

Sri Basavegowda Vs. The State Of Karnataka

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Court : Karnataka

Decided On : Dec-20-2023

Judge : M.Nagaprasanna

Appeal No. : WP 10872/2023

Appellant : Sri Basavegowda

Respondent : The State Of Karnataka

Judgement :

1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU R DATED THIS THE20H DAY OF DECEMBER, 2023 BEFORE THE HON'BLE MR. JUSTICE M. NAGAPRASANNA WRIT PETITION No.10872 OF2023(GM-RES) BETWEEN: SRI BASAVEGOWDA S/O PAVADIGOWDA AGED ABOUT75YEARS KARADYA VILLAGE NAGAMANGALA TALUK MANDYA DISTRICT PIN CODE - 571 431. ... PETITIONER (BY SRI ADAVEESHAIAH B., ADVOCATE) AND:

1. . THE STATE OF KARNATAKA DEPARTMENT OF PRIMARY AND SECONDARY EDUCATION VIKASA SOUDHA BENGALURU PIN CODE - 560 001. REPRESENTED BY IT'S PRINCIPAL SECRETARY TO GOVERNMENT2. DEPUTY DIRECTOR OF PUBLIC INSTRUCTIONS MANDYA DISTRICT MANDYA2PIN CODE - 571 401. 3 . DEPUTY COMMISSIONER MANDYA DISTRICT MANDYA PIN CODE - 571 401. 4 . THE HEAD MASTER GOVERNMENT HIGH SCHOOL G.MALLIGERE MANDYA TALUK AND

DISTRICT PINCODE - 571 401. ... RESPONDENTS (BY SMT NAVYA SHEKHAR, AGA) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE DIRECTIONS TO THE R-3, DEPUTY COMMISSIONER MANDYA DISTRICT. MANDYA PIN CODE 57140, DIRECTING TO INITIATE PROCEEDINGS AGAINST R-2 AND 4 TO RECOVER THE ARREARS OF GRATUITY AS PER THE ANNEXURE-C1, C2 AND C3 DTD 0302.2022 THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR

ORDER

S ON 21.11.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court seeking a direction by issuance of a writ in the nature of mandamus directing the 3rd respondent/Deputy Commissioner, Mandya District to initiate 3 proceedings against respondents 2 and 4 to recover arrears of gratuity.

2. Heard Sri B. Adaveeshaiah, learned counsel appearing for the petitioner and Smt. Navya Shekhar, learned Additional Government Advocate appearing for the respondents.

3. Facts adumbrated are as follows: The petitioner joins the services of the 4th respondent/ Government High School, G.Malligere, Mandya Taluk and District as a Group-D employee on 18-11-1971. After about 42 years of service, the petitioner retires on attaining the age of superannuation on 31-05-2013. On retirement, the petitioner was not paid complete gratuity which drew him to knock at the doors of the Controlling Authority under the Payment of Gratuity Act, 1972 (the Act for short). The Controlling Authority, in terms of her order dated 05-03-2015 determines arrears of gratuity to be paid by the State Government to the petitioner at `2,40,449/-. After the said order, the petitioner submits several representations for 4 payment of arrears of gratuity. When nothing came about, he again knocks at the doors of the Labour Department seeking recovery of arrears of gratuity. The Labour Officer communicates to the 3rd respondent to initiate proceedings to

recover gratuity as arrears of land revenue. Nothing happening thereafter, the petitioner is driven to this Court in the subject petition.

4. The learned counsel appearing for the petitioner would vehemently contend that the petitioner is an employee of Government and retires on attaining the age of superannuation after 42 years of service and is not paid complete gratuity on the ground that the petitioner was initially appointed as a daily wage employee and then his services came to be regularized. The learned counsel would submit that the very finding is erroneous as the Controlling Authority has referred to circulars of Government themselves and holds that gratuity should be paid in its entirety i.e., for all 42 years of service. 5

5. The learned Additional Government Advocate Smt. Navya Shekhar would however, refute the submissions and on instructions has filed certain documents along with a memo and would submit that they may be taken as objections from the Department. The solitary finding and observations in those communications are that the petitioner was initially appointed on daily wage basis and that he has been regularized on a subsequent date. Gratuity is already paid from the date on which his services were regularized till his retirement. However, the same is denied for daily wage period on the score that the issue is pending before the Apex Court. She would submit that once the Apex Court would decide the issue, payment of gratuity would be settled on that basis.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The entry of the petitioner into the service of the 4th respondent/Government High School as a Group-D employee on 18-11-1971 and retiring on attaining the age of superannuation on 31-05-2013 are not in dispute. In the interregnum, it appears that the petitioner along with others was regularized in service in terms of the Government Order dated 01-01-1990 and gratuity is paid to the petitioner at `1,92,700/- which is for the period between 01-01-1990 and 31-05-2013. The short payment of gratuity leads the petitioner before the Controlling Authority under the Act as gratuity to the petitioner for the service he has rendered between 18-11-1971 and 01-01-1990 close to 19 years was taken away.

8. The Controlling Authority after placing reliance on the Government orders issued by the State Government from time to time and judgments rendered on the issue of entitlement of gratuity to an employee even if he is on daily wages, allows the claim, determines arrears of gratuity to be paid at `2,40,449/- and directs payment along with interest in terms of her order dated 05-03-2015. The order reads as follows: (cid:4)

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DDDD9999KKKK(cid:4)(cid:4)(cid:4)(cid:4).

(Emphasis added)

Several years have passed by, but arrears of gratuity is not paid to the petitioner. Several representations submitted by the petitioner have gone unheeded. The petitioner then approaches the Labour Department and files an application for recovery of gratuity before the Department. A communication is sent on 03-02-2022 to the Deputy Commissioner directing recovery of gratuity. The communication dated 03-02-2022 reads as follows: 5(cid:21), 0L (cid:9)9Z(cid:20)(cid:22)5G L (cid:9)9Z8L.. 0L(cid:29), +: ,(cid:10) jZ\ Dk (55 I Lk) (cid:22)%(cid:4), 1972 8 1(cid:22) (cid:4) (cid:30)(cid:31). 9C0 (cid:21)m. **** (cid:28)- +(cid:22)- (cid:20)M., (cid:21)o(cid:10)(cid:18)K (cid:16) (cid:21),(cid:21)

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(cid:17), (cid:30)R 5 (cid:30)(cid:22) F,:

05. 03-2015 (cid:4) (cid:4) \$C (cid:30) w . 2,80,638/- * \$C F,(cid:29)(cid:21) = 10%
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Ykw C*M (cid:16) F 1(cid:22)-K YZ9K(cid:4). ,QRF(cid:21). Despite the aforesaid
communication and passage of close to 9 years now, the petitioner is not paid
arrears of gratuity. It is then he is before the doors of this Court seeking a direction
to recover arrears of gratuity to be issued by the hands of this Court to the
respondents. This Court passed several orders seeking to know as to why
complete gratuity was not released in favour of the petitioner. This has resulted in
certain communications from Department to Department, one of which I deem it
appropriate to 9 notice as it is germane. The communication dated 06-02-2023
reads as follows: 5555: (cid:22)(cid:10) 1q (cid:22)(cid:10)V(cid:10), =9 V(*
(cid:17)(. 9p, @ w, (cid:30)R. 5555(cid:21)(cid:21)(cid:21)(cid:21): *,
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(cid:4)1C DC* (cid:4) \$C (cid:21)m (cid:22)t(cid:10) ,LJYZ (cid:4)9 1 (cid:21)m.
9999ZZZZ: *, (cid:17)(cid:10)D V(9p, (cid:30)R 1 pL:: M5(8)(cid:22),L-71/2015-16
F, :15-02-2022 **** (cid:28)- +(cid:22)- (cid:20)M. 9Z(cid:127) 1E 5VY9%. V1
M(cid:24)L D* '@' z(cid:10) ,, {1 V|(cid:20)(cid:22)5, (cid:17)(cid:10)D V(9p,
(cid:4)1C 5(cid:21) F,:26-05-2015 (cid:22)t(cid:10) ,LJ CW(cid:10)< DC* \$C 5.
(cid:128)(cid:10) 9p (cid:22). D@ (cid:129)\$1< 1 (cid:22)(cid:21)G^. (cid:21) CP
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CCCCPPPPMMMM(cid:4)(cid:4)(cid:4)(cid:4)."

(Emphasis added)

The indication in the communication is that daily wage employees would not be entitled for gratuity under the Karnataka Civil Service Rules (KCSRs) which they are governed till they get regularized. The issue whether the provisions of the Act would be applicable or the KCSRs, is still looming large and an identical issue is pending before the Apex Court. Therefore, gratuity is not paid for the daily wage period of 19 years. This communication forms the vehement submission of the learned Additional Government Advocate who puts up vehement defence that mandamus should not be issued as the issue is yet to be decided. I decline to accept the submission of the learned Additional Government Advocate on a plain reading of the provision of the Act. Section 2 of the Act reads as follows:

11. 2. Definitions.-In this Act unless the context otherwise requires,- (a) appropriate Government means,- (i) in relation to an establishment- (a) belonging to, or under the control of, the Central Government, (b) having branches in more than one State, (c) of a factory belonging to, or under the control of, the Central Government, (d) of a major port, mine, oilfield or railway company, the Central Government, (ii) in any other case, the State Government; (b) completed year of

service means continuous service for one year; (c) continuous service means continuous service as defined in Section 2-A;]. (d) controlling authority means an authority appointed by the appropriate Government under Section 3; (e) employee means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a 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 a State Government and is governed by 12 any other Act or by any rules providing for payment of gratuity;]. . . . (o) prescribed means prescribed by rules made under this Act; (p) railway company has the meaning assigned to it in clause (5) of Section 3 of the Indian Railways Act, 1890 (9 of 1890); (q) retirement means termination of the service of an employee otherwise than on superannuation; (r) superannuation, in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment; (s) wages means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance. (Emphasis supplied) Clause (e) of Section 2 defines an employee. An employee would mean that any person employed for wages, whether the terms of employment are express or implied in any kind of work, manual or otherwise, the Act would apply but would not include any such 13 person who holds a post under the Central Government or the State Government and is governed by any other Act or any other Rules providing for payment of gratuity. It is no doubt true that on regularization or even otherwise to some extent, the Rules of the State Government would become applicable to the employees who are regularized. Therefore, in the first blush, the submission of the learned Additional Government Advocate would sound acceptable, but on a deeper delving it is not, as Section 14 of the Act has overriding effect. It reads as follows: 14. Act to override other enactments, etc.-The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent

therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act. In terms of Section 14, the Act would become applicable to all employees including the Central Government or the State Government if under the Act they would get higher benefits. The issue need not detain this Court for long or delve deep into the matter. The Apex Court in plethora of judgments considering this 14 very issue has held in NAGAR AYUKT NAGAR NIGAM, KANPUR v. MUJIB ULLAH KHAN¹ as follows: 7. On the other hand, the learned counsel for the respondent pointed out that the Central Government has published a Notification in terms of Section 1(3)(c) of the Act on 8-1-1982 to extend the applicability of the Act to the Municipalities. Thus, the Act is applicable to the Municipalities. The relevant provisions of the Act read as under: 1. Short title, extent, application and commencement.-(1) This Act may be called the Payment of Gratuity Act, 1972. (2) It extends to the whole of India: Provided that insofar as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir. (3) It shall apply to- (a) every factory, mine, oilfield, plantation, port and railway company; (b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months; (c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf. 1 (2019) 6 SCC10315 8. A perusal of the above provisions would show that the Act is applicable to (1) every factory, mine, oilfield, plantation, port and railway company; (2) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, the said provision has two conditions viz. (i) a shop or establishments within the meaning of a State law; and (ii) in which ten or more persons are employed; and (3) the establishments or class of establishments which the Central Government may notify.

9. The appellant is not covered by clauses (a) and (b) of Section 1(3) of the Act. Clause (a) is not applicable on the face of the provisions, but even clause (b) is not applicable in view of Section 3(1)(c) of the 1962 Act as such Act is not applicable

to the offices of the Government or local authorities. The local authorities means a municipal committee, district board, etc. or entrusted with the control or management of a municipal or local fund in terms of Section 3(31) of the General Clauses Act, 1897.

10. In terms of the abovesaid Section 1(3)(c) of the Act, the Central Government has published a Notification on 8-1-1982 and specified local bodies in which ten or more persons are employed, or were employed, on any day of the preceding twelve months as a class of establishment to which this Act shall apply. The said Notification dated 8-1-1982 reads as under: New Delhi, 8-1-1982 NOTIFICATION S.O. No.239. In exercise of the powers conferred by clause (c) of sub-section (3) of Section 1 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specified local bodies in which ten or more persons are employed, or were employed, on any day preceding twelve months, as a class of establishments to which the said Act shall apply with effect from the date of publication of this notification in the Official Gazette. sd/- 16 (R.K.A. Subrahmanya) Additional Secretary (F. No.S-70020/16/77-FPG)

11. We find that the Notification dated 8-1-1982 was not referred to before the High Court. Such notification makes it abundantly clear that the Act is applicable to the local bodies i.e. the Municipalities. Section 14 of the Act has given an overriding effect over any other inconsistent provision in any other enactment. The said provision reads as under: 14. Act to override other enactments, etc.- The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.

12. In view of Section 14 of the Act, the provision in the State Act contemplating payment of gratuity will be inapplicable in respect of the employees of the local bodies.

13. Section 2(e) of the Act alone was referred to in the judgment reported as MCD [MCD v. Dharam Prakash Sharma, (1998) 7 SCC221 1998 SCC (L&S) 1800: AIR 1999 SC293. The said judgment is in the context of the CCS (Pension) Rules,

1972 [1972 Rules]. which specifically provides for payment of pension and gratuity. The Act is applicable to the Municipalities, therefore, it is wholly inconsequential even if there is no reference to the Notification dated 8-1-1982.

14. The entire argument of the appellant is that the State Act confers restrictive benefit of gratuity than what is conferred under the Central Act. Such argument is not tenable in view of Section 14 of the Act and that liberal payment of gratuity is in fact in the interest of the employees. Thus, the gratuity would be payable under the Act. Such is the view taken by the Controlling Authority. (Emphasis supplied)

17 The Apex Court holds that though employees of Municipal Corporation are governed by separate enactments and service conditions are determined under those enactments, in the light of Section 14 of the Act which has overriding effect, the employees would be entitled to claim gratuity under the Act. Therefore, the contention of the State that the employees of the State cannot seek gratuity under the Act is noted only to be rejected.

9. The other submission of the learned Additional Government Advocate is that the petitioner and the like would not be entitled to gratuity prior to the date of their regularization when they were daily wage employees. This again does not stand to reason in the light of interpretation of the Act by the Apex Court in a judgment rendered in *NETRAM SAHU v. STATE OF CHHATTISGARH*² wherein the Apex Court holds as follows:- 14. We do not agree with this submission of the learned counsel for the respondent State for more than one reason:

14. 1. First, the appellant has actually rendered the service for a period of 25 years; 2 (2018) 5 SCC43018 14.2. Second, the State actually regularised his services by passing the order dated 6-5-2008; 14.3. Third, having regularised 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; 14.4. 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 his regularisation for calculating his continuous service of five years.

15. In our considered opinion, the High Court committed an error in placing reliance on the decision of this Court in *State of Karnataka v. Umadevi* (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC1:

2006. SCC (L&S) 753]. 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 regularised by the State and, therefore, the law laid down in *Umadevi* (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC1:

2006. SCC (L&S) 753]. could not be relied on. Indeed, even the decision of *Umadevi* (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC1:

2006. SCC (L&S) 753]. makes a distinction in cases and where the services stand regularised, the ratio of *Umadevi* (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC1:

2006. SCC (L&S) 753]. to deny the relief would not apply.

16. In our considered opinion, once the State regularised 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. 19

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 regularised. The question as to from which date such services were regularised was of no significance for calculating the total length of service for claiming gratuity amount once the services were regularised by the State.

18. It was indeed the State who took 22 years to regularise the service of the appellant and went on taking work from the appellant on payment of a meagre 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 regularised 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 M.C. Chagla, C.J.

(as he then was) in *Firm Kaluram Sitaram v. Union of India* [*Firm Kaluram Sitaram v. Union of India*, 1953 SCC OnLine Bom 39 : AIR1954 Bom 50]. . The learned Chief Justice in his distinctive style of writing while deciding the case between an individual citizen and the State 20 made the following pertinent observations: (SCC OnLine Bom para

19) 19. 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.

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. The 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 costs of Rs 25,000 payable by the State to the appellant. Costs to be paid by the State along with the payment of gratuity amount. (Emphasis supplied) In a subsequent judgment in *SENIOR SUPERINTENDENT OF POST OFFICES v. GURSEWAK*

SINGH³ the Apex Court directs payment of gratuity for the entire service of employees working as Gramin Dak Sewak on part time basis in a postal department. The Apex Court has held as follows: 8. Mr Bharat Sangal, learned Amicus Curiae, represented the interest of the respondents before this Court. The learned counsel inter alia submitted that:

3. (2019)15 SCC29221 8.1. The Payment of Gratuity Act, 1972 applies to every place defined as an establishment within the meaning of any law for the time being in force in a State. To determine the applicability of the Payment of Gratuity Act, 1972 it must be seen whether the place is defined as an establishment under the law applicable to the State. Reliance was placed on the judgment of State of Punjab v. Labour Court [State of Punjab v. Labour Court, (1980) 1 SCC4:

1980. SCC (L&S) 123]. wherein this Court held that an establishment falling within the definition of Section 2(ii)(g) of the Payment of Wages Act, 1936 would be covered by the Payment of Gratuity Act, 1972. It was contended that the Postal Department is an establishment within the meaning of the term used in Section 2(ii)(g) of the Payment of Wages Act, 1936 and the 1972 Act, would be applicable to its employees. 8.2. Section 1(3) of the 1972 Act, provides for payment of gratuity to employees of every factory, mine, oilfield, plantation, port, railway company, shop or establishment. Section 1(3) of the 1972 Act reads as under: 1. Short title, extent, application and commencement.- * * * (3) It shall apply to- (a) every factory, mine, oilfield, plantation, port and railway company; (b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months; (c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf. (emphasis supplied) 8.3. It was further submitted that Section 14 of the 1972 Act specifically provides that the Act would apply notwithstanding anything inconsistent therewith contained in any enactment. Section 14 of the 1972 Act reads as under: 14. Act to override other enactments, etc.-The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith

contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.

8.4. Section 4(1)(b) of the 1972 Act provides that gratuity would be payable to an employee even on his resignation. Thus, any rule barring payment of gratuity to an employee who resigns, would be contrary to Section 14 read with Section 4(1)(b) of the 1972 Act. 8.5. It was further submitted that the Department of Posts, Gramin Dak Sewak (Conduct and Employment) Rules, 2001 were superseded and replaced by the Department of Posts, Gramin Dak Sewak (Conduct and Engagement) Rules, 2011. Under the amended 2011 Rules the term employment/appointment has been replaced by engagement. The amended Rule 6 pertains to payment of ex gratia gratuity to Gramin Dak Sewaks.

9. The first issue to be determined is whether a Gramin Dak Sewak is an employee as per Section 2(e) of the 1972 Act, and is entitled to payment of gratuity under this Act?. 9.1. Section 1(3)(b) of the 1972 Act applies to every establishment within the meaning of any law for the time being in force. This Court in *State of Punjab v. Labour Court* [*State of Punjab v. Labour Court*, (1980) 1 SCC4:

1980. 23 SCC (L&S) 123]. has held that there is no reason for limiting the meaning of the expression law in Section 1(3)(b) of the 1972 Act. The Postal Department is as an establishment under Section 2(k) of the Indian Post Office Act, 1898 which reads as under: 2. Definitions.- * * * (k) the expression Post Office means the department, established for the purposes of carrying the provisions of this Act into effect and presided over by the Director General. (emphasis supplied) The Indian Post Office Act, 1898 would fall under the expression law in Section 1(3)(b). Consequently, the Posts and Telegraphs Department would be an establishment under the 1972 Act. 9.2. Section 4(1) of the 1972 Act, provides for payment of gratuity to an employee on the termination of his employment, subject to the condition that he must have rendered a minimum of 5 years' continuous service. Section 4(1) of the 1972 Act reads as under: 4. Payment of gratuity.-(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,- (a) on his

superannuation, or (b) on his retirement or resignation, or (c) on his death or disablement due to accident or disease: Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

24. Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority. Explanation.- For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement. (emphasis supplied) 9.3. Section 4 of the 1972 Act states that Gratuity shall be payable to an employee. The term employee is defined by Section 2(e) of the 1972 Act, as under: 2. Definitions.-In this Act unless the context otherwise requires,- *** (e) employee means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a 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 a State Government and is governed by any other Act or by any rules providing for payment of gratuity; (emphasis supplied) 25 Section 2(e) of the 1972 Act, however specifically excludes persons who are governed by any Act, or Rules providing for payment of gratuity. 9.4. Section 2(e) of the 1972 Act excludes persons who hold a post with the Central or State Government and are governed by any other Act or rules providing for payment of gratuity. Gramin Dak Sewaks are engaged as extra-departmental agents, a post governed by the 2011 Rules. [Supt. of Post Offices v. P.K. Rajamma, (1977) 3 SCC94 1977 SCC (L&S) 374. See also Union of India v. Kameshwar Prasad, (1997) 11 SCC650 1998 SCC (L&S) 447]. These Rules have a separate provision for payment of gratuity to the extra-departmental agents. A Gramin Dak Sewak is not an employee under the 1972 Act. The first issue is answered accordingly. (Emphasis supplied) The Apex Court here again considers

cases of those persons who are appointed on part time basis as Gramin Dak Sewaks in postal department. They were never regularized but the Apex Court holds that despite them being appointed as part time employees, gratuity cannot be determined under the Rules obtaining qua their appointment but it should be determined under the Act.

10. On a coalesce of the afore-quoted judgments of the Apex Court what would unmistakably emerge is that the petitioner was entitled to gratuity for his entire service and not restricting it to the 26 period of regular service as the Act does not differentiate between a regular employee and a daily wage employee. It only reads as an employee and defines an employee. If such an employee is entitled to payment of gratuity under the Act, as observed by the Apex Court in the aforesaid judgments, the State could not have denied arrears of gratuity to be paid to the petitioner. The State has not only denied, but denied for 9 long years. Therefore, the petitioner becomes entitled to payment of gratuity along with interest in terms of the Act and cost of this litigation as well.

11. For the aforesaid reasons, I pass the following:

ORDER

(a) Writ Petition is allowed. (b) Mandamus issues to the respondents to pay arrears of gratuity to the petitioner in a total sum of `2,40,449/- along with interest at respective rates notified by the State Government from time to time between 2013 till date of payment. (c) The petitioner is entitled to `50,000/- as costs of litigation to be paid by the State. 27 (d) This order shall be complied within four weeks from the date of receipt of a copy of this order. Failure thereto, the petitioner becomes entitled to costs at `1,000/- for every days delay till it reaches the doors of the petitioner. Sd/- JUDGE bkp CT:SS

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