Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 22/09/2026

(1993) 02 AHC CK 0056

In the Allahabad High Court

Case No : C.M.W.P. No. 9191 of 1978

U.P. State Road Transport Corporation APPELLANT

Vs

Asst. Labour Commissioner and Others RESPONDENT

Date of Decision : 26-02-1993

Acts Referred:

Constitution of India, 1950 — Article 311
Payment of Gratuity Act, 1972 — Section 2, 4

Citation : (1994) 68 FLR 237 : (1999) 3 LLJ 386

Hon'ble Judges : V.K. Khanna, J;G.P. Mathur, J

Bench : Division Bench

Advocate : Sri Kant Sharma, for the Appellant; V.B. Khare, for the Respondent

Final Decision : Allowed

Judgement

G.P. Mathur, J.—The Controlling Authority under the Payment of Gratuity Act (hereinafter referred to as the Act) allowed the application moved by respondent No. 3 and held that he was entitled to Rs. 5,152.50 p. as gratuity and this order was affirmed in appeal by the Appellate Authority. Feeling aggrieved the U.P. State Road Transport Corporation (hereinafter referred to as the Corporation) has filed the present writ petition.

2. Muneshwar Prasad Srivastava, respondent No. 3 was initially appointed, as Assistant Mechanic, which was a non-pensionable post in the erstwhile U.P. Government Roadways on September 2, 1949. He was promoted to the non-pensionable post of mechanic on March 5, 1959 in the same department. A Notification was issued by U.P. Government on October 25, 1960 under which certain posts like Junior Foreman onwards were declared as pensionable. Respondent No. 3 was promoted as Junior Foreman on May 14, 1964. U.P. State Road Transport Corporation was created u/s 34 of Road Transport Corporation Act, 1950 on June 1, 1972 and it succeeded in toto to the assets and liabilities of the erstwhile U.P. Government Roadways by virtue of a notification issued by the Government on June 30, 1972. Subsequently all the employees of the erstwhile

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/up-state-road-transport-corporation-...

U.P. Government Roadways including respondent No. 3 were sent on deputation with the Corporation vide Notification dated June 7, 1972 and July 15, 1972. All the employees who were sent on deputation were absorbed in the Corporation on August 28, 1982. The respondent No. 3, however, retired from service on December 21, 1975 when he was working on deputation with the Corporation. He gave an application for payment of pension and gratuity to him on December 1, 1975. Provisional pension and gratuity were sanctioned by the General Manager of the Corporation vide order dated May 29, 1976. The Accountant General U.P. thereafter sanctioned pension and Rs. 1,740/- as gratuity by the Order dated October 30, 1976. The U.P. Government made Contributory Fund Rules, 1933 for those Government Servants who were holding non-pensionable posts. Subsequently a scheme known as Contributory Provident Fund, Pension and Insurance Scheme was introduced by the Government for those employees who were holding pensionable posts.

3. Respondent No. 3 moved an application on October 5, 1976 before the Controlling Authority under the Payment of Gratuity Act on the ground inter alia that he had worked for 27 years as an employee of the Corporation and had attained the age of superannuation on December 31, 1975, that he had given an application to his employer for payment of gratuity to him, but they offered to pay much less than what he was entitled u/s 4 of the Act and therefore, a direction may be issued to the employer to pay him gratuity to which he was legally entitled under the Act. The application was contested by the petitioner-Corporation on the ground inter alia that respondent No. 3 was an employee of U.P. Government Roadways which was a department of the State Government and after creation of the U.P. State Road Transport Corporation w.e.f. June 1, 1972 he continued to work on deputation with the said department; that his status was that of a Government Servant and he continued to hold lien in the State Government; that the respondent No. 3 was a civil servant and he was governed by all Rules and Regulations and Fundamental Rules, as applicable to other Government employees and that on account of his holding a post under the State Government he was not an ''employee'' and as such the provisions of the Act were not applicable to him.

4. The Controlling Authority held that respondent No. 3 was an employee of the Corporation and as the provisions of Payment of Gratuity Act were applicable to the Corporation, he was entitled to gratuity for the period October, 1949 to May 13, 1964. The Appellate Authority affirmed the findings of the Controlling Authority on the ground that respondent No. 3 did not hold a civil post under the State Government.

5. Sri S.K. Sharma, learned counsel for the Corporation has contended that Section 4 of the Act provides that gratuity shall be payable to an employee on the termination of his employment either on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease after the said employee had rendered continuous service for not less

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/up-state-road-transport-corporation-…

than five years. The word ''employee'' has been defined in Section 2(e) of the Act and prior to its amendment by Act No. 25 of 1984 it did not include any such person who held a civil post under the Central Government or a State Government. It is further contended that respondent No. 3 was appointed in the erstwhile U.P. Government Roadways and even after the creation of the U.P.S.R.T.C. on June 1, 1972 and his going on deputation to the said Corporation on July 15, 1972, his status did not change and he continued to be an employee of U.P. Government when he retired from service on December 31, 1975 and therefore, being holder of a civil post under the State Government, he was not covered by the provisions of Payment of Gratuity Act. Learned counsel for contesting respondent has on the other hand contended that after all the employees of the U.P. Government Roadways were sent on deputation to the; Corporation on July 15, 1972, they became employees of the Corporation and as such they ceased to hold a post under the State Government and therefore, the provisions of the Act were fully applicable and the orders passed by the Controlling Authority as well as Appellate Authority are perfectly correct.

6. The main question to be considered is as to what was the status of the employees of the erstwhile U.P. Government Roadways who went on deputation to the Corporation on July 15, 1972 and prior to their absorption in the Corporation on August 28, 1982. Since respondent No. 3 retired on December 31, 1975 we do not have to take into consideration the result of final absorption of the employees in the Corporation. It is not necessary to consider the effect of the provisions of the Road Transport Corporation Act, the creation of the Corporation and also the various Notifications issued by the State Government in this regard in detail as the same question has engaged the attention of this Court earlier. A Division Bench in Jagdish Prasad Gupta and Others Vs. State of U.P. and Others, , speaking through Hon''ble K.N. SINGH, J. (as His Lordship then was) held as follows at page 87 :

"The question whether the jural relationship of master and servant existed between the petitioner and the Corporation is to be examined in the light of the Government orders and notifications issued in the matter. As already discussed, the petitioners were initially employed by the erstwhile U.P. Government Roadways and they enjoyed the status of Government Servants. On the establishment of the Corporation, the petitioners'' services were placed on deputation and they continued to be regulated by the terms and conditions as laid down in Fundamental Rules 110 to 113 itself. Since the Corporation did not absorb them they continued to be Government Servants."

The same question was again considered by another Division Bench at Lucknow in A.K. Srivastava v. State of U.P. 1980 II LLJ 114 wherein it was held as follows at pages 94-95 :

" A perusal of these rules makes it clear that even if an employee of the State Government is remunerated from some local fund or from the funds of a body incorporated or not which is wholly or substantially owned or controlled by the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/up-state-road-transport-corporation-…

Government he will not cease to be a Government Servant unless provided otherwise. Fundamental Rule 110 makes it clear that the Government Servant will continue to be on deputation so long his lien does not come to an end or deputation ceases and he will become employee of the employer to whom his services have been transferred only after his lien or deputation comes to an end . ..."

"The Government service is a matter of status and not of contract and merely because services of an employee are transferred, it does not mean that a contract has come into existence with the employer to whom services have been transferred or with whom he has been sent on deputation. Merely because the Corporation exercises the power of control over the petitioner and pays him salary, it could not be taken to mean that the contract has come into existence between the petitioner and the Corporation and he ceased to be Government servant and became employee of the Corporation."

A Full Bench in U.P.S.R.T.C. v. State of U.P. 1981 AWC 481 has held that the provisions of Article 311 of the Constitution would apply to an erstwhile employee of the U.P. Government Roadways who is sent on deputation to the Corporation and who has not ceased to be a Government Servant. The view taken by the Full Bench affirms the view expressed by the above mentioned two Division Benches in the case of Jagdish Prasad Gupta v. A.K. Srivastava (supra). In view of the above mentioned pronouncements of this Court it is obvious that an employee of U.P. Government Roadways even after he went on deputation to the Corporation and prior to his final absorption on August 28, 1982, continued to be a Government Servant and did not become an employee of the Corporation.

7. A person holds a civil post under the State provided (i) his duties fall under any sphere of activities connected with the State, (ii) the post which he holds is created by the State Government and could be abolished by it (iii) the conditions of service of that person are regulated and controlled by the State and (iv) he is paid a monthly salary out of State fund. There cannot be any dispute that prior to creation of the Corporation and his going on deputation thereon on July 15, 1972, respondent No. 3 was holding a civil post under the State Government as all the conditions enumerated above were fully satisfied. Thus, it is clear that respondent No. 3 was holding a civil post under the State Government at the time when he retired from service on December 31, 1975. Since he was holding a civil post under the State Government, he was not an "employee" as defined in Section 2(e) of the Act and consequently the provisions of Section 4 of the Act did not apply to him and he was not entitled to any gratuity.

8. The Controlling Authority has repelled the contention of the petitioner on the ground that in case respondent No. 3 was a Government Servant on deputation then the Corporation should have reverted him to his parent department prior to his retirement. The Authority has further held that the services of the respondent No. 3 were terminated by the Corporation as he retired from Regional Workshop at Gorakhpur and not from the Transport Department of the State Government.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/up-state-road-transport-corporation-…

In our opinion the reasons given by the Authority for holding him an employee of the Corporation are wholly untenable. The services of the respondent No. 3 were not terminated. He attained the age of superannuation on December 31, 1975. When a person retires from service, his services are in fact not terminated. It is an event which takes place automatically when a person attains a particular age under the relevant service rule or Standing Orders applicable to him. An order passed by a higher authority informing an employee or servant that he would retire on a particular day is merely in the nature of a communication of the happening of the events. Therefore the mere fact that the respondent No. 3 continued to work with the Corporation till the end and he was informed about his superannuation by the Corporation is wholly irrelevant. Similarly the reason given by the appellate authority that he was not paid pension and gratuity for the entire period of service rendered by him but only from 1964 when he was promoted to the post of Junior Foreman is also not relevant. The fact as to whether pension was paid to him or not has no bearing on the question as to whether he was an "employee" "as defined in Section 2(e) of the Act". When he was holding a non-pensionable post, he was governed by a Contributory Provident Fund Rule for Government Servants in which an equal amount of contribution towards Provident Fund was made by the Government. The contribution made by the Government amounted to an equal if not better compensation for the gratuity which could be claimed by such a Government Servant.

9. In view of the discussion made above, we are of the opinion that Respondent No. 3 was not entitled to any gratuity under the Payment of Gratuity Act as he was not covered by the provisions of the aforesaid Act.

10. The writ petition is accordingly allowed and the order dated May 28, 1977 of the Controlling Authority (Annexure 9) and the Order dated August 3, 1978 of the Appellate Authority (Annexure 10) are quashed. There will be no order as to costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/up-state-road-transport-corporation-…