
(2013) 07 JH CK 0192

In the Jharkhand High Court

Case No : WP (L) No"s. 7808 and 7865 of 2012

St. Xavier's School

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2(s), 4(2), 7

Citation : (2013) 139 FLR 53 : (2013) 3 JLJR 553

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Satish Bakshi, Tapash Kabiraj and Nipun Bakshi, for the Appellant; Bhola Nath Ojha for the State, Sumit Gadodia, Prem Pujari Roy and Anurag Kashyap, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The issue raised in the present case is whether in calculation of wages in terms of Sections 2(s) and 4(2) of the Payment of Gratuity Act, 1972, the component of grade pay should be included or not?

2. The impugned orders challenged by the writ petitioners i.e. Management of the School have held in favour of the private respondents by holding that grade pay would be included in the meaning of wages u/s 2(s) of the Act of 1972.

3. Challenge of the same by the writ petitioners primarily is based upon three grounds, inter alia:--

(i) That the grade pay is in the nature of allowance which is exempted from being included as part of the wages under the definition of wages u/s 2(s) of the Act, 1972. In support of this he relies upon a judgment rendered by learned Single Judge of the Bombay High Court in the case of Voltas Limited Vs. Chandrkant Y. Bhramhane and Others, .

(ii) It is further contended on behalf of the petitioners that grade pay has been granted basically in the nature of an incentive to encourage the teachers" to perform well. It, therefore, does not become part of the wages, which is ordinarily payable to such teachers under the school.

(iii) That the private respondents-teachers have sought to rely upon the cases of two other teachers referred to in the impugned orders as well who were erroneously granted the said payments of gratuity by including grade pay in the component of wages, though it is not legally enforceable against the school and cannot be made a basis for claiming gratuity on that account by these petitioners.

4. The private respondents had approached the controlling authority under the Payment of Gratuity Act, 1972 in Case Nos. 20/2011 and 21/2011 with a prayer to direct the school to grant legally accruable dues on account of gratuity under the provisions of the Act, 1972. The controlling officer after hearing the management passed an order in favour of the teachers dated 12th April, 2012.

5. The writ petitioners-management being aggrieved preferred an appeal under the provisions of Section 7 of the Act of 1972 being Appeal Nos. 4/2012 & 5/2012. The Appellate Authority also affirmed the original order while rejecting the writ petitioners" appeal vide order dated 28th August, 2012 and on 30th October, 2012 respectively. These two orders are under challenge in the present writ applications. The writ petitioners in the appeal also had taken similar plea that the grade pay should not include the component of wages as they do not come under the definition of wages u/s 2(s) of the Act. Therefore, the private respondents should not be entitled for inclusion of grade pay in the calculation of their gratuity amount. The Appellate Authority after considering the rival contention of the parties and definition of wages, came to a conclusion that while calculating the dearness allowance payable, the component of grade pay was included in the basic wages of the teachers and the same was also done while calculating the earned leave accruable to the private respondents-teachers. It also took into an account that two other teachers had also been granted similar benefit of gratuity by including the grade pay with the basic wages. Therefore, no justification or legal basis can be made out for differential treatment to these teachers, who are private respondents herein.

6. Learned counsel for the private respondents has sought to supplement the reasons aforesaid as recorded in the impugned orders by referring to Annexures-A, B and D which are calculation of the Earned Leave amounts paid to them as also similar benefits paid to other two teachers, namely, Pamela Alexandar and Mrs. Mukta Prasad.

7. Learned counsel for the private respondents has also drawn attention of the Court to the Office Memorandum dated 2nd September, 2008 (Annexure-C) issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Pension & Pensioners" Welfare, Government of India, whereunder the recommendation of Sixth Central Pay Commission, was to be implemented as per

the guidelines laid thereunder. As per the meaning of expression contained at Clause 4.2 i.e. emolument, it has been indicated that the basic pay in the revised pay structure means the pay drawn in the prescribed pay band plus the applicable grade pay which does not include any other type of pay like special pay etc. In such circumstances, learned counsel appearing on behalf of the private respondents-teachers have supported the impugned orders.

8. Learned counsel for the petitioners informs that the entire amount accruable as per the terms of the statutory authority, have been deposited already before the Deputy Labour Commissioner in view of proviso to Section 7(7) of the Act of 1970.

9. In the background of the aforesaid facts and the legal issues, the question for determination in the instant case as indicated in the opening paragraph is whether the component of grade pay is to be included in the wages as defined u/s 2(s) of the Act of 1972.

10. It is also not in dispute that the grade pay has been implemented pursuant to Sixth Pay Revision in the Central Government and other undertakings under the Central Government. The office memorandum contained at Annexure-C of the counter affidavit filed by the private respondents throw some light also on the meaning of expression "basic pay" which is quoted as under:--

4.2. Basic pay in the revised pay structure means the pay drawn in the prescribed pay band plus the applicable grade pay but does not include any other type of pay like special pay, etc.

11. It further appears that in calculation of the dearness allowance in respect of these petitioners as also the earned leave encashment amount, the same yardstick had been followed by including the grade pay with the basic pay of these petitioners as would appear from Annexure-B of the counter affidavit of the private respondents. Similar benefits were also granted in favour of other two teachers whose reference has also been given in the impugned orders.

12. The definition of wages under the provisions of Section 2(s) of the Act of 1972 is quoted hereunder for better appreciation:--

Section 2(s): "Wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

13. Learned counsel for the private respondents has also relied upon a decision rendered in the case of N.D.P. Namboodripad (Dead) by LRs. Vs. Union of India (UOI) and Others, , where the meaning of expression "emolument" has been explained. The opinion of the Hon'ble Supreme Court as contained in para 17 of the instant judgment explains that the word "emolument" no doubt is a wider term than basic pay. It generally refers to the salary or profits from employment

or office. However, the definition of emolument should be read contextually as per the opinion of the Hon''ble Supreme Court.

14. In this regard the learned counsel for the petitioners have relied upon a decision of Bombay High Court rendered in the case of Voltas Limited vs. C.Y. Bhamhane and Others reported in 2008-I-LLJ-416 (Bom.), where according to the petitioners a judgment rendered by Hon''ble Supreme Court has been quoted and relied upon. However, from perusal of the aforesaid judgment, it appears that the question for consideration before the learned Single Judge of Bombay High Court was whether the element of site allowances and conveyance allowance should be included in the definition of Wages u/s 2(s) of the Act of 1972.

15. The judgment of Hon''ble Supreme Court was relied upon in such context wherein it was held that the inclusion of conveyance allowance does not come within the definition of wages. Therefore, inclusion of conveyance allowance and site allowance in the component of wages u/s 2(s) was quashed.

16. In the instant case, from the facts which have been narrated hereinabove, it is obvious that the component of grade pay was included by the management of school only upon implementation of 6th Pay Revision in Central Government as also other undertaking under the Central Government. The definition of basic pay as contained in office memorandum issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Pension & Pensioners'' Welfare, Government of India, throw some light upon the meaning of basic pay which is indicated to mean the pay drawn in the prescribed pay band plus the applicable grade pay. The petitioners though made an argument that the grade pay was in the nature of an incentive but no documents have been brought on record in respect of the same neither was any material produced before the statutory authority including the appellate authority under the Act of 1972 in support of such a stand. This however appears therefore to be an afterthought unsubstantiated by any materials on record.

17. In the circumstances, the writ petitioners have themselves included the component of grade pay in the basic wages of these petitioners for the purposes of computation of dearness allowance as also earned leave accruable to the private respondents herein. The petitioners have also included the said component of grade pay into the basic wages of other two employees, who have been granted the benefit of gratuity payable under the Act.

18. In such circumstances, by relying upon the construction of expression of wages undertaken by the petitioner management himself in respect of not only these two petitioners but also other two teachers of the said school as also light thrown upon the meaning of basic pay as contained in Clause 4.2 of the Office Memorandum dated 2nd September, 2008, an inference can be drawn that the writ petitioner''s management has also understood the expression ''wages'' in the same term i.e. by including the component of grade pay with that of wages.

Therefore, the order of the Controlling Authority as well as the Appellate Authority, who have also construed expression wages u/s 2(s) of the Act of 1972 in similar manner cannot be said to suffer from any legal infirmity. In the facts and circumstances which have been discussed hereinabove and the reasons recorded, the impugned orders which take into account the component of grade pay in the wages as per Section 2(s) of the Act, 1972, cannot be said to suffer from any error of law or of fact and therefore requires no interference. The writ petitions are accordingly dismissed. Consequently, I.A. No. 4110 of 2013 in W.P. (L) No. 7808 of 2012 and I.A. No. 4108 of 2013 in W.P.(L) No. 7865 of 2012 also stand disposed of.