

**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

S.B. Civil Miscellaneous Appeal No.125/2015

1. Ajmer Vidyut Vitran Nigam Ltd. through its Chairman, City Power House, Pancheel Nagar, Makadwali Raod, Ajmer.
2. Managing Director, Ajmer Vidyut Vitran Nigam Ltd., City Power House, Pancheel Nagar, Makadwali Road, Ajmer.
3. Secretary (Administration), Ajmer Vidyut Vitran Nigam Ltd. through its Chairman, City Power House, Pancheel Nagar, Makadwali Raod, Ajmer.

---Appellants

Versus

1. Rasheed Jilani Malik S/o Shri Rasheed Ahmed, R/o, Plot No.45, Sector 10, Vaishali Nagar, Jaipur.
2. Presiding Authority constituted under Payment of Gratuity Act, 1972, Ajmer.

---Respondents

For Appellant(s)

Mr. Jai Lodha

For Respondent(s)

Mr. Prabhavish Sharma

**HON'BLE MR. JUSTICE SANDEEP PRAKASH SHARMA**

Order

**30/11/2021**

1. The present appeal has been preferred against the judgment awarded on 16.12.2014 passed by the Controlling Officer under the Gratuity Act whereby the Court directed the appellant to release the amount of Rs.1,09,720/- as claim for gratuity along with 10% interest from the date of filing of the suit i.e. 30.04.2008 to the date of passing of the order and thus a total amount of Rs.1,82,410/- was directed to be paid to the respondents.
2. Learned counsel submits that as the Company was having its own Pension Rules of 1988, the provisions of Payment of Gratuity

Act, 1972 would not be applicable in view of the notification issued by the State Government dated 11.09.2000. He therefore submits that the direction for releasing of gratuity amount for a person who has submitted his resignation is erroneous. Learned counsel further submits that as per the Pension Rules, 1988 and Rule 25 of the Pension Rules, 1996, the pension is not payable or gratuity is not payable to an employee who has submitted his resignation and forfeited his past service in terms of Rule 25. Learned counsel therefore submits that the court below has fallen in error in releasing the amount.

3. *Per contra*, learned counsel appearing for the respondent-claimant supports the order passed by the court and the Controlling Officer under the Gratuities Act, Ajmer. He submits that under the Pension Regulations, 1988 pension framed by the appellant, the respondent-claimant had never opted for the Pension Regulations of 1988 and was therefore governed under the Gratuities Act, 1972, the provisions of the Pension Rules, 1988 and the provisions of the Pension Rules of 1996 would thus have no application and as claimant had already completed more than five years of service in terms of the Gratuity Act, 1972, he was entitled to receive gratuity as has been calculated on the basis of his last date drawn. Thus, learned counsel submits that no interference is warranted in the order passed by the court.

4. I have considered the submissions.

5. The Ajmer, Vidyut Vitran Nigam Ltd. has adopted the Pension Regulations of erstwhile Rajasthan State Electricity Board however as per the provisions of Pension Regulations, 1988 the same would be applicable only on submitting of option by an employee.

Admittedly, the respondent has not submitted his option for adopting the Pension Rules, 1988 he was therefore governed by the existing Payment of Gratuity Act, 1972. The contention of the learned counsel for the appellant therefore would have no force and the exemption as mentioned by the notification of the State Government dated 11.09.2000 has to be said to have no application to the case of the respondents. Respondent would be entitled to the Payment of Gratuity if he has completed more than five years of service. Admittedly, the claimant respondent has completed more than six years of service.

6. Keeping in view thereto, he was entitled to receive gratuity amount of Rs.1,09,720/- as calculated by the court below. The amount would also carry interest @10% as directed by the court below from the date of filing of the claim i.e. 30.04.2008. Since the amount has not been paid to the petitioner even till date although deposited with the court, the respondent would be entitled to receive the aforesaid interest amount till the date of payment. It is expected that the payment shall now be released in favour of the respondent within a period of one month henceforth.

7. The appeal stands dismissed accordingly.

8. Stay application as well as other applications, if any, stand disposed of.

(SANJEEV PRAKASH SHARMA),J

SAURABH/12