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O.A.No. 25 of 2007

Order dated 6.10.2009

CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

And

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

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In this Original Application, the applicant has prayed as follows:

- "a) *To kindly quash the order of the Respondent No.2 dated 28.12.2001 vide Annexure 2 and 12.5.2005 vide Annexure 5 as the said orders are clearly violating the orders of Hon'ble Tribunal and Hon'ble High Court and settled principles of law.*
- b) *To direct the Respondent to make payment of the salary of the applicant against E.D.Sub Post Master which the applicant was holding prior to 25.8.97 till 2.8.2004 by adjusting the salary which he has already received during the period and Respondents may kindly be directed to pay the salary prescribed against the post of E.D. Sub-Post Master with revisions made time to time to the applicant as per the direction of Hon'ble Tribunal and Hon'ble High Court within a specific time with interest and compensation.*
- c) *That the Respondent may kindly be directed to make immediate payment of post-retirement dues of the applicant as he is starving due to non-payment of Post-Retirement Benefits.*
And
- d) *said Respondent may kindly be directed to refund the wages of the applicant which they have forcibly recovered from him for the period from 5.7.2004 to 2.8.2004.*

And

May kindly pass such other order and orders which Hon'ble Court deem fit and proper for the benefit of the applicant;

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2. It is submitted at the Bar that the applicant has been paid the salary and all other reitiral dues except gratuity. Therefore, the short question that arises for consideration is with regard to the claim of the applicant for payment of gratuity for the entire period which he spent in service.

3. A reading of Annexures A/2 and A/5 would show that the reinstatement of the applicant in service was subject to the initiation of further departmental inquiry into his alleged misconduct and he was to credit the amount paid to him for his excess retention in service for 29 days w.e.f. 5.7.2004 to 2.8.2004.

4. We have heard Shri S.Mohanty, the learned counsel for the applicant and Shri R.C.Swain, the learned Additional Standing Counsel appearing for the Respondents and have also gone through the entire records produced before us.

5. The reply statement filed for and on behalf of the Respondents would show that though the order passed by the Department for putting the applicant off duty was revoked by this Tribunal and the order of the Tribunal was confirmed by the Hon'ble High Court, the applicant is not entitled for any gratuity beyond the age of superannuation, i.e., 65 years. Further, it is the stand taken in the counter that even though the applicant was paid the salary for 29 days of overstay in the service, he is not entitled to gratuity for that period. After considering the question raised, we are of the view that the applicant is entitled for gratuity as per rules for the period of his service up to the age of his superannuation and thereafter if he overstayed in service after the date of his superannuation, he is not entitled for any gratuity, though he was paid the salary for 29 days of his overstay in service, as evidenced from Annexure A/5. In the above circumstances, we dispose of this



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O.A. by directing the Respondents to consider the case of the applicant for payment of gratuity for the entire period of his service till the normal date of his retirement on superannuation and pass appropriate orders within a reasonable time, at any rate within three months from the date of receipt of copy of this order. It is to be noted that as per the rules regarding payment of gratuity, the applicant is not entitled for any gratuity for the period of his overstay in the service beyond the normal date of his superannuation. However, this observation will not stand in the way of the Department to consider the applicant's case and take a decision in the matter of payment of gratuity for the 29 days of service put in by the applicant beyond the normal date of his superannuation.

6. With the above observation, the O.A. stands disposed of. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER