

(2013) 02 AHC CK 0256

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 27231 of 1998

U.P. State Road Transport Corporation

APPELLANT

Vs

Additional Labour Commissioner, U.P. and Another

RESPONDENT

Date of Decision : 12-02-2013

Acts Referred:

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

Citation : (2013) 3 ADJ 695 : (2013) 3 ALJ 686 : (2013) 5 AWC 5176 : (2013) 137 FLR 226 : (2013) 2 LLJ 363 : (2013) LLR 613 : (2013) 1 UPLBEC 682

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Samir Sharma, for the Appellant; Mohd. Islam, for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—The workman, upon retirement, filed an application before the Controlling Authority under the Payment of Gratuity Act praying for calculation of the gratuity on the basis of last pay drawn by him at the time of his retirement. The employers took a stand that the last pay given to the petitioner was wrongly given to him, on account of wrong fixation of his pay-scale and, accordingly, the pay-scale of the petitioner was revised and, on that basis, the gratuity was calculated which has been duly released. The Controlling Authority, after considering the matter, held that the workman was entitled to receive the gratuity on the basis of the calculation made on the basis of last pay drawn by him, alongwith interest. The petitioner, being aggrieved, filed an appeal which was also dismissed. The petitioner, thereafter has filed the present writ petition.

2. Having heard the learned counsel for the parties, the Court finds that the order by which the pay-scale was re-calculated has not been questioned nor challenged by the workman and consequently, the said order has attained finality.

3. The law is settled, namely, that the gratuity has to be calculated on the basis of the last pay drawn by the workman. Sub Clause (2) of Section 4 of the

Payment of Gratuity Act, 1972 provides as under:

For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned: Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account: Provided further that in the case of 1[an employee who is employed in a seasonal establishment and who is not so employed throughout the year"], the employer shall pay the gratuity at the rate of seven days' wages for each season. 1[Explanation.-- In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.]

4. From a perusal of the aforesaid, the gratuity is payable to an employee on the basis of, the rate of wages last drawn by employee concerned. From the aforesaid, it is clear that the wages last drawn by the employees is the criteria for payment of gratuity but is hedged with a condition that it should be passed on the rate of wages payable to the workman. Sub-section (2) of Section 4 does not mean that gratuity has to be calculated on the wages last drawn. If last drawn wages has wrongly been computed, it does not mean that the gratuity has to be computed on the basis of last drawn wages. The gratuity has to be computed on the rate of wages that is actually payable to the workman and which is last drawn by him. In the instant case, admittedly last drawn wages paid to the workman mean was incorrect but it will not entitle the workman to be paid the gratuity on the basis of last drawn wages. Since the pay-scale was revised which has led to a decrease in the last drawn wages, the gratuity was rightly calculated on the revised last drawn wages. The revision of the pay-scale calculated by the petitioner has not been disputed by the respondent. Consequently, the order of the Controlling Authority and order of the Appellate Authority cannot be sustained and are quashed. The writ petition is allowed.