

(2012) 01 JH CK 0121

In the Jharkhand High Court

Case No : Writ Petition (L) No. 222 of 2006

Rameshwar Prasad Srivastava

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:

Citation : (2012) 01 JH CK 0121

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Mukesh Kr. Sinha, for the Appellant; Anoop Kr. Mehta, for the Respondent

Judgement

Narendra Nath Tiwari

1. In these writ petitions, the petitioners have prayed for quashing the order passed by the Controlling Authority-cum-Assistant Labour Commissioner (Central), Dhanbad (Annexure-8) and also the order of the appellate authority (Annexure-9) under Payment of Gratuity Act, 1972 (hereinafter referred to as "the Act"). By the impugned orders, the said authorities refused to calculate the amount of gratuity, payable to the petitioners on the basis of the provisions applicable to the employees of M/s. Bharat Coking Coal Limited. (M/s. BCCL for short).

2. The petitioner no. 1-Rameshwar Prasad Srivastava has challenged the impugned orders mainly on the ground that he was appointed in CMLWO under the Central Government on 29.7.1961 and thereafter by transfer to M/s. BCCL w.e.f. 1.10.1986 from where he was retired on attaining the age of superannuation on 31.5.2003. The claim of petitioner no. 2-Ram Chandra Ojha is also similar.

3. The case of both the petitioners is that they have received the gratuity amount from CMLWO for the period they were under the service of CMLWO and they got gratuity amount from M/s. BCCL for the period after their transfer and joining M/

s. BCCL.

4. According to the petitioners, in place of bifurcated calculation, M/s. BCCL should have calculated the gratuity amount on the basis of the length of initial service in CMLWO, but in calculating the gratuity amount, the period of service rendered in CMLWO has not been taken into consideration. It has been submitted that because of the said erroneous calculation of the final amount of gratuity, the petitioners have been paid less amount. They are entitled to get the gratuity amount on the basis of the length of service from the date of initial appointment minus the amount paid by the Government of India. It has been further submitted that the petitioners' services were continuous and they were not appointed a fresh in M/s. BCCL. After their transfer to M/s. BCCL, their seniority was maintained. They also got due promotion on that basis. Therefore, the petitioners are entitled for calculation of their gratuity on the basis of the total period of service in CMLWO plus M/s. BCCL, but the concerned authorities have wrongly calculated the amount. The calculation is arbitrary and prejudicial to the petitioners.

5. Learned counsel for the petitioners submitted that in similar cases, other subsidiaries of Coal India Limited have calculated the amount of gratuity on the basis of length of service and the payment has been made at the rate of the gratuity, admissible to the employees minus the amount calculated and paid by the Central Government. The respondent-M/s. BCCL has also given the said benefit to S.C. Biswas, but they have discriminated against the petitioners and have adopted double standard.

6. The writ petitions have been contested by M/s. BCCL. They have also filed counter affidavit. It has been stated, inter alia, that the petitioners had got their gratuity for the services rendered in M/s. BCCL as per the provisions of the Act. Before transfer of their services, the petitioners were in the services of CMLWO. Their service condition was governed by the rules applicable to the employees of the Central Government. The services rendered as an employee of M/s. BCCL, has been calculated and the gratuity has been determined on that basis. M/s. BCCL calculated the amount in accordance with law and there is no arbitrariness or illegality in the impugned orders.

7. I have heard learned counsel for the parties and considered the facts and materials on record. I also perused the impugned orders. I find that admittedly the petitioners were initially employed under CMLWO. Subsequently, their services were transferred to M/s. BCCL w.e.f. 1.10.1986. However, the service condition of the petitioners was not changed. They continue to be governed according to the service condition and rules applicable to the Central Government. They had got promotion on that basis. After retirement, the amount of gratuity was calculated by Central Government for the period the petitioners rendered service in CMLWO. M/s. BCCL also calculated the amount of gratuity for the period they rendered service under M/s. BCCL and paid to them.

8. Though the petitioners have claimed that the calculation ought to have been on the basis of the initial date of appointment till the date of retirement and the amount of gratuity should have been paid on the basis of the rate admissible to the employees of M/s. BCCL minus the amount paid by the Central Government, no such legal provision/rule/circular has been produced by the petitioners in support of the said submission. The claim of the petitioners was duly considered by the Controlling Authority as well as the appellate authority under the Act. Both the authorities have held that the amount of the petitioners' gratuity was properly calculated and the amount has already been awarded and paid.

9. The orders of both the authorities are thoroughly discussed and well considered. No legal ground has been made out to interfere with the said impugned orders.

10. So far as payment of some of the employees on the basis of calculation made from the date of initial appointment under Central Government is concerned, legality or illegality of such orders is not under challenge before this Court. Those orders have been brought on record as Annexure-7 series. After going through the said orders, I find that no provision of law/rule/circular has been referred to therein on the basis of which the said benefit has been given to the respective persons. If any such order is passed by different authorities of the respondents without discussing or without referring to or relying upon any provision of law/rule/circular, the same cannot be taken as precedent and is of no help to the petitioners. The petitioners are at liberty to produce those orders before the competent authority of the respondents for consideration and taking appropriate decision. These writ petitions are, accordingly, disposed of in the said term.