

(1989) 04 PAT CK 0037
In the Patna High Court

The Management of Khas Karanpura Colliery of Central Coal Fields Ltd. APPELLANT

Vs

Regional Labour Commissioner and Others RESPONDENT

Date of Decision : 20-04-1989

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2, 7

Citation : (1989) 2 LLJ 395 : (1990) 1 PLJR 21

Hon'ble Judges : Satyeshwar Roy, J

Bench : Single Bench

Judgement

Satyeshwar Roy, J.—As common questions of facts and law are involved in these cases, they were heard together and are being disposed of by this judgment.

2. The employees-respondents were working in Khas Karanpura Colliery of Messrs. Central Coalfields Limited. After their retirement, the Company offered them gratuity. The employees and in one case the widow of the employee Sainath being not satisfied with the amount filed separate applications u/s 7 of the Payment of Gratuity Act 1972 ("the Act") before respondent No. 2. Respondent No. 2, after giving notice to the parties and after hearing them, by order as contained in Annexure-5 increased the amount of gratuity payable by the petitioner to the employees. The order as contained in Annexure-5 has been confirmed by respondent No. 1 by order as contained in Annexure-7.

3. Two points were urged by Mr. M.M. Banerjee, learned Counsel appearing on behalf of the petitioner:

(a) As the employees were drawing wages more than rupees one thousand on the date they superannuated, applications u/s 7 of the Act were not maintainable as they were not employees within the meaning of the Act;

(b) Even if they were employees within the meaning of the Act, they were entitled to claim gratuity for the period up to which they drew wages not exceeding rupees one thousand.

4. On behalf of the employees Mr. Ramautar Sharma submitted that the Act applied to them and the applications filed by them were maintainable. He urged that as the Act applied, the amount computed by respondents No. 1 and 2 as gratuity the employees-respondents were entitled to get.

5. So far point No. (a) is concerned, there is no dispute that at the time when the employees and the deceased employee Sainath retired, each of them was drawing wages more than rupees one thousand per month. It is not in dispute that at a point of time during service each of the employees was drawing salary less than rupees one thousand per month.

6. This Act came into force on 16th September 1972 and each of the employees retired thereafter. In view of the decision of the Supreme Court in the AIR 1985 1759 (SC) it must be held that as the retirement of the employees was after the coming into force of the Act and as before their retirement each of them drew wages less than rupees one thousand per month, they were employees within the meaning of Section 2(e) of the Act and they were entitled to the benefit under the Act.

7. So far point No. (b) is concerned, it appears that each of the employees was drawing salary more than rupees one thousand per month at the time of their retirement. Respondent No. 2 noticed that the petitioner did offer to pay gratuity to them. No records were produced before respondent No. 2 to show their earnings before their retirement. Respondent No. 2 computed the gratuity on the basis of the maximum amount admissible i.e. the wages at the rate of rupees one thousand per month. I may notice that in Section 2(e) originally the amount was rupees one thousand which was increased by amendment with effect from 1st July 1984 to rupees sixteen hundred which again was amended with effect from 1st October 1987 to rupees two thousand five hundred. The unamended Section 2(e) is applicable in these cases.

8. In Goodyear India Limited case (Supra) the Supreme Court observed as follows (P 26):

Gratuity will have to be paid to all those persons whose employment came to an end after the coming into force of the Act for that period during which he came within the definition of an employee within the meaning of Section 2(e) of the Payment of Gratuity Act.

9. That being the position, respondent No. 2 was required to first record a finding whether the Act applied to the employees-respondents or not. It correctly held that the Act applied. Thereafter it held that the wages of each of the employees was more than rupees one thousand on the date of their retirement. Respondent No. 2 has taken rupees one thousand as earning each month of each of the employees during the whole of their period of service.

10. It is admitted case that the employees did not draw the same benefit throughout their service. Their wages were surely not the same throughout their

service. The gratuity shall have to be computed for each year admissible keeping in view wages being drawn that year and this shall go on till each started receiving wages up to rupees one thousand. What respondent No. 2 had done was not permissible in law. Since the computation is not in accordance with law, the petitioner must succeed on this point.

11. In the result, all these applications are allowed in part, the amounts quantified for each employee in Annexures-5 and 7 are quashed and the matter is remitted to respondent No. 2 to dispose of the same by passing a fresh order after giving notice to the parties keeping in view the law noticed above. Mr. Sharma prayed that the employees should be paid interest. Since I am remitting the matter to respondent No. 2, he may make that submission before him. I have noticed that the records were not produced by the Company before respondent No. 2. If the old records of the respondents-employees are not available because they were appointed by owners of Coalmines before nationalisation, the Company shall produce records of employees similarly situated as the respondents to show the rates at which wages were drawn during the relevant years. Respondent No. 2 shall compute the benefit on the basis of the same. The petitioner shall pay the respondents-employees the amount it admits they are entitled and the respondent-employees will receive the same without prejudice to their claim.