

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JUNE, 2021

BEFORE

THE HON'BLE MR.JUSTICE P. B. BAJANTHRI

WRIT PETITION NO.24653/2016 (L-PG)

BETWEEN:

KARNATAKA STATE ROAD
TRANSPORT CORPORATION
BANGALORE RURAL DIVISION
MYSORE ROAD, BANGALORE
BY ITS DIVISIONAL CONTROLLER
REP. BY ITS CHIEF LAW OFFICER.

... PETITIONER

(BY SMT.RENUKA H.R., ADVOCATE)

AND:

1. THE DEPUTY LABOUR COMMISSIONER
AND THE APPELLATE AUTHORITY
UNDER THE PAYMENT OF GRATUITY ACT
REGION 2, KARMEEKA BHAVAN
BANNERGHATTA ROAD
BANGALORE - 560 029.
2. THE ASSISTANCE LABOUR COMMISSIONER
AND CONTROLLING AUTHORITY
UNDER THE PAYMENT OF GRATUITY ACT
DIVISION 1, KARMEEKA BHAVAN
BANNERGHATTA ROAD,
BANGALORE - 560 029.

3. MAREGOWDA
S/O H. PUTTEGOWDA
ADULT
R/O DEVIRAHALLY
HALAGUR HOBLI
MALAVALLI
MANDYA DISTRICT – 570 001

SINCE DECEASED BY HIS LR's
3(a). SIDDARAJU
S/O MAREGOWDA,
AGED ABOUT 53 YEARS
R/O NO.78/2, DEVARAHALLY
DASAVAKODIHALLI,
MALLAVALLI, MANDYA DIST.,

... RESPONDENTS

(BY SRI.Y.D.HARSHA, AGA FOR R-1 AND R-2;
SRI.V.S.NAIK, ADVOCATE FOR LR's OF D-R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, DIRECTION OR ORDER QUASHING THE ORDERS PASSED IN NO.ALC-1/PGA/CR/107-2011-12 DATED 5.7.2013 (ANNEXURE-B) PASSED BY THE SECOND RESPONDENT AND ETC.,

THIS WRIT PETITION COMING ON FOR *PRELIMINARY HEARING IN 'B' GROUP*, THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

In the instant petition, petitioner has assailed the orders dated 05.07.2013 and 22.04.2015

(Annexure-B and D respectively) passed by the 2nd and 1st respondents. Respondent No.3, deceased stated to have joined the services with the petitioner-Corporation on 10.10.1967 and his probationary period was declared with effect from 01.08.1974. He was dismissed from service on 31.07.1997, which was the subject matter of I.D.No.57/1997. The reference was allowed in part on 11.05.2004, by directing the Corporation to reinstate the deceased workman with continuity of service and 75% back wages. Deceased respondent No.3 attained the age of superannuation on 03.05.2005. The petitioner-Corporation questioned the validity of the award passed by the Labour Court in W.P.No.44935/2004 and it was allowed in part while modifying the back wages from 75% to that of 25% on 22.08.2007. Still aggrieved by the order of the learned Single Judge, Corporation preferred Writ Appeal No.2128/2007 and it was allowed on

17.03.2008. Faced with these decisions and events, deceased respondent No.3 submitted an application before the Competent Authority in seeking difference of gratuity amount on 01.08.2008. Controlling Authority has determined gratuity amount at Rs.78,795/- less deduction Rs.47,385/- - 31,590/- on 05.07.2013. The Corporation preferred an appeal before Appellate Authority and suffered an order on 22.04.2015. Hence the present petition.

2. Insofar as challenge to the Controlling authority order dated 05.07.2013 and Appellate Authority Order dated 22.04.2015. Learned counsel for petitioner-Corporation submitted that for the purpose of calculation of number of years of service in assigning gratuity to the respondent No.3 from 10.10.1967 is incorrect as is evident from Ex.P.4. He was placed on probationary period with effect from 01.08.1974. Hence there is patent error in calculating

number of years of service from 10.10.1967 to 01.08.1974. It is further pointed out that calculation of interest at 10% from 01.07.1997 is impermissible for the reasons that his application for claiming arrears of gratuity amount is on 01.08.2008. Therefore he is not entitled to interest from 01.07.1997.

3. Per contra, learned counsel for respondent responded to the contention of the petitioner and submitted that, date of entry into service is relevant for the purpose of calculation of gratuity and not with reference to the date of probation/confirmation. It is further submitted that there is no infirmity in calculating interest at the rate of 10% with effect from 01.07.1997 for the reasons that with reference to date of dismissal on 31.07.1997. The petitioner-Corporation should have calculated gratuity with reference to basic pay at Rs.1,755/- + DA Rs.2,808/-.

Therefore, there is no infirmity on behalf of the Corporation. That apart dismissal order dated 31.07.1997 was subject matter before Industrial Tribunal, before this Court in Writ Petition and Writ Appeal. Therefore, there is no delay on the part of respondent No.3 in filing the application on 01.08.2008 in claiming arrears of gratuity along with interest.

4. Heard the learned counsel for respective parties.

5. Undisputed facts are that, respondent No.3 deceased joined the services on 10.10.1967 and he was confirmed on 01.08.1974. He was dismissed from service on 31.07.1997 and it has attained finality in confirming order of dismissal on 17.03.2008 in W.A.No.2128/2007. Respondent No.3 filed application claiming for gratuity on 01.08.2008. Controlling

Authority passed an order determining gratuity amount on 05.07.2013 and it was confirmed by the appellate authority on 22.04.2015. The petitioner-Corporation raised two questions namely counting of service of the deceased respondent No.3 from 10.10.1967 is incorrect. Having regard to the fact that deceased respondent No.3 was confirmed on 01.08.1974, the petitioner-Corporation has not apprised this Court that payment of gratuity is required to be calculated from the date of confirmation or an employee. Therefore, from Ex.P.4 it is evident that deceased respondent No.3 has joined service on 10.10.1967. Hence, petitioner has not made out a case insofar as interference of counting number of years of service towards gratuity from 10.10.1967 to 01.08.1974. Further, payment of interest at the rate of 10% with effect from 01.07.1997. It is submitted that deceased respondent

No.3 claimed for arrears of gratuity with effect from 01.08.2008. Corporation being model employer should have fair enough in calculating dues of its employees particularly gratuity amount with reference to formula. There is an error committed by the petitioner-Corporation in not settling the entire gratuity amount as on 31.07.1997, the date on which deceased respondent No.3 was dismissed.

6. In view of these facts and circumstances, petitioner has not made out a case. Accordingly, Writ Petition stands ***dismissed***. Gratuity is determined by the Controlling Authority and affirmed by the Appellate Authority be disposed in favour of the respondent/workmen at the earliest.

**Sd/-
JUDGE**