

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 425
~~XXXXXX~~ and OA-437/91 1990

DATE OF DECISION 24-1-1992

The Divisional Personnel Officer, Southern Railway, Trivandrum Applicant(s) in both the cases

Smt Sumathi Dandapani Advocate for the Applicant (s)

Versus

Smt PC Annamma & another Respondent(s) in OA-425/90
Smt CT Sosa & another - respondents in OA-437/91

CORAM: M/s S Krishnamoorthy & Ajith Advocate for the Respondent(s) in OA-437/91
M/s AC Jose & Sunil Jose - Advocate for R-1 } in OA-425/90
Mr NN Sugunapalan, SCGSC - Advocate for R-2 }

The Hon'ble Mr. SP MUKERJI, VICE CHAIRMAN
&

The Hon'ble Mr. AV HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? /s
2. To be referred to the Reporter or not? NO
3. Whether their Lordships wish to see the fair copy of the Judgement? /s
4. To be circulated to all Benches of the Tribunal? /s

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

Since identical question of law and similar facts are involved in these two cases, they are being jointly considered and disposed of by this common order.

2. The Divisional Personnel Officer, Southern Railway, Trivandrum is the common applicant in these two cases. The respondent Smt PC Annamma in OA-425/90 who had been working as a Casual Khalasi under the P.W.I., Kottayam, Southern Railway filed a petition before the controlling authority under the Payment of Gratuity Act, 1972, the Assistant Labour Commissioner (Central), Trivandrum, the second respondent claiming an amount

of Rs.10,152/- as terminal gratuity alleged to be due to her for her casual service from 21.6.1963 to 31.1.1987. There was a delay in making this application. As the Divisional Personnel Officer, Trivandrum the applicant before us who was the respondent before the second respondent, did not file any statement contest^{ing} the claim, the second respondent after examining Smt Annamma and taking evidence which were produced before it held that the applicant before it was entitled to get a gratuity of Rs.11,225.77 by the impugned order at Annexure-I in OA-425/90 dated 16.11.1989. The second respondent directed the applicant to pay to the first respondent a sum of Rs.11,226/- as gratuity within one month from that date. Aggrieved by that order, the applicant has filed OA-425/90. xxxx. It is averred in the application that the second respondent had no jurisdiction to pass the impugned order as Casual Labourers employed in the Railways do not come within the purview of the Payment of Gratuity Act. It has also been averred that the amount of gratuity calculated by the second respondent is not correct. A further contention is raised that the second has gone wrong in condoning the delay without any justifiable reason.

3. The first respondent in OA-437/91 Smt CT Sosa another Casual Labourer under the applicant had filed application No. 36(19)/89/ALC/TVM dated 31.10.1990 before the second respondent herein claiming a sum of Rs.11,310/- being gratuity due to her for the period of her casual service from 21.9.1963 to 31.3.1989 on the basis of last pay drawn by her, namely,

Rs.870/- per month. The application was resisted by the Divisional Personnel Officer. By impugned order at Annexure-I dated 31.10.1990, the second respondent found that the first respondent was entitled for an amount of Rs.9,536/- as gratuity and had directed the Divisional Personnel Officer to pay to the 1st respondent a sum of Rs.9,536/- after adjusting the amount paid to her as gratuity, if any, within a period of one month from that date. It is aggrieved by the above order that the Divisional Personnel Officer has filed OA-437/91. It has been averred in the application that the order passed by the second respondent is without jurisdiction as the employees under the Railways do not come within the purview of the Payment of Gratuity Act.

4. We have heard the arguments of the learned counsel on either side and have also carefully gone through the documents.

5. The impugned orders Annexure-I in both these cases are attacked on the ground that they have been passed without jurisdiction as the employees under the Railways are not governed by the Payment of Gratuity Act, ^{are governed} but by the Gratuity Rules framed by the Railways. But in both these orders, the second respondent, the authority under the Payment of Gratuity Act has observed that the Railway Board had issued certain instructions extending the provisions of Payment of Gratuity Act to the category of Casual Labourers and that these instructions were incorporated in the Railway Board P.B.Circular No.119/86 published on page No.7 of supplement No.23/86 to fortnightly

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Gazette Vol.XXXVI, No.23 of 1.12.1986. The respondents in DA-437/91 has produced a photo copy of letter No.P(L)407/ Rules/Vol.III dated 2.7.1986 from the CPO/MADRAS to all concerned. The subject dealt with in this letter is payment of Gratuity Act, 1972 Rules framed thereunder - Application to Casual Labour on Railways. It is stated in this letter:

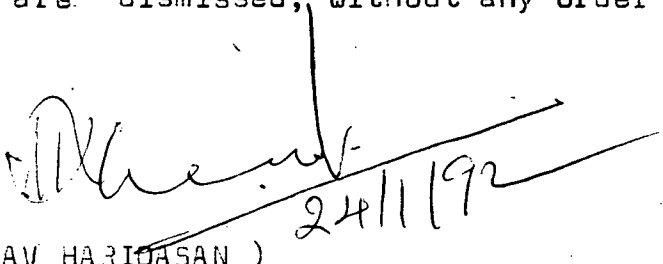
"It may be seen from Board's letter dated 26.2.86.

- (1) That the provisions of the payment of Gratuity Act, 1972 are applicable to all casual labour on Railways, whether on open line, Project or in Factory establishments..."

In the face of the above letter, it is futile for the applicant to contend that the second respondent in these cases has acted without jurisdiction in entertaining the application filed by the 1st applicant in both these cases. As the applicants were Casual Labourers, who had never been regularly absorbed in Railway Service Rules in the Railway Pension Manual or the Rules relating the Payment of Gratuity to the Railway employees did not apply to them. Therefore, the provisions of Payment of Gratuity Act must necessarily apply to them. It is on that reasoning that the Railway Board itself has in the letter cited above made it clear that the Payment of Gratuity Act should be applicable to casual labourers. Therefore the contention of the applicant that the impugned orders in both these cases are liable to be quashed as the same has been passed without jurisdiction, has only to be rejected. The further contention of the applicant in these cases that the amounts calculated by the second respondent are not correct

also has to be rejected as there is nothing on record to show that the finding on the quantum of gratuity is perverse.

6. In view of what is stated in the foregoing paragraph, we find no merit in these two applications, therefore they are dismissed, without any order as to costs.


(AV HARI DASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

trs

24-1-1992

CERTIFIED TRUE COPY
Date

SECTION OFFICER

