

(2008) 08 JH CK 0028
In the Jharkhand High Court

Santosh Kumar Chaudhary

APPELLANT

Vs

Controlling Authority and Assistant Labour Commissioner
(Central) and Another

RESPONDENT

Date of Decision : 05-08-2008

Acts Referred:

Citation : (2008) 3 JCR 723

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—The petitioner was initially appointed on the post of Surveyor in the DVC, Bermo Mines on 20.3.1956 and was promoted to the post of Survey Officer with effect from 24.2.1975 and was retired on superannuation from service of DVC (Mines) on 28.2.1985. While the petitioner was still in service, the respondent-employer circulated a notification among his employees calling upon the employees Of the Corporation who have completed 20 years of service to exercise option in writing either to continue to subscribe to contributory provident fund or to the employees provident fund or to opt for pension-cum-gratuity scheme. Thereupon, the petitioner opted for pension-cum-gratuity scheme but the authority did not communicate about the outcome of that option though the petitioner had expressed his readiness to refund the Corporation's contribution to provident fund. Meanwhile, the petitioner retired on superannuation but was not given benefit under the aforesaid scheme, namely, pension-cum-gratuity scheme, though in similar situation one Mr. B.N. Biswas was given benefit under that scheme. Subsequently, the petitioner was given gratuity amount of Rs. 19,176/- which was far below than the amount of Rs. 44,480/- which the petitioner was entitled to get and therefore, the petitioner made a representation before the Management but no order was passed and, therefore, the petitioner filed an application under the provision of Payment of Gratuity Act before the competent authority claiming a sum of Rs. 25,204/- as

Rs. 19,176/- had already been paid whereas the petitioner was entitled to get Rs. 44,480/- and the controlling authority vide its order dated 28.3.1999 disposed of the application rejecting the application of the petitioner but held that the petitioner is entitled to get Rs. 22,126.15 and, therefore, the authority was asked to make payment of Rs. 2950.15.

2. Being aggrieved with that order the petitioner preferred an appeal before the appellate authority, vide P.G. Appeal No. 15 of 1999 which was also dismissed on 8.11.2000 with a modification whereby respondent-management was directed to make payment of interest @10% on Rs. 19,176/- for the period from 1.4.1985 to 25.4.1987 and also on Rs. 2950.15 for the period from 6.1.1998 to 24.9.1999.

3. Being aggrieved with the order of the competent authority as also the appellant authority, the petitioner has preferred this application for quashing both the orders.

4. It is pertinent to note here that in spite of notice served upon the petitioner, nobody appeared on behalf of the respondent and as such no counter affidavit has been filed.

5. Learned Counsel appearing for the petitioner submits that once the petitioner exercised his option for coming under the pension-cum-gratuity scheme, he should have given benefit under that scheme but the authority made payment of the gratuity amount under the provision of Payment of Gratuity Act, though under similar situation, one Mr. B.N. Biswas was given benefit under the pension-cum-gratuity scheme and hence, the order passed by the competent authority as well as appellate authority are quite erroneous.

6. Having heard learned Counsel appearing for the parties and on perusal of the orders passed by the competent authority as also by the appellate authority it does appear that it is the case of the petitioner that he opted for to come under the scheme of Pension-cum-Gratuity Act and claimed gratuity amount under that scheme whereas stand of employer is that the applicant was a member of CMPF Scheme and not a member of GPF/CPF scheme and as such member of CMPF scheme is entitled to gratuity as per the provision of Payment of Gratuity Act. Further stand seems to be that one is entitled to have benefit under the Payment of Gratuity Act if the wage does not exceed Rs. 1600/- and that the petitioner was entitled to gratuity as per the provision of Payment of Gratuity Act till 29.6.1980 but thereafter salary of the petitioner exceeded Rs. 1600/- and therefore, he is not entitled to have gratuity thereafter and, therefore, stand was taken that the petitioner was not entitled to the gratuity amount of the whole period and is also not entitled to have benefit to the pension-cum-gratuity scheme as he was not a member under that scheme nor he deposited the employer's contribution of CMPF to DVC whereas other person, namely, Mr. B.N. Biswas was a member of pension-cum-gratuity scheme and had deposited the employer's contribution of CMPF with the employer.

7. Taking into consideration this aspect of the matter, both the competent

authority as well as appellate authority rejected the claim of the petitioner with partial modification.

8. Having heard learned Counsel for the parties and taking into consideration the ground on which petitioner's claim was rejected, I do not find any illegality in the order. Hence, the order passed by the competent authority as well as appellate authority need no interference by this Court.

9. Accordingly, I do not find any merit in this application. Hence, it is dismissed.