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NETRAM SAHU

v.

STATE OF CHHATTISGARH & ANR.

(Civil Appeal No. 1254 of 2018)

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MARCH 23, 2018

[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

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Payment of Gratuity Act, 1972 – s.2(e) r/w s.2A – Qualified service – Appellant rendered 22 years as daily wager and 3 years as regular work charge employee i.e. he was regularised 3 years prior to his retirement – Whether appellant can be said to have rendered qualified service i.e. continuous service as specified in s.2(e) r/w s.2A so as to make him eligible to claim gratuity as provided under the Act from the State – Held: Appellant actually rendered total service for a period of 25 years and the State actually regularized his services – Having regularized the services, the appellant became entitled to claim its benefit for counting the period of 22 years regardless of the post and the capacity on which he worked for 22 years – Once the State regularized the services of the appellant while he was in State services, the appellant became entitled to count his total period of service for claiming the gratuity amount subject to his proving continuous service of 5 years as specified under s.2A of the Act which, in this case, the appellant has duly proved – The statute being a welfare legislation meant for the benefit of the employees, who serve their employer for a long time, it is the duty of the State to voluntarily pay the gratuity amount to the appellant rather than to force the employee to approach the Court to get his genuine claim.

Allowing the appeal, the Court

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HELD: In the circumstances appearing in the case, it would be the travesty of justice, if the appellant is denied his legitimate claim of gratuity despite rendering “continuous service” for a period of 25 years which even, according to the State, were regularized. The question as to from which date such services were regularized was of no significance for calculating the total length of service for claiming gratuity amount once the services

were regularized by the State. It was indeed the State who took 22 years to regularize the service of the appellant and went on taking work from the appellant on payment of a meager salary of Rs.2776/- per month for 22 long years uninterruptedly and only in the last three years, the State started paying a salary of Rs.11,107/- per month to the appellant. Having regularized the services of the appellant, the State had no justifiable reason to deny the benefit of gratuity to the appellant which was his statutory right under the Act. It being a welfare legislation meant for the benefit of the employees, who serve their employer for a long time, it is the duty of the State to voluntarily pay the gratuity amount to the appellant rather than to force the employee to approach the Court to get his genuine claim. It is really unfortunate that the genuine claim of the appellant was being denied by the State at every stage of the proceedings up to this Court and dragged him in fruitless litigation for all these years. [Paras 17, 18, 19] [687-A-E]

Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors, (2006) 4 SCC 1 : [2006] 3 SCR 953 – held inapplicable.

Firm Kaluram Sitaram v. The Dominion of India AIR 1954 Bombay 50 – approved.

Case Law Reference

[2006] 3 SCR 953 held inapplicable Para 15

AIR 1954 Bombay 50 approved Para 18

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1254 of 2018.

From the Judgment and Order dated 01.08.2014 of the High Court of Chhatisgarh at Bilaspur in WA No. 240 of 2014.

Kiran Kumar Jaipurkar, Anshuman Shrivastava, Advs. for the Appellant.

Aniruddha P. Mayee, A. Selvin Raja, Avnish M. Oza, Advs. for the Respondents.

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A The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. This appeal is directed against the final judgment and order dated 01.08.2014 passed by the High Court of Chhattisgarh at Bilaspur in Writ Appeal No.240 of 2014 whereby the Division Bench of the High Court dismissed the appeal filed by the appellant herein and affirmed the judgment and order dated 16.12.2013 passed by the Single Judge of the High Court in Writ Petition(L) No.178 of 2013 by which the Single Judge allowed the petition preferred by the respondents herein and set aside the orders of the Controlling Authority and Appellate Authority by which the claim of the appellant herein of gratuity for the period from 01.04.1986 to 23.05.2008 was allowed.

2. Few relevant facts need mention to appreciate the short controversy involved in the appeal.

D 3. The appellant was appointed as daily wager on 01.04.1986 by the Water Resources Department of the State of Chhattisgarh and was attached to the office of SDO (E/M) Light Machinery Tubewell & Gage Sub-Division Sakri, P.S. Charkarbhata, District Bastar (CG). Subsequently, the services of the appellant were regularized on work charge establishment to the post of Pump Operator by order dated 06.05.2008. After attaining the age of superannuation, the appellant retired on 30.07.2011.

F 4. The appellant was, however, not paid the gratuity amount by the State which, according to him, was payable to him after his retirement. Therefore, the appellant filed an application before the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as “the Act”) and prayed for payment of gratuity amount to him in accordance with the provisions of the Act.

G 5. By order dated 27.03.2012, the Controlling Authority allowed the application and held that the appellant is entitled to claim gratuity amount from the State for the services rendered by him. It was further held that the appellant has in all rendered 25 years and 3 months of service (22 years and 1 month as daily wager and 3 years and 2 months as regular work charge employee) and hence rendered the required years of qualified service as per the requirements of the Act.

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6. The State felt aggrieved and filed appeal before the specified Appellate Authority under the Act. By order dated 30.01.2013, the Appellate Court dismissed the appeal filed by the State and affirmed the order of the Controlling Authority. A

7. The State pursued the matter and filed Writ Petition No.178/2013 against the order passed by the Appellate Authority in the High Court of Chhattisgarh at Bilaspur. The Single Judge of the High Court, by order dated 16.12.2013 allowed the writ petition and set aside the orders of the Controlling Authority and the Appellate Authority. B

8. The appellant herein (employee) felt aggrieved by the order of the Single Judge and filed writ appeal before the Division Bench. By impugned judgment, the Division Bench dismissed the appellant's appeal and upheld the order passed by the Single Judge, which has given rise to filing of the appeal by way of special leave by the employee concerned in this Court. C

9. The short question, which arises for consideration in this appeal, is whether the High Court (Single Judge/Division Bench) was justified in holding that the appellant (employee) was not entitled to claim gratuity from the State (respondent herein) for the services rendered by him or in other words, the question arises for consideration is whether the appellant can be held to have rendered qualified service, i.e., continuous service as specified in Section 2(e) read with Section 2A of the Act so as to make him eligible to claim gratuity, as provided under the Act, from the State. D
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10. Heard Mr. Kiran Kumar Jaipurkar, learned counsel for the appellant and Mr. Aniruddha P. Mayee, learned counsel for the respondents. F

11. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside the orders of the High Court (Single Judge and Division Bench) restore the orders of the Controlling Authority and Appellate Authority. G

12. It is not in dispute that the appellant has actually rendered the total service for a period of 25 years 3 months, i.e., from 01.04.1986 to 30.07.2011 to the State. It is also not in dispute that the appellant's services were regularized by the State by order dated 06.05.2008, i.e., much H

A prior to the appellant attained the age of superannuation. It is also not in dispute that the appellant's 25 years and 3 months period of service satisfied the rigor of the expression "continuous service" as defined under Section 2-A of the Act.

B 13. The submission of the learned counsel for the respondent-State was that the appellant could not be held eligible to claim the gratuity amount because out of the total period of 25 years of his service, he worked 22 years as daily wager and only 3 years as regular employee. It is for this reason, the learned counsel urged that the appellant could not be said to have worked continuously for a period of 5 years as provided under the Act so as to make him eligible to claim gratuity.

C 14. We do not agree with this submission of learned counsel for the respondent-State for more than one reason. First, the appellant has actually rendered the service for a period of 25 years; Second, the State actually regularized his services by passing the order dated 06.05.2008; D Third, having regularized the services, the appellant became entitled to claim its benefit for counting the period of 22 years regardless of the post and the capacity on which he worked for 22 years; Fourth, no provision under the Act was brought to our notice which disentitled the appellant from claiming the gratuity and nor any provision was brought to our notice which prohibits the appellant from taking benefit of his long and continuous period of 22 years of service, which he rendered prior to E his regularization for calculating his continuous service of five years.

F 15. In our considered opinion, the High Court committed an error in placing reliance on the decision of this Court in **Secretary, State of Karnataka & Ors. vs. Umadevi(3) & Ors.**, (2006) 4 SCC 1 to deny the relief of grant of gratuity to the appellant. In the case at hand, the High Court should have seen that the services of the appellant was actually regularized by the State and, therefore, the law laid down in **Umadevi(supra)** could not be relied on. Indeed, even the decision of **Umadevi (supra)** makes a distinction in cases and where the services stand regularized, the ratio of **Umadevi** to deny the relief would not G apply.

H 16. In our considered opinion, once the State regularized the services of the appellant while he was in State services, the appellant became entitled to count his total period of service for claiming the gratuity amount subject to his proving continuous service of 5 years as specified under Section 2A of the Act which, in this case, the appellant has duly proved.

17. In the circumstances appearing in the case, it would be the travesty of justice, if the appellant is denied his legitimate claim of gratuity despite rendering “continuous service” for a period of 25 years which even, according to the State, were regularized. The question as to from which date such services were regularized was of no significance for calculating the total length of service for claiming gratuity amount once the services were regularized by the State.

18. It was indeed the State who took 22 years to regularize the service of the appellant and went on taking work from the appellant on payment of a meager salary of Rs.2776/- per month for 22 long years uninterruptedly and only in the last three years, the State started paying a salary of Rs.11,107/- per month to the appellant. Having regularized the services of the appellant, the State had no justifiable reason to deny the benefit of gratuity to the appellant which was his statutory right under the Act. It being a welfare legislation meant for the benefit of the employees, who serve their employer for a long time, it is the duty of the State to voluntarily pay the gratuity amount to the appellant rather than to force the employee to approach the Court to get his genuine claim.

19. In view of the foregoing discussion, we cannot agree with the reasoning and the conclusion arrived at by the High Court which is legally unsustainable. It is really unfortunate that the genuine claim of the appellant was being denied by the State at every stage of the proceedings up to this Court and dragged him in fruitless litigation for all these years.

20. Indeed, this reminds us of the apt observations made by the Chief Justice M.C. Chagla (as he then was) in the case of **Firm Kaluram Sitaram vs. The Dominion of India** (AIR 1954 Bombay 50). The learned Chief Justice in his distinctive style of writing while deciding the case between an individual citizen and the State made the following pertinent observations:

“Now, we have often had occasion to say that when the State deals with a citizen it should not ordinarily reply on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent Judges, as an honest person.”

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A 21. These observations apply in full force against the State in this case because just case of the appellant was being opposed by the State on technical grounds. As a consequence, the appeal succeeds and is allowed. Impugned judgment/order passed by the High Court (Single Judge and Division Bench) are set aside and the orders of the Controlling Authority and Appellate Authority are restored with cost of Rs.25,000/- payable by the State to the appellant. Cost to be paid by the State along with the payment of gratuity amount.

B 22. The respondent-State is directed to release/pay the gratuity amount as determined by the Controlling Authority within three months to the appellant.

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Devika Gujral

Appeal allowed.