on 7-4-1965 and continuously worked till 12-4-1973 when he was relieved from services of Respondent No. 4 to join the post of Assistant Manager (Cadre) of Respondent No. 3. The Petitioner was accordingly relieved on 12-4-1973 (Annexure P/2). The Petitioner has filed this petition claiming the gratuity amount from Respondent No. 3 for the entire period from 7-4-1965 till 30-6-2003, when he attained the age of superannuation.

Shri Shailendra Soni, learned Counsel appearing for the Petitioner would submit that in view of Rule 19 of the C.G. Rajya Sahakari Bhoomi Vikas Bank's Cadre Service (Service of Key Personnel) Rules (for short, "the Rules") the Petitioner is entitled to payment of gratuity for the entire period including the period when he

was working as an employee of Respondent No. 4.

Per contra, Shri Rajeev Shrivastava, learned Counsel appearing for the Respondents No. 3 and 4 would submit that Rule 19 of the Rules is clear to the extent that the Respondent No. 4 would pay their contribution of the gratuity as soon as their employees are selected and joined the cadre. Learned Counsel would further submit that the Petitioner is not entitled to payment of gratuity amount for the period from 7-4-1965 to 12-4-1973 as the Petitioner had not completed ten years of service, while working with Respondent No. 4. It was next contended that under Rule 38 of Sahakari Bhoomi Vikas Bank Karmachari Seva Niyam, 1973 (for short. "Niyam 1973"), gratuity is payable after completion of ten years of service. In the instant case, the Petitioner has completed eight years of service, thus, he is not entitled to payment of gratuity amount accordingly.

I have heard learned Counsel appearing for the parties, perused pleadings and documents appended thereto.

Rule 19 of the C.G. Rajya Sahakari Bhoomi Vikas Bank's Cadre Service (Service of Key Personnel) Rules reads as under:

19. Gratuity - The gratuity shall be paid to the employees at the rate approved by the Committee. The period of the service of the employees in a cooperative institution just prior to the joining of the Apex Bank shall be taken into account for this purpose. The district land Development Bank shall pay their contributions of the gratuity as soon as their employees are selected and have joined the cadre.

Bare reading of the aforesaid Rule makes it clear that while calculating the amount of gratuity, the period of service of the employee prior to joining shall be taken into consideration for this purpose. Thus, whether the Petitioner on the basis of completion of eight years of service with Respondent No. 4 was entitled to payment of gratuity or not, is immaterial. Had the Petitioner claimed the gratuity from the Respondent No. 4 on the basis of eight years of service, the situation would "have been different, as in accordance with Rule 38 of the Niyam 1973, the Petitioner may not be eligible. Rule 19 of the Rules provides for taking the period of service of the employee into consideration for payment of gratuity. The gratuity is not payable separately as the contribution of the gratuity has to be made by the Respondent No. 4 to Respondent No. 3 as soon as the Petitioner was selected and joined the cadre of Respondent No. 3. Rule 38 of the Niyam 1973 is not applicable to the employees of the Apex Bank i.e., Respondent No. 3.

This Court in the matter of Food Corporation of India Vs. Shyam Sunder Deepak and Others, while considering the expression continuous service, observed as under:

The Hon"ble Supreme Court in Jeewanlal (1929) Ltd., Calcutta Vs. Its Workmen, while considering the expression "continuous service", held as under:

10.....there can be no doubt that in a different context the same words can and

often have different meanings. As this Court has observed in *Budge Budge Municipality v. P.R. Mukherjee* the same words may mean one thing in one context and another in different context. This is the reason why decisions on the meaning of particular words or collection of words found in other statutes are scarcely of much value when we have to deal with a specific statute of our own, they may be helpful but cannot be taken as guides or precedents"..... "Continuous service" in the context of the scheme of gratuity framed by the tribunal in the earlier reference postulates the continuance of the relationship of master and servant between the employer and his employees. If the servant resigns his employment service automatically comes to an end. If an employer terminates the service of his employee that again brings the continuity of service to an end. If the service of an employee is brought to an end by the operation of any law that again is another instance where the continuance is disrupted, but it is difficult to hold that merely because an employee is absent without obtaining leave that itself would bring to an end the continuity of his service. Following the said decision, the Hon'ble Supreme Court in another case *Banaras Hindu University, Varanasi and another Vs. Dr. Indra Pratap Singh*, while considering the expression "continuous service", has prescribed in Clause (a) of para 2 of Merit Promotion Scheme evolved by the University Grants

Commission, observed thus-

9. .... In case of shift from one University to another-or from one institution to the other - it can reasonably be presumed that there is bound to be some interval. The interval may be of a day, a week or a month. What is relevant is not the length of the interval or break, as it may be called, but its nature. We do not mean to say that length of such interval is totally irrelevant; what we mean, however, is that one must take into consideration the reason for which break - or the circumstances in which such break-has occurred. It was further observed that-

"In Words and Phrases (Vol. 9) the word "continuous employment" is assigned the following meaning:

It means working with reasonable regularity, and work does not cease to be "continuous" because of interruptions in occupation due to periods of temporary illness, such as are incident to people of normal health. "Continuously", as used in regulations defining total permanent disability under war risk policy, does not denote absolute continuity.

Again the word "continuous service" is given the following meaning.

Phrase "continuous service", as contained in collective bargaining agreement, had to be viewed in light of terms of agreement which provided for work schedule of eight hours per day for a five day week, Monday to Friday, inclusive and, therefore one working regular prescribed hours of labour would be rendering "continuous service" within agreement even though not working on Saturdays or Sundays or more than eight hours in any 24.

Applying well settled principle or law to the facts of the present case, it is evident that Rule 19 of the Rules would squarely be applicable to the Petitioner as he was selected by Respondent No. 3 and the Petitioner joined the services of Respondent No. 3 on being relieved from services of Respondent No. 4. The Petitioner is entitled to payment of gratuity calculated on the basis of service from 7-4-1965 till 30-6-2003 when he attained the age of superannuation. It is for the Respondent No. 3 to collect the contribution of gratuity from the Respondent No. 4, if the same is not already paid as soon as the Petitioner was selected and joined the cadre of Respondent No. 3. The Petitioner is further entitled to interest as admissible under the provisions of law.

In view of the foregoing and for the reasons mentioned hereinabove, the petition is allowed. No order as to costs.