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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCHAllahabad this the 21st day of November 1994.

Original Application no. 1343 of 1993.

Manager, Govt. Opium Alkaloin Works, Ghazipur. U.P.

... Applicant.

C/A Shri N.B. Singh

Versus

Shiv Nath, S/o Shri M.A. Madho, C/O Shri B. Sharma, President Shri Opium Factory Labour Union Saklenabad, Gazipur. (UP)

... Respondent

C/R Shri R.N. Rai

Alongwith

Original Application no. 1340 of 1993.

Manager Govt. Opium and Alkaloid Works, Gazipur, U.P.

... Applicant

C/A Shri N.B. Singh

Versus

Ram Chander, S/o Shri Kanhayee, C/O Shri B. Sharma, President, Opium Factor Labour Union, Saklenabad, Gazipur (UP)

... Respondent.

C/R Shri R.N. Rai

Alongwith

Original Application no. 1341 of 1993

Manager, Govt. Opium & Alkaloid Works, Ghazipur, UP.

... Applicant

C/A Shri N.B. Singh

Versus

Jagarnath, S/o Shri Sukhdeo, C/o Shri B. Sharma, President Opium Factory Labour Union Saklenabad, Ghazipur, (UP)

... Respondent

C/R Shri R.N. Rai

Alongwith

Original Application no. 1342 of 1993

Manager, Govt. Opium & Aukaleid Works, Ghazipur, U.P.

... Applicant

C/A Shri N.B. Singh

versus

Shital, S/o Shri Buddhu, C/o Shri B. Sharma, President Opium Factory Labour Union, Saklenabad, Ghazipur up.

C/R Shri R.N. Rai ... Respondent

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Along with
Original Application no. 1345/93

Manager, Govt. Opium Alkaloid Works, Ghazipur, U.P.
C/A Shri N.B. Singh Applicant

Versus

Dasrath, S/o Shri Surajman, C/o Shri B. Sharma, President
Opium Factory Labour Union Saklenabad, Ghazipur (UP).

.... Respondents

C/R Shri R.N. Rai

Alongwith

Original Application no. 1344 of 1993.

Manager, Govt. Opium Alkaloid Works, Ghazipur, (UP).
C/A. Shri N.B. Singh Applicant

C/R Shri R.N. Rai.

Hon'ble Mr. T.L. Verma, Judicial Member.
Hon'ble Mr. S. Dayal, Administrative Member.

ORDER

Hon'ble Mr. S. Dayal, Member 'A'

These are six applications filed by the
Manager, Govt. Opium and Alkaloid Works, Ghazipur,
against six different respondents under section 19 of
the Administrative Tribunal Act, 1985, having a common
point of law and are, therefore, being taken together for
disposal.

2. The relief sought by the applicant in all the
applications is quashing of the order dated 28.06.93 and

award of the cost of the petition. The ground of seeking the relief are that gratuity has been paid once and an order to pay it again is wrong, that the workers of the applicant were not entitled to pension to 18.11.60 and were governed by Contributory Provident Fund Act and the workers were given option to accept the pension from the date of appointment in terms of 18.11.60 notification, that C.S. C.S. (pension) Rules were not applicable to the workers who were covered by CCS (Temporary Service) Rules, 1965, Rule 10 (1) of the CCS (Temporary Service) Rules, 1965 provides for payment of gratuity and this gratuity has already been paid to the workers, & that the Assistant Labour Commissioner (C) has wrongly applied the provisions of the Payment of Gratuity Act, 1972.

2. The facts as contained in the application are that respondents had following profiles:-

| | Sri Ram Chandra | Sri Jagannath | Sri Shitpal |
|--|---|--|---|
| Period as Casual labour with intermittent gap | 31 Yrs. 1 Months (1.4.46 to 30.7.77) | 29 Yrs 11 Months (15.5.48 to 30.7.77) | 26 Yrs 11½ Months (15.5.50 to 30.4.77) |
| Period with Seasonal worker with intermittent gap | 5 Yrs 1 months (1.5.77 to 29.6.82) | 5 Years 3 months (1.5.77 to 31.7.82) | 5 Yrs 2 months (1.5.77 to 7.7.82) |
| Period of Regular/ Temporary appointment as unskilled worker | 18.8.82 to 31.1.89 | 18.8.82 to 31.1.89 | 21.9.82 to 31.1.89 |
| Period of total temp. Service | 6 Yrs 5½ months | 6 Yrs 5½ months | 6 Yrs 4 months 11 days. |
| Whether respondent opted for pension Rules | Yes | Yes | Yes |
| Whether Temp. Service is less than 20 Yrs. | Yes | Yes | Yes |
| Difference of Gratuity awarded (Rs.) | 2200 | 2200 | 2197 |



| | Sri Shivanath | Sri Hardeo | Shri Dasrath |
|--|--|---|---------------------------------------|
| Period as Casual labour with intermittent gap. | 26 Yrs 11 $\frac{1}{2}$ Months (15.5.50 to 30.4.77) | 31 Yrs 6 Months (7.11.45 to 30.4.77) | 30 Years (15.5.47 to 30.4.77) |
| Period with Seasonal worker with intermittent gap. | 5 Yrs 2 months (1.5.77 to 29.6.82) | 5 Yrs. 2 months (1.5.77 to 29.6.82) | 5 Yrs 1 months (1.5.77 to 29.6.82) |
| Period of Regular/ Temporary appointment as unskilled worker | 30.6.82 to 31.1.89 | 30.6.82 to 31.1.89 | 30.6.82 to 31.6.85 |
| Period of total Temp. Service | 6 Yrs 7 Mon. 1 day | 6 Yrs 7 Mon. 1 day | 6 Yrs. 7 mon. 1 da |
| Whether respondent opted for pension Rules. | Yes | Yes | Yes |
| Whether Temp. Service is less than 20 Yrs. | Yes | Yes | Yes |
| Difference of Gratuity awarded (Rs.) | 2207 | 2207 | 2207 |

3. It is seen from the order of the Assistant Labour Commissioner (Central) (Annexure A-1) that the arrears of gratuity are for the period of work of the respondents as seasonal workers at the rate of 7 days for each completed year of service.

4. The learned counsel for the applicant Shri N.B. Singh has been heard. None appeared on behalf of the respondents inspite of issuance of notices and four adjournments over the period of one year. Hence hearing was conducted ex-parte.

5. The learned counsel for the applicant has argued that employee as defined in section 3 (e) of payment of Gratuity Act, excludes a person holding a post under the Government and is governed by any other Act, or by any rules providing for payment of gratuity. He also drew attention to Section 4 (2) of the payment

of Gratuity Act, 1972, which excludes the seasonal workers from being entitled to gratuity. He has contended that the respondents are covered by the CCS (Temporary Service) Rules, 1965, for the period of their regular service as unskilled workers as they held a civil post under the Government of India but did not hold lien or suspended lien to be within the purview of CCS (Pension) Rules because they were not confirmed against any post. They, were, therefore, entitled to gratuity under Rule 10 (1) (a) of terminal gratuity payable to temporary Government servants and were not entitled to gratuity under the second proviso to section 4(2) of the Act.

6. The learned counsel for the respondents argued before us that the respondents were not covered by the provisions of the Payment of Gratuity Act, 1972, because they were holding a post under the Central Government and were governed by rules providing for payment of gratuity framed by the Central Government. The applicants in paragraph 3(a), (b) and (d) of their reply in the case under the Payment of Gratuity Act and para 4 (g), (h), (i) and (k) and 5 (c) of the application before this tribunal have averred that the applicants were casual and seasonal workers prior to 30.6.82 and did not come within the purview of the CCS (Temporary Service) Rules or CCS (Pension) Rules. The CCS (Temporary Service) Rules became applicable to the respondents with effect from 30.6.82 and they went out of the purview of the Payment of Gratuity Act as far as their service rendered after 30.6.82 were concerned.

7. The above situation left the consideration of

their period as seasonal workers in a Government Factory from 01.05.77 onwards for purposes of gratuity. The argument advanced in paragraph 5 B of the OA that the respondents were not liable to payment of gratuity under payment of Gratuity Act because the establishment of their employer had become a pensionable establishment by virtue of Government notification dated 18.11.60 is not valid. The focus of the Payment of Gratuity Act and CCS (Pension) Rules as well as CCS (Temporary Service) Rules are those employees who are covered by the provisions of the Act or the Rules. The Act and Rules have certain categories which may be excluded categories of employees. The present lot of respondents belonged to such a category till 30.6.82 by the admission of applicants themselves. Hence there is no doubt that they were covered by section 4 (2) of the Payment of Gratuity Act as Seasonal Workers from 01.05.77 onwards. They would not have been covered under the Payment of Gratuity Act if they had been bestowed the temporary status from 01.05.77 itself which is not the case here. Hence the argument that the service in pensionable establishment excludes an employee or worker from the purview of Payment of Gratuity Act has not force of law.

8. Another argument which has been advanced in paragraph 5 B of the OA is that applicants had given an option to join the pensionable establishment from the date of their joining is also faulty. The respondents may have wished to avail of the provisions of pension from first day of their joining the establishment as a casual worker which was as far back as the year 1945 to 1950 but they were allowed the temporary status only in June, 1982, and they were not covered by the provisions of the CCS

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(Temporary Service) Rules till that date and the payment of Gratuity Act was clearly applicable.

9. Another question which can arise is that the gratuity becomes payable only on the date of leaving the establishment voluntarily or on superannuation and on that date the CCS(Temporary Service) Rules were applicable and therefore, no gratuity was payable under the Payment of Gratuity Act. Here we have to keep the background of the cases in view to render substantial justice. The background is that the respondents have rendered their services to the establishment as casual, seasonal and temporary workers for a period varying from 38 to 42 Years and at the end of it they are being paid a small amount. In addition to the above it is a settled position of law that a benefit already accrued cannot be taken away by retrospective application of Act or Rules. The benefits of gratuity under the payment of Gratuity Act had already accrued before they came within the purview of CCS (Temporary Service) Rules. The respondent are entitled to gratuity as Seasonal Worker under section 4 (2) of the Payment of Gratuity Act as decided by the Assistant Labour Commissioner (Central) for the period of 01.05.77 onwards till they were granted temporary status and the Payment of Gratuity Act remained applicable though eclipsed by the CCS (Temporary Service) Rules from June 1982 onwards because of the applicability of these rules so that duplication of gratuity benefits for the same period ~~can~~ be avoided.

10. We, therefore, dismiss the application and direct the applicants to pay the amount decreed by

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by the Assistant Labour Commissioner (Central) with a compound interest of 18 % with effect from 01.02.89.

11. There shall be no order as to costs.

+ Sd/
(J. Dayal)
Member-A

(T.L. Verma)
Member-J

/pc/

Prepared by Shri
8/12/89