

DEPUTY LABOUR COMMISSIONER AND APPELLATE AUTHORITY,
REGION-2, BENGALURU.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 13TH APRIL 2022, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The above petitions are filed seeking quashing of the orders of the Controlling Authority/Appellate Authority under the Payment of Gratuity Act, 1972 ('the Act' for short) awarding gratuity amount claimed by respondent No.1 with interest at 10% per annum.

The particulars of the impugned orders are as follows:

Sl. No.	Writ petition	Date of order		Amount awarded
		Controlling Authority	Appellate Authority	
1	46017/2017	16.12.2014	06.01.2016	85,758/-
2	46019/2017	15.12.2014	06.01.2016	84,116/-
3	46105/2017	15.12.2014	-	1,24,615/-
4	46106/2017	15.12.2014	-	1,59,547/-
5	46107/2017	17.12.2014	-	1,81,220/-
6	46108/2017	16.12.2014	06.01.2016	47,114/-

2. The petitioners are the Government bodies being part of the Department of Panchayat Raj. Respondent No.1 in the above cases were initially employed as daily wage workers. The Government by its order regularized the services of respondent No.1 with certain cut off dates.

Respondent No.1 retired from the services on receiving their pension amounts and gratuity.

3. After such retirement, they submitted the applications before the Controlling Authority claiming that they were entitled to gratuity from the date of their induction as daily wage workers. The particulars of date of appointment as daily wage workers, date of their regularization, date of retirement, date of applications and the amount received by respondent No.1 are set out in the table below.

Sl No.	R1 in Writ petition	Date of appointment as daily wage worker as claimed by R1	Date of regularization of service	Date of retirement	Date of application filed by R1	Amount in Rs. received by R1
1	46017/2017	10.03.1976	01.01.1990	31.10.2007	17.12.2013	58,500/-
2	46019/2017	1974	01.01.1990	31.08.2007	03.12.2013	56,875/-
3	46105/2017	03.03.1979	01.01.1990	30.06.2012	02.12.2013	1,80,000/-
4	46106/2017	10.02.1975	01.01.1990	30.06.2011	17.12.2013	80,088/-
5	46107/2017	01.02.1976	01.01.1990	30.06.2013	08.05.2014	1,92,700/-
6	46108/2017	03.08.1979	01.01.1990	30.06.2004	03.12.2013	23,963/-

4. The petitioners opposed the applications of respondent No.1 on the ground that they were Government employees and not employees under Section 2(e) of the Act, therefore the Controlling Authority has no jurisdiction to entertain such claims. In some of the cases, the petitioners

preferred the appeals before the Appellate Authority. They also came to be dismissed. Hence the above petitions.

5. The main ground of challenge is that respondent No.1 were not the employees within the meaning of Section 2(e) of the Act, therefore the petitions were not maintainable. It is contended that the impugned orders are without jurisdiction and liable to be quashed.

6. The petitions are opposed on two grounds. One is that against the orders of the Controlling Authority, statutory appeal as provided under Section 7 of the Act lies. Therefore the petitions are not maintainable. Second contention is that respondent No.1 were employees within the meaning of Section 2(e) of the Act for the period commencing from their induction as daily wage workers till their regularization. Therefore the said period should have been taken into consideration as the qualifying period of service for the purpose of computing gratuity.

7. The petitioners admit that respondent No.1 were the employees. The petitioners' witness in his cross-examination admitted that respondent No.1 joined the

services of the petitioners as daily wage workers on the dates mentioned in the table above and they worked as such since their regularization on the dates mentioned against their names in the table.

8. The only contention of the petitioners is that Section 2(e) of the Act excludes the Government employees, therefore respondent No.1 could not have invoked Section 7 of the Act. Similarly, the other contention is that since respondent No.1 were not covered under the Act, respondent Nos.2 and 3 had no jurisdiction to entertain the applications of respondent No.1 for payment of gratuity.

9. Section 2(e) of the Act reads as follows:

"2(e) "employee" means any person (other than an apprentice) **who is employed for wages**, whether the terms of such employment are expressed or implied, in any kind of work, manual or otherwise, in or in connection with the work of the factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, **but does not include any such person who holds a post under the Central Government or State Government** and is **governed by any other Act or by any rules providing for payment of gratuity."**

10. Of-course on their regularization, respondent No.1 were governed by the Karnataka Civil Services Rules (KCSR) and they have received pension and gratuity on their retirement. However, admittedly the petitioners paid gratuity only covering the period from the date of their regularization till their retirement on attaining superannuation. While so paying gratuity, the petitioners did not take into consideration the services rendered by respondent No.1 from the date of their appointment as daily wage workers till the date of their regularization. During that period, respondent No.1 were not governed by the KCSR or for any other rules for payment of gratuity.

11. Reading of the judgment in ***Sr.Superintendent of Post Offices v. Gursewak Singh***¹ relied on by learned Counsel for the petitioners shows that the said case involved the services of Gramin Dak Sewak engaged as Extra Departmental Agents. They were governed by Gramin Dak Sewak (Conduct & Engagement) Rules, 2011. More so that was not the case of regularization. Under the circumstances,

¹ AIR 2019 SC 1493

the Hon'ble Supreme Court held that Dak Sewak were not employees within the definition of Section 2(e) of the Act.

12. In ***Municipal Corporation of Delhi v. Dharam Prakash Sharma***² relied on by learned Counsel for the petitioners themselves, the Hon'ble Supreme Court held that mere fact that the gratuity is provided for under the Pension Rules will not disentitle the employees to get the payment of gratuity under Payment of Gratuity Act. Therefore the aforesaid two judgments in no way advance the case of the petitioners.

13. In ***Municipal Corpn. Of Delhi v. Dharam Prakash Sharma***³, the Hon'ble Supreme Court held that notwithstanding separate pension rules, MCD employees were entitled to the benefits under the provisions of 1972 Act in view of overriding effect of the Act as per Section 14 of the said Act.

14. The Hon'ble Supreme Court in para 16 of the latest judgment in ***Netram Sahu v. State of Chhattisgarh***⁴ which was a similar case involving the regularized daily wage workers as Government servants held as follows:

² AIR 1999 SC 293

³ (1998) 7 SCC 221

⁴ (2018) 5 SCC 430

“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 2-A of the Act which, in this case, the appellant has duly proved.”

(Emphasis supplied)

15. In para 18 of the said judgment, the Hon'ble Supreme Court further held that on regularization of services of daily wage worker, the State has no justifiable reasons to deny the benefit of gratuity to him and that was his statutory right under the Act. It was further held that Act being 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.

16. The Hon'ble Supreme Court in the judgment in ***Nagar Nigam, Kanpur v. Mujib Ullah Khan***⁵ which was rendered subsequent to ***Gursewak Singh's*** case referred to *supra* held that the employees of Nagar Nigam Kanpur were

⁵ (2019) 6 SCC 103

entitled to gratuity despite CCS (Pension) Rules provided for them for payment of pension and gratuity in view of the fact that the Central Government by notification dated 08.01.1982 specified that the local bodies where ten or more persons are employed, the Act shall apply. It was further held that in view of overriding effect of Section 14 of the Act and that payment of gratuity is in the interest of employees, the gratuity would be payable to the employees.

17. Further the two Division Benches of this Court in case of **the Assistant Executive Engineer, Public Works Department v. Sri Putta and others**⁶ and **Smt.Mahadevamma v. Assistant Executive Engineer & ors.**⁷ held that regularized employees of the departments of PWD and irrigation of the State Government are entitled to the benefit of gratuity under the Act.

18. In para 11 of the judgment in **Smt.Mahadevamma's** case referred to *supra* this Court following the judgment in **Netram Sahu's** case referring to Section 248-A of the KCSR held as follows:

⁶ WA No.2761/2000 DD 06.12.2000

⁷ WA No.100/2013 DD 04.03.2021

"11. It is pertinent to note that the interpretation put forth by the learned Single Judge that in view of Rule 248A of the Rules, **the provisions of the Act would not apply cannot be sustained** as the Supreme Court in Municipal Corporation Delhi *supra* has held that payment of Gratuity Act being a special provision for payment of gratuity, unless there is any provision therein which **excludes its applicability to an employee** who is otherwise governed by provision of Pension Rules, it is not possible to hold that an employee is not entitled to gratuity under Payment of Gratuity Act, 1972. In view of aforesaid enunciation of law by Hon'ble Supreme Court in *Netram Sahu supra*, the order passed by the learned Single Judge cannot be sustained in the eye of law as the aforesaid decision binds this Court."

(Emphasis supplied)

19. In the light of the aforesaid judgments of the Hon'ble Supreme Court in **Netram Sahu's** case referred to *supra* and the judgments of the Division Bench of this Court referred to *supra*, there is no merit in the contention that on their regularization into service, respondent No.1 loose benefit of the Act. The Controlling Authority considering the admissions of the petitioners' witness regarding date of employment of respondent No.1 as daily wage workers, their regularization and non payment of gratuity for the period they

worked as daily wage workers and also referring to the judgments of this Court, rightly rejected the contention of the petitioners and passed the impugned orders.

20. In some of the cases, the petitioners did not even file appeal before the Appellate Authority on the ground that the Act is not applicable, therefore the order of the Controlling Authority was without jurisdiction. In view of the discussions made above, there is no merit in that contention. Having regard to that, this Court does not find it necessary to refer to the judgments relied on by learned Counsel for the petitioners in that regard.

21. The only relief the petitioners are entitled at the most is about the date from which the interest is payable. The table of the dates of events show that some amongst respondent No.1 filed applications before the Controlling Authority after lapse of 10 years, 6 years and 2 years etc. Probably they filed such applications after learning about grant of gratuity in other cases by this Court. The petitioners also being Government bodies and dealing with tax payers money, this Court finds it just and proper to modify the order

only with regard to the date from which the petitioners are liable to pay the interest.

22. Therefore the petitions are partly allowed. The impugned orders regarding payment of gratuity are confirmed. The petitioners are jointly and severally liable to pay the gratuity amount to respondent No.1 with interest thereon at 10% per annum from the date of the applications till the date of deposit.

If the amount is not deposited already, the petitioners shall deposit the same before the Controlling Authority within 30 days from the date of this order

The amount deposited, if any, shall be released to respondent No.1/legal representatives of respondent No.1 if not already released to them.

**Sd/-
JUDGE**

KSR