

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 16615 of 2023

**Food Corporation of India
Versus
Union of India & Ors.**

For the petitioner : Mr. Kamal Kumar Chattopadhyay
For the Union of India : Mr. Atarup Banerjee
Mr. Praloy Bhattacharya
Mr. Rajdeep Pramanick
Heard on : 09th October 2023.
Judgment on : **09th October, 2023.**

Raja Basu Chowdhury, J:

1. Affidavit of service filed in Court today is retained with the record.
2. The present writ petition has been filed, *inter alia*, challenging the orders dated 19th March, 2020 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the "said Act") and the order dated 28th February, 2023, passed by the Appellate Authority under the said Act.
3. It is the petitioner's case that around 49 workmen were engaged by a rice mill set up by the Durgapur Food Corporation District run under the name and style of Modern Rice Mill. The engagements of the workmen were through contractors. Consequent upon the closure of the said mill in the year 1990/1991 since, there was no requirement

for engagement of the contractors, the aforesaid workmen were engaged by the petitioner on need basis and on daily rated, no work no pay system.

4. Since, the workmen demanded absorption, they had approached the Ministry of Labour, Government of India, whereupon an industrial dispute between the workmen and the petitioner, regarding regularisation of service of the workmen was referred by the Ministry of Labour, Government of India, in exercise of powers conferred on them by clause (d) of sub-section (1) of Section 10 and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the "said Act") to the Central Government Industrial Tribunal, Asansol, for adjudication by framing the following issues:

SCHEDULE

"Whether the demand of Durgapur Casual Workers Union for absorption of 49 casual workmen as per list enclosed by the management of FCI, Durgapur is justified? If not, what relief they are entitled to?"

5. On contest, by an award dated 9th June, 1999, the said reference was answered in the following terms: -

"The demand of Durgapur Casual Workers' Union for absorption of 49 casual workmen (as per list) by the management of F.C.I. Durgapur is justified. The concerned casual workmen be absorbed by the management within three months from the date of enforceability of this Award".

6. Although, a challenge to the Award was made by the petitioner, the challenge was ultimately set at rest by a judgment and order dated 9th December, 2014 in Civil Appeal No. 10856 of 2014, delivered by the

Hon'ble Supreme Court, thereby, directing implementation of the award from its due date, as ordered by the Tribunal.

7. Pursuant to the aforesaid, by an office order dated 15th July, 2015, the petitioner offered to notionally fix the pay of the aforesaid 49 workmen, which included the respondent no.4, with a rider that the monetary benefit shall be made available to the aforesaid workmen from the date of joining the post.
8. The respondent no.4, having since, accepted the offer and having discharged his duties in terms of the aforesaid office order, had subsequently superannuated from service on 30th June, 2017, whereupon he had applied for payment of gratuity.
9. Since, the claim for gratuity was refused, the respondent no.4 had applied before the Controlling Authority for determination of gratuity payable to him by filing an application in Form 'N'.
10. The said application was disposed of by the Controlling Authority by an order dated 19th March, 2020, *inter alia*, observing that since, there had been no break in service of the respondent no.4 and the said respondent having duly worked with the petitioner for 11 years 6 months and 22 days, from 9th June, 1999 to 30th December, 2010, the respondent no.4 was entitled to payment of gratuity. The Controlling Authority after determining the gratuity payable to the respondent no.4, by issuing notice in Form 'R' had directed disbursement of gratuity in favor of the respondent no.4.
11. Challenging the said determination, an appeal was filed by the petitioner before the Appellate Authority under the said Act, *inter alia*, on the ground that gratuity is payable only to the permanent employees of the petitioner. The Appellate Authority, on contest, by an order dated

28th February, 2023 was, pleased to dismiss the said appeal having not found any ground to interfere.

12. Being aggrieved, the present writ petition has been filed.
13. Mr. Chattopadhyay, learned advocate representing the petitioner, by placing reliance on a judgment delivered by the Hon'ble Supreme Court on 11th May, 2016 passed in connection with IA No. 1 & 2 of 2016 submits that the Hon'ble Supreme Court by taking note of the direction issued by the petitioner, had confined payment of back wages to the aforesaid workmen for the period from 1st June, 2009 to 31st December, 2010. The Hon'ble Supreme Court did not grant back wages for any other period.
14. Having regard to the aforesaid, since, the absorption of the respondent no.4 was in terms of office order dated 15th July, 2015, which categorically provided that payment of monetary benefit would be from the date of joining the post and the appointment would be notionally effective from 9th June, 1999, the respondent no.4 having acted in terms of the said notice, is not entitled to payment of gratuity, apart from the period for which he had actually worked after absorption.
15. It is still further submitted that the respondent no.4 having joined the post on 17th May, 2016 and having been superannuated from service on 30th June, 2017, under no stretch of imagination can be entitled to payment of gratuity since, the respondent no.4 did not put in continuous service for a period of 5 years.
16. He, however, submits that in identical facts this Court had been pleased to decide a similar question in WPA No. 16617 of 2023, by its judgment and order dated 12th September 2023.

17. Mr. Banerjee, learned advocate enters appearance on behalf of Union of India submits that the aforesaid issue has already been decided by this Court in an earlier writ petition being WPA 16617 of 2023. Having regard to the same, it is submitted that there is no irregularity either on the part of the Controlling Authority or by the Appellate Authority in passing the aforesaid orders and as such, no interference is called for by this Court.

18. Heard, Mr. Chattopadhyay and Mr. Banerjee, learned advocates appearing for the petitioner and the Union of India respectively and considered the materials on record.

19. I find that this Court in WPA 16617 of 2023 by its judgment dated 12th September, 2023 has been, *inter alia*, pleased to observe as follows:

“Although, Mr. Chattopadhyay, learned advocate representing the petitioner, contends that that the respondent no.4 is not entitled to payment of gratuity inasmuch as, he had joined the post on 17th May, 2016 and was superannuated on 30th June, 2017, thus, having not rendered continuous service for a period of 5 years, he is not entitled to gratuity, I am afraid and am unable to accept such contention. Having regard to the direction issued by the Hon’ble Supreme Court on 9th December, 2014, the letter dated 15th July, 2015 provided notional absorption with effect from 9th June, 1999, without any break in service. The letter dated 15th July 2015, thus, did not disentitle the respondent no. 4 to be entitled to payment of gratuity. Insofar as the direction issued by the Hon’ble Supreme Court for payment of back wages is concerned for the period from 1st June, 2009 to 31st December, 2010, I am of the view that the same does not interfere with the petitioner’s substantive right to be entitled to the payment of gratuity. The aforesaid order

cannot be read in isolation to deny the statutory benefit in the form of payment of gratuity. Taking into consideration the definition of continuous service as provided in Section 2A of said Act, I am of the view that gratuity could not have been denied to the respondent no.4, inter alia, by contending that he had joined the service only on 17th May, 2016. Admittedly, it is not the case of the petitioner that there had been break in service of the respondent no.4, in terms of the office order which seeks to implement the award of the Tribunal dated 9th June, 1999. The Hon'ble Supreme Court by its judgment and order dated 9th December, 2014, had directed implementation of the award from the due date as directed by the learned Tribunal. The offer letter dated 15th July, 2015 does not also interfere with the past service of the respondent no.4. The petitioner, thus, cannot be permitted to contend that since, the respondent no.4 had been absorbed sometime in the year 2016, he was not in continuous service for a period of 5 years, as he had been superannuated on 30th June, 2017.

I find that the Controlling Authority by its order dated 19th March, 2020, has categorically returned the finding that the respondent no.4 had continuously worked with the employer for a period of 11 years, 6 months and 22 days from 9th June, 1999 to 30th December, 2010. The aforesaid finding in the light of the deliberations made hereinabove cannot be said to be perverse.”

20. Having regard to the aforesaid and taking into consideration the finding returned by the Controlling Authority, by its order dated 19th March 2020 that the respondent no. 4 had continuously worked with the employer for 11 years 6 months and 22 days from 9th June 1999 to 30th December 2010, I am of the view that the said finding cannot be said to be perverse.

21. I am also of the view that the objection put forward by the petitioner cannot be sustained and orders passed both by the Controlling Authority and the Appellate Authority do not call for interference. The petitioner has also not been able to identify any jurisdictional error committed either by the Controlling Authority or the Appellate Authority.
22. Accordingly, the writ application being WPA 16615 of 2023 is ***dismissed.***
23. There shall, however, be no order as to costs.
24. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)