
(2009) 02 AHC CK 0049
In the Allahabad High Court

State of U.P. and Another

APPELLANT

Vs

Ram Chandra Ram and Another

RESPONDENT

Date of Decision : 27-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Payment of Gratuity Act, 1972 — Section 2, 4, 7

Citation : (2009) 85 AWC 1961 : (2009) 2 AWC 1961 : (2009) 121 FLR 438 :
(2009) 3 LLJ 763 : (2009) 2 UPLBEC 1745

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Sri S.S. Sharma, the learned standing counsel for, the petitioner and Sri Dhananjai Kumar Rai, the learned Counsel for the respondents.

2. The petitioner has challenged the orders dated 15.2.2005 and 27.6.2005 passed by the controlling authority under the Payment of Gratuity Act, 1972. The facts as culled out from the record is. that respondent No. 1 was appointed as a work charged employee in the petitioner's establishment on 1.9.1968 and his services was regularized w.e.f. 31.12.1993. The petitioner retired from the service on 31.8.2001 and at that time, an amount of Rs. 17,160 was paid as gratuity, taking the period of service from 31.12.1993 till the date of his retirement dated 31.8.2001. The respondent No. 1, being aggrieved by the non-inclusion of the period from 1968 to 1993, i.e., the period when he had started working as a work charged employee, filed an application, for computation of the gratuity, before the controlling authority under the Payment of Gratuity Act. The controlling authority, after considering the matter, passed an order dated 15.2.2005 holding that, the period from 1.9.1968 to 31.12.1993 was also to be included as period spent in service while computing the gratuity and, accordingly directed the petitioner to pay the balance amount of Rs. 57,412 alongwith interest @ 10% p.a. The petitioner, being aggrieved, has filed a review

application which was also rejected by an order dated 27.6.2005. The petitioner thereafter has filed the present writ petition.

3. A preliminary objection was raised that the petitioner has an alternative remedy of filing an appeal u/s 7(7) of the Act. No doubt the petitioner has a remedy of filing an appeal but considering the facts and the circumstances of the case that has been brought on record coupled with the fact that the writ petition was entertained in the year 2005, this Court is of the opinion, that it is a fit case where the Court should exercise the writ jurisdiction under Article 226 of the Constitution of India since the Court finds that the question with regard to the applicability of the Act is involved in the present writ petition and which goes to the root of the matter.

4. According to the petitioner, the respondent No. 1 is an employee of the State Government and therefore, the Payment of Gratuity Act, 1992 is not applicable and that U.P. Retirement Benefit Rules, 1961 is applicable which has been framed in exercise of the powers conferred under Article 309 of the Constitution of India.

5. According to the petitioner the respondent No. 1 is an employee of the State Government and holds a substantive post as per Regulation 368 of the Civil Service Regulations and consequently, the U.P. Retirement Benefit Rules, 1961 becomes applicable upon the respondent No. 1 and gratuity is required to be paid as per the said Rules. Section 2(e) of the Payment of Gratuity Act defines as under:

(e) "employee" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, [and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity].

6. A perusal of the aforesaid definition of the word employee clearly indicates that employee in an establishment, factory, etc. will not include a person who holds a post under a State Government and is governed by any Act or by any Rules which provides for the payment of gratuity. The amount of gratuity under the Act is determined u/s 7 and only a person who is eligible for payment of gratuity can file such an application. Section 4 of the Act contemplates that gratuity shall be payable to an employee on termination of his employment. A conjoint reading of Section 4 read with Section 7 of the said Act coupled with the definition clause of the word "employee" as defined in Section 2(e) will make it absolutely clear that a Government employee who is governed by separate Act and Rules relating to payment of gratuity is not entitled to file an application under the Payment of Gratuity Act. Consequently, the impugned order passed by the controlling authority cannot be sustained and is quashed. The writ petition is

allowed. Any amount deposited by the petitioner, before the controlling authority, is liable to be refunded to the petitioner.

7. The matter does not end here. According to the respondent, he is liable to be paid gratuity on the basis of the period of service which he had put in from 1968 till the date of his retirement in 2001. On the other hand, the petitioners have calculated the gratuity from the date when the respondent was treated as a regular employee. No reason has been given by the employers as to why the period from 1968 to 1993 has not been included under Rule 3 (8) of the U.P. Retirement Benefit Rules, 1961. Consequently, it would be open to the respondent No. 1 to move an appropriate application for payment of the remaining amount of gratuity before the employers concerned. If such an application is filed, the employers will consider his application and pass a fresh order within two months from the date of the production of a certified copy of this order. If respondent No. 1 is entitled for payment of gratuity, taking his service from 1968 onwards till his date of retirement, the arrears would be calculated and paid within two months thereafter.