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DHANSAI SAHU

v.

STATE OF CHHATTISGARH & ORS.

(Civil Appeal No. 564 of 2020)

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JANUARY 21, 2020

**[A. M. KHANWILKAR AND DINESH MAHESHWARI, JJ.]**

- Payment of Gratuity Act, 1972 – s.2(e) – Issue as to whether the service rendered as daily-wager before being regularized and given the status of a regular Government servant, can be reckoned, so as to invoke the provisions of the 1972 Act after the age of superannuation and retirement as State Govt. employee – High Court held that the provisions of 1972 Act have no application to a person who holds post under the State Govt. and is governed by any other Act and in particular, the 1976 Rules – Appellant relied on the recent decision of Supreme Court in Netram Sahu dealing with similar argument by the appellant therein – Held: s.2(e) of the 1972 Act provides that if a person holds a post under the Central Govt. or a State Govt. and is governed by any other Act or by any rules providing for payment of gratuity, the provisions of the 1972 Act will have no application – Respondents are relying on the provisions of the 1976 Rules applicable to the post held by the appellant after being regularised on 01.09.08 – These Rules were not brought to the notice of Supreme Court in the case of Netram Sahu which decision is in conflict with the unreported decision dtd.16.01.09 of the coordinate Bench of Supreme Court in Teja Singh (C.A.No.292/09) – Ordinarily, the matter would have been proceeded to be decided on the construct of the relied upon Rules, but the exposition by the coordinate Bench of two Judges of Supreme Court in Teja Singh will also have to be taken note of, hence observing judicial propriety, the issue is referred to be considered by a larger Bench of three Judges – Registry to place the file before Hon'ble the Chief Justice for constitution of a larger Bench – Service Law – Chhattisgarh Civil Services (Pension) Rules, 1976 – rr. 3(i), 5, 13, 16, 43(1), 44(1) & (2) – Judicial Discipline.*

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**Referring the issue to be considered by a larger Bench of A  
three Judges, the Court**

**HELD:** 1.1 Notably, in *Netram Sahu vs. State of Chhattisgarh & Anr.* the Supreme Court had dealt with the judgment of the High Court in the case of *Netram Sahu vs. State of Chhattisgarh & Ors.* which in turn had relied on the exposition of Supreme Court in the case of *Bharat Sanchar Nigam Ltd., Jammu vs. Teja Singh* (unreported decision) and also the principle underlying the exposition in *Secretary, State of Karnataka & Ors. vs. Umadevi (3) & Ors.* However, none of the above decisions was referred to while answering the issue by this Court in *Netram Sahu*. In the case of *Teja Singh*, the coordinate Bench of two Judges of Supreme Court opined that a daily-rated Mazdoor who has been regularized but did not have qualifying service in terms of the service rules for extending retiral benefits to him, would not be entitled for payment of gratuity under the 1972 Act. The subsequent decision in *Netram Sahu* is in conflict with the said principle stated in the unreported decision of Supreme Court. Section 2(e) of the Payment of Gratuity Act, 1972, in no uncertain terms provides that if a person 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, the provisions of the 1972 Act will have no application. The respondents are relying on the provisions of the 1976 Rules applicable to the post held by the appellant after being regularised on 1.9.2008. These Rules were not brought to the notice of Supreme Court in the case of *Netram Sahu*. Ordinarily, the Court would have proceeded to decide the matter on the construct of the relied upon Rules, but as noted above, the exposition by the coordinate Bench of two Judges of this Court in the unreported decision of *Teja Singh* will also have to be taken note of and to observe judicial propriety, it is deemed appropriate to refer the issue under consideration to be considered by a larger Bench of three Judges. [Paras 4-7] [123-C-G; 124-A-D; F-G]

*Netram Sahu v. State of Chhattisgarh & Anr. (2018) 5 SCC 430 : [2018] 3 SCR 682 ; Netram Sahu v. State of Chhattisgarh & Ors. (2014) SCC OnLine Chh 159 ; Bharat Sanchar Nigam Ltd., Jammu v. Teja Singh*

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- A      **Decision of Supreme Court dtd.16.1.2009 in Civil Appeal No. 292/2009 ; Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors. (2006) 4 SCC 1 : [2006] 3 SCR 953 ; Assistant Executive Engineer CNNL v. The Deputy Labour Commissioner & Appellate Authority, Bangalore & Ors. Decision dtd. 04.09.12 in the High Court of Karnataka at Bangalore in W.P. No. 15856/2012 – referred to.**
- B      **Decision dtd. 04.09.12 in the High Court of Karnataka at Bangalore in W.P. No. 15856/2012 – referred to.**

**Case Law Reference**

C	<b>[2018] 3 SCR 682</b>	<b>referred to</b>	<b>Para 4</b>
D	<b>[2006] 3 SCR 953</b>	<b>referred to</b>	<b>Para 4</b>
CIVIL APPELLATE JURISDICTION : Civil Appeal No. 564 of 2020.			
From the Judgment and Order dated 19.09.2018 of the High Court of Chhattisgarh at Bilaspur in Writ Appeal No. 283 of 2016.			
J.P. Mishra, Shankar Divate, Advs. for the Appellant.			
Sumeer Sodhi, Ms. Simran Agrawal, Ashish Tiwari, Advs. for the Respondents.			
E	The following Order of the Court was passed		

**O R D E R**

- F      1. Leave granted.
2. The moot question involved in this appeal is: whether the service rendered as daily-wager before being regularized and given the status of a regular Government servant, can be reckoned, so as to invoke the provisions of the Payment of Gratuity Act, 1972 (for short, “the 1972 Act”) after the age of superannuation and retirement as State Government employee?
- G      3. The High Court of Chhattisgarh, Bilaspur (for short, “the High Court”) relying on the definition of “employee” in Section 2(e) of the 1972 Act, has taken the view that the provisions of the 1972 Act have no application to a person who holds a post under the State Government and is governed by any other Act and in particular, the Chhattisgarh Civil Services (Pension) Rules, 1976 (for short, “the 1976 Rules”).
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4. The appellant would, however, rely on the recent decision of this Court in *Netram Sahu vs. State of Chhattisgarh & Anr.*<sup>1</sup>, dealing with the similar argument by the appellant therein, who was appointed as a daily-wager and after working for 22 years, came to be regularized on work charge establishment but was denied gratuity, because on the day when he attained the age of superannuation, he was holding the post under the State Government. Indeed, the Court was called upon to answer the issue in identical situation, but it is obvious from the observations in paragraph 14 of the reported decision that no provision of either the 1972 Act or the 1976 Rules was brought to the notice of the Court, which would disentitle the appellant therein from claiming the gratuity or for that matter, any provision prohibiting the appellant therein from taking benefit of his long and continuous service period of 22 years which he had rendered prior to being regularised. Notably, this Court had dealt with the judgment of the High Court in the case of *Netram Sahu vs. State of Chhattisgarh & Ors.*<sup>2</sup>, which in turn had relied on the exposition of this Court in the case of *Bharat Sanchar Nigam Ltd., Jammu vs. Teja Singh*<sup>3</sup> (unreported decision) and also the principle underlying the exposition in *Secretary, State of Karnataka & Ors. vs. Umadevi (3) & Ors.*<sup>4</sup>. However, none of the above decisions has been referred to while answering the issue by this Court in *Netram Sahu* (supra @ F.N. 1).

5. In the case of *Teja Singh* (supra), the coordinate Bench of two Judges of this Court considered the claim of a person who was an employee as a daily-rated Mazdoor with a Central Government owned Corporation. He was recruited in the year 1973 and regularized with effect from 11.8.1986 and eventually superannuated on 30.8.1989. This Court was pleased to set aside the relief of gratuity given to that person by the Central Administrative Tribunal and the High Court. In other words, the coordinate Bench of this Court opined that a daily-rated Mazdoor who has been regularized but did not have qualifying service in terms of the service rules for extending retiral benefits to him, would not be entitled for payment of gratuity under the 1972 Act. In other words, the subsequent decision in *Netram Sahu* (supra @ F.N. 1) is in conflict with the said principle stated in the unreported decision of this Court.

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<sup>1</sup> (2018) 5 SCC 430 (two-Judge Bench)

<sup>2</sup> Decided on 1.8.2014 in Writ Appeal No. 240/2014 (2014 SCC OnLine Chh 159)

<sup>3</sup> Decided on 16.1.2009 in Civil Appeal No. 292/2009 (two-Judge Bench)

<sup>4</sup> (2006) 4 SCC 1

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- A        6. Reverting back to Section 2(e) of the 1972 Act, the same in no uncertain terms provides that if a person 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, the provisions of the 1972 Act will have no application. The respondents are relying on the provisions of the 1976 Rules applicable to the post held by the appellant after being regularised on 1.9.2008. The said rules provide for grant of pension and gratuity. "Gratuity" has been defined in Rule 3(i) to include "Service Gratuity" payable under sub-Rule (1) of Rule 43; "Death-cum-Retirement Gratuity" payable under sub-Rule (1) of Rule 44 and; "Residuary Gratuity" payable under sub-Rule (2) of Rule 44 of the stated Rules (the 1976 Rules). Rule 5 deals with regulations of claims of pension/gratuity or family pension, Rule 13 predicates that the service of a Government servant shall not qualify unless his duties and pay are regulated by the Government or under conditions determined by the Government and Rule 16 envisages counting of service on contract for a specified period.
- B        Obviously, these Rules were not brought to the notice of this Court in the case of *Netram Sahu* (supra @ F.N. 1). We may also notice the decision of the High Court of Karnataka at Bangalore in the case of *Assistant Executive Engineer CNNL vs. The Deputy Labour Commissioner & Appellate Authority, Bangalore & Ors.*<sup>5</sup>, which has taken the view that where provision for payment of gratuity is made in the service Rules applicable to the person holding a post, his claim for gratuity must be decided on the basis of such Rules and not by invoking the provisions of the 1972 Act.

7. Ordinarily, we would have proceeded to decide the matter on the construct of the relied upon Rules, but as noted above, the exposition by the coordinate Bench of two Judges of this Court in the unreported decision of *Teja Singh* (supra) will also have to be taken note of and to observe judicial propriety, we deem it appropriate to refer the issue under consideration to be considered by a larger Bench of three Judges. Accordingly, the Registry is directed to place the file of the present matter before Hon'ble the Chief Justice for constitution of a larger Bench.

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Divya Pandey

Matter referred to larger Bench.

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<sup>5</sup> Decided on 4.9.2012 in W.P. No. 15856/2012 and connected matters