IN THE HIGH COURT OF JHARKHAND AT RANCHI
L.P.A No.145 of 2024

Signode India Limited (A company incorporated under Companies Act, 1956), having its Registered Office at Signode India Limited, 3rd Floor, Jyothi Majestic, 8-2-120/84, Road No. 02, Banjara Hills, PO & PS Banjara Hills, District-Hyderabad, PIN-500034, (Telangana) and having its Branch Office at Bhojania Palace, NH-33, PO & Ps Mango, Town Jamshedpur, District East Singhbhum, through its authorized signatory cum Manager- Human Resource, namely, Vidhu Shekhar, aged bout 36 years, son of Kishore Kumar, resident of Semra Post, Jita Chapra, Chhapra Horil, Muzaffarpur, PO & PS Muzaffarpur District-Muzaffarpur, PIN-843127 (Bihar) …. … Appellant

Versus

1. The State of Jharkhand, through Labour Commissioner, Jharkhand-cum-Appellate Authority, having its office at Nepal House, Doranda, PO & PS: Doranda, District Ranchi, PIN 834002 (Jharkhand).
2. The Deputy Labour Commissioner-cum-Controlling Authority, Kolhan Division, Jamshedpur, having its office at New Sitaram Dera, Town Jamshedpur, PO& PS: Golmuri, District: East Singhbhum, Jharkhand.
3. Suresh Kumar Jha, son of late Dr. Markandey Jha, resident of 831, Udaigiri, Vijaya Heritage, PO & PS: Kdama, Town Jamshedpur, District East Singhbhum. … … Respondents

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CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Appellant(s) : Mr. Sumeet Gadodia, Advocate;
Ms. Shruti Shekhar, Advocate
For the Resp. No.3 : Mr. Mantra Narayan Thakur, Advocate;
Ms. Sunita Kumari, Advocate
For the Resp.-State :Mr. Ashwini Bhushan, AC to Sr.SC-II

CAV On: 09.12.2025 **PRONOUNCED ON:08 .01.2026**

[Per: Sujit Narayan Prasad J.]

1. The present Appeal has been filed under Clause-10 of the Letters Patent against the order dated 19.02.2024 passed by the learned Single Judge in W.P.(S) No. 3244 of 2023, whereby and whereunder, the learned Single Judge while dismissing the writ petition filed by the petitioner (appellant herein) had not interfered with the order dated 18.4.2019 passed by the respondent no.2 in Case No. GA-3/2017 and

order contained in Memo No. 732/Ranchi, dated 19.4.2023 passed by Labour Commissioner, Jharkhand-cum-Appellate Authority under payment of Gratuity Act, 1972 [in short, Act] in Appeal Case No. P.G.-5 of 2019 and has held that the respondent no.3 is entitled for claim of gratuity under the Payment of Gratuity Act, 1972.

Factual Matrix

2. The brief facts of the case as per the pleadings made in the writ petition as well as impugned order needs to refer herein which reads as under:

(I) Petitioner (appellant herein) is a Company incorporated under the Companies Act, 1956 and is manufacturer and supplier of the industrial packaging, consumables, equipment and services to its customers across the country and its operations are spread across geographical territory of India.

(II) The case of the petitioner is that in view of agreement dated 04.11.2000, the respondent no. 3 was engaged as a Retainer by the Jamshedpur Unit of the Company with effect from 15.11.2000 for which consultation fee of Rs.30,000/- was agreed to be paid to him. The agreement was initially valid for a period of five years from 15.11.2000.

(III) The said agreement was renewed from time to time and the last extension was granted to him vide extension letter dated 23.08.2016. The respondent no.3 worked in the petitioner-Company for the period from 23.11.2000 to 31.10.2016 as a

Retainer and for which service certificate dated 05.01.2017 was also issued by the Company.

(IV) The respondent no.3 made an application in Form-1 under Payment of Gratuity Rule, 1972 for payment of full gratuity, which was turned down by the Company holding that the respondent no. 3 is not entitled to any other payments other than monthly Retainer Fee as per terms and conditions of the agreement.

(V) Thereafter, an application was also filed by the respondent no.3 in Form-N under Gratuity Rules for payment of gratuity before the Deputy Commissioner-cum-Controlling Authority, Kolhan Division, Jamshedpur, which was registered as Case No. GA-3/2017.

(VI) The Deputy Labour Commissioner, vide his order dated 18.04.2019, allowed the case no. GA-3/2017 in favour of the respondent no. 3 holding therein that he is entitled for payment of gratuity to the tune of Rs.5,16,928/- under the Payment of Gratuity Act, 1972.

(VII) Aggrieved by the same, an Appeal being Appeal Case No. PG-05/2019 was filed by the petitioner (appellant herein) before the Labour Commissioner, Jharkhand-cum-Appellate Authority. The Appeal was also rejected, affirming the earlier order dated 18.04.2019 passed in Case No. GA-03/2017 with an order for payment of gratuity with simple interest at the rate of 10%.

(VIII) Being aggrieved by the order dated 18.04.2019 and order dated 19.4.2023 petitioner has preferred writ petition being W.P.(S) No. 3244 of 2023, but the same was dismissed by the learned writ Court, against which the present appeal has been filed.

3. It is evident from the factual aspect that the respondent no.3 being aggrieved with the conduct of the appellant-management in not making payment of gratuity has filed an application being case No. GA-3/2017 which was decided on 18.4.2019 by the authority concerned wherein it has been held that the respondent no.3 is entitled for payment of full gratuity under the provision of section 4(2) of the Payment of Gratuity Act, 1972,by directing the appellant-management to make payment of an amount of Rs. 5,16,928/-. Against the same, the appellant-management has preferred an Appeal before the appellate authority being Appeal Case No. PG-05/2019which was also rejected vide order dated19.04.2023.

4. Both the orders passed by the controlling authority as well as appellate authority have been assailed by the appellant-management by filing writ petition being WP(S) No. 3244 of 2023.

5. The learned Single Judge has refused to interfere with the orders passed by both the authorities by taking into consideration the provision of section 2(e) of the Payment of Gratuity Act, 1972 as also section 4 thereof by holding that although the respondent no.3 was employed as Retainer but taking into consideration the nature of work which was being discharged by him, he should be considered as an employee.

6. The dismissal of the said writ petition is the subject matter of the present appeal.

7. **<u>Arguments advanced on behalf of the appellant/writ petitioner</u>:**

The learned counsel appearing for the appellant has taken following grounds in assailing the impugned judgment:

(i) The learned Single Judge has not appreciated the fact that the authority who has decided the issue by directing to make payment of gratuity was not competent enough to do the same in view of the provision of section 2 (a)(i)(b)of the Payment of Gratuity Act, 1972 in view of the fact that the appellant-management is having branches across the country and due to implication of section 2(a)(i)(b) the appropriate authority for determination of the entitlement of the respondent no.3 for gratuity will be the Central Government but herein the State Government has decided the issue being the competent authority.

(ii) It has been contended that that there is no master and servant relationship between appellant and the respondent no.3 as the respondent no. 3 worked as a Retainer under the contract and the agreement was initially valid for a period of five years only

(iii)The learned Single Judge has also not appreciated the fact that the respondent no.3 was appointed as Retainer to discharge duty on specific terms and conditions along with the nature of duty referred therein and, as such, holding the respondent no.3 as employee within the meaning of section 2(e) of the Act 1972 cannot be said to be just and proper taking into consideration the

nature of work assigned to him.

(iv) The learned counsel for the appellant has relied upon the following judgments passed by the Hon'ble Apex Court, in support of his arguments:

(a) Electronics Corpn. Of India Ltd. vs. Electronics Corpn. of India Service Engineers Union reported in (2006)7 SC 330;

(b) Indian Medical Association vs.V.P. Shantha and others reported in (1995) 6 SCC 651;

(b) Jeewanlal Ltd. and others vs. Appellate Authority and others reported in (1984) 4 SCC 356;

(c) Yeswant Deorao Deshmukh vs. Walchand Ramchand Kothari reported in 1950 SCC 766.

Arguments advanced on behalf of the Respondent No.3:

8. The learned counsel for the respondent no.3 has taken the following grounds by defending the impugned order:

(i) The branch of appellant-management at Jamshedpur is registered under the Jharkhand Shops and Establishment Act and, as such, the appropriate authority to decide the issue will be the authority appointed by the State Government and, therefore, the Deputy Labour Commissioner, the functionary of the State Government, has exercised the jurisdiction by deciding the issue regarding entitlement of the respondent no.3 for payment of gratuity under Payment of Gratuity Act, hence, it is incorrect on the part of the appellant-management that the authority of the State Government is not competent to decide the issue.

(ii) The respondent no. 3 was performing his duty as a Works Manager, which is evident from the order of the controlling authority and that of the appellate authority. The said facts are admitted and cannot be disputed by the Company. The authority holds full jurisdiction and the order is in consonance with the settled rules and laws which have been elaborately dealt with by the appellate authority and the same was not interfered with by the kerned single Judge.

(iii) The contention which has been raised by the learned counsel for the appellant that the respondent no.3 was appointed on the post of "Retainer" and he was to discharge duty as per certain terms and conditions stipulated in the contract/agreement is absolutely incorrect as if the nature of work which has been assigned to the respondent no.3 will be taken into consideration which has also been considered by the authority concerned while deciding the issue and in coming to the conclusion that the respondent no.3 was employee within the meaning of Section 2(e) of the Act, therefore, the authority on consideration of the nature of work of the respondent no.3 has come to the conclusion that the respondent no.3 is entitled for gratuity under the fold of the Act, 1972 which has also been considered by the learned Single Judge and, as such the order of learned Single Judge not requires any interference.

Analysis:

9. Heard the learned counsel appearing for the parties and gone through

the findings recorded by the learned Single Judge in the impugned order as also the pleadings and other affidavits filed by the parties.

10. In the backdrop of the aforesaid factual aspect and also on the basis of the arguments advanced on behalf of the learned counsel for the parties the following issues are being framed for consideration:

(i) Whether the branch of the appellant management who has been registered under Jharkhand Shops and Establishment Act to be governed for the purpose of consideration of entitlement of payment of gratuity under Payment of Gratuity Act by the authority being functionary of State Government or the Central Government merely because the branches of the appellant management are also in the different States.

(ii) Whether merely on the basis of terms and conditions of the contract of appointment or contrary to that the duty has been assigned to the respondent no.3 showing the respondent no.3 under the fold of the employee will it be just and proper to negate the entitlement of gratuity within the meaning of Payment of Gratuity Act, 1972.

11. Both the aforesaid issues are being taken up separately.

Issue No.1

12. This court in order to decide the aforesaid issue reiterates the pleadings made in the plaint wherein the appellant-management has referred the provision of section 2(a), the same is being referred herein under:

"2. 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"*

13. Thus from aforesaid it is evident that Section 2 (a) (i)(b) of the Act 1972 stipulates that in a case where the management is having branches across the country then the appropriate authority would be the functionary of Central Government.

14. Mr. Sumeet Gadodia, the learned counsel appearing for the appellant-management in order to strengthen his argument in the aforesaid context has relied upon the judgment rendered by the Hon'ble PEX Court in the case of *"**Jeewanlal Ltd. and others vs. Appellate Authority and others"*** reported in***(1984) 4 SCC 356.***

15. While on the other hand, Mr. Mantra Narayan Thakur, the learned counsel appearing for the respondent no.3 has submitted by taking the ground that since the appellant-management is also registered under Jharkhand Shops and Establishment Act and, as such, the functionary of the State Government will be the competent authority to decide the payment of gratuity within the meaning of Payment of Gratuity Act.

16. This Court needs to consider the judgment passed by the Hon'ble Apex Court in "***Jeewanlal Ltd. and others"*** *(supra)***,** relied upon by Mr. Gadodia, the learned counsel appearing for the appellant-management, particularly paragraph no.15 thereof, but before that the factual aspect of the said case needs to be referred herein.

17. In the aforesaid case the respondent ceased to be an employee on attaining the age of superannuation after completing 35 years of

service. Since he was entitled to payment of gratuity under this Act, the appellant calculated the amount of gratuity payable to him under sub-section (2) of Section 4 on the basis that “fifteen days' wages” meant half of the monthly wages last drawn by him i.e. for 13 working days, there being 26 working days in a month. Being dissatisfied with such payment, the respondent made a claim under sub-section (1) of Section 7 of the Act before the Controlling Authority, Madras for determination of the amount of gratuity payable to him. He made a demand for payment of an additional sum as gratuity on the ground that his daily wages should be ascertained on the basis of what he actually got for 26 working days and the amount of “fifteen days' wages” should be calculated accordingly, not by just taking half of his wages for a month of 30 days or fixing his daily wages by dividing his monthly wages by 30. The appellant contested the claim contending that the words “fifteen days' wages” occurring in sub-section (2) of Section 4 of the Act only meant half a month's wages and since a month consisted of 26 working days, the amount of gratuity was rightly arrived at by multiplying the daily wages by “thirteen”.

18. The Controlling Authority by its order dated September 23, 1978 held that for the purposes of calculating “fifteen days' wages” it was necessary to ascertain one day's wage and since a month consists of 26 working days, the amount of gratuity should be calculated accordingly i.e. by dividing the monthly wages last drawn by 26 multiplied by ‘fifteen’ and not by just taking half of his wages for a

month of 30 days or by dividing such monthly wages by 30. It accordingly directed the appellant to pay Rs. 6069.00 as gratuity under sub-section (1) of Section 4 of the Act. On appeal, the Appellate Authority, Madras by its order dated July 12, 1976 held that there was an error in the mode of computation of the amount of gratuity payable to the respondent. According to it, the gratuity payable to the respondent would have to be calculated at half of his monthly rate of wages i.e. wages he would have earned in a consecutive period of 15 days and his daily wages had to be multiplied by "thirteen" and not by "fifteen" for every completed year of service or part thereof not exceeding six months. It accordingly reduced the amount of gratuity payable to Rs 5259.80 p.

19. Since, the Appellate Authority in several other cases took a view to the contrary and as a result of conflicting orders passed by the Appellate Authority, the employers in some of these cases and the employees in others had to file petitions in the concerned High Court under Article 226 of the Constitution and they have been disposed of in the judgment under appeal. The High Court following the decision of this Court in ***Shri Digvijay Woollen Mills Ltd.*** **v.** ***Mahendra Prataprai Buch*** **[(1980) 4 SCC 106 : 1980 SCC (L&S) 513 : (1981) 1 SCR 64 : (1980) 2 LLJ 252]** and that of the **Bombay High Court in** ***Lakshmi Vishnu Textile Mills*** **v.*P.S. Mavlankar*** **[(1979) 1 LLJ 443** (Bom)] held that in order to determine "fifteen days' wages", of a monthly-rated employee under sub-section (2) of Section 4 of the Act, it was necessary to determine one day's wage last drawn by him

and then multiply the same "fifteen" times, and the resultant sum had to be multiplied by twenty to arrive at the maximum amount of gratuity payable under sub-section (3) of Section 4 of the Act. It accordingly restored the orders of the Controlling Authority.

20. Against the said order of the High Court appeals were preferred before the Hon'ble Apex Court wherein one of the issues was jurisdiction of the controlling authority which is also the issue in the instant case.

21. The Hon'ble Apex Court in paragraph 15 of the said judgment has observed which reads as under :

> ***15.*** *We do not think it necessary to deal at length the last and third question raised in some of these appeals viz., the objection to the jurisdiction of the Controlling Authority under Section 3 of the Act to entertain the claim against some of the appellants. It is said that Messrs Jeewanlal (1929) Ltd. is an all-India concern having its branches in more than one State and therefore the "appropriate Government" within the meaning of Section 2(a)(1)(b) of the Act in relation to them is the Central Government for purposes of Section 3. The appropriate Government is the Central Government in relation to an establishment belonging to or under the control of the Central Government or having branches in more than one State or of a factory belonging to, or under the control of the Central Government or in the case of a major port, mine, oilfield, or railway company. Section 2(a)(i) of the Act reads as follows:*
>
> *"2. 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;"*

It would appear that the definition of appropriate Government in Section 2(a)(i) in relation to an establishment makes a distinction between establishments and factories. In relation to an establishment belonging to, or under the control of, the Central Government and of a factory belonging to, or under the control of, the Central Government, the appropriate Government is the Central Government. But the Central Government is the appropriate Government only in relation to an establishment having branches in more than one State. There is no like provision made in relation to such an establishment having factories in different States. We feel that the point relating to the jurisdiction of the Controlling Authority under Section 3 of the Act does not really arise. It appears that Messrs Jeewanlal (1929) Ltd. have their registered and head office at Calcutta and branch offices and factories at Calcutta, Bombay and Madras and sales offices at Delhi, Hyderabad and Cochin. It has also two factories in Madras viz. Shree Ganeshar Aluminium Works and Messrs Mysore Premier Metal Factory. It employs about 300 members of clerical staff at the head office and its branch offices throughout the country as well as in its two factories and employs about 1300 workmen in its factories at Calcutta, Bombay and Madras. We are inclined to the view that the Controlling Authority had jurisdiction to entertain the claim of an employee working in an office attached to a factory as such an office would be an adjunct of the factory but that is not the question before us. The Controlling Authority has in fact, confined the adjudication of claims in relation to workmen who were employed at the two factories at Madras but declined to entertain the claims of employees who were working either at the branch office at Madras or at the office attached to the factories in question. That being so, the contention relating to jurisdiction of the Controlling Authority under Section 3 of the Act must fail."

22. It is evident that the Hon'ble Apex Court has taken into consideration the definition of appropriate Government as stipulated in Section 2(*a*)(*i*) has observed that the Central Government is the appropriate Government only in relation to an establishment having branches in more than one State. There is no like provision made in relation to such an establishment having factories in different States. It has further been observed that it appears that Messrs Jeewanlal

(1929) Ltd. have their registered and head office at Calcutta and branch offices and factories at Calcutta, Bombay and Madras and sales offices at Delhi, Hyderabad and Cochin. It has also two factories in Madras viz. Shree Ganeshar Aluminium Works and Messrs Mysore Premier Metal Factory. It employs about 300 members of clerical staff at the head office and its branch offices throughout the country as well as in its two factories and employs about 1300 workmen in its factories at Calcutta, Bombay and Madras.

23. Taking into consideration the aforesaid fact the Hon'ble Apex Court has observed that the Controlling Authority had jurisdiction to entertain the claim of an employee working in an office attached to a factory as such an office would be an adjunct of the factory and the Controlling Authority has in fact, confined the adjudication of claims in relation to workmen who were employed at the two factories at Madras but declined to entertain the claims of employees who were working either at the branch office at Madras or at the office attached to the factories in question.

24. Thus, from the aforesaid may be inferred that if the posting has been made in two different branches of the office situated in two different States, then certainly the Central Government would be the appropriate authority.

25. Herein, the facts of the present case is not similar to that of the aforesaid case upon which the reliance has been placed, rather, here it is admitted by the learned counsel for the appellant that the respondent no.3 was posted in Jamshedpur and remained there for

sixteen years having not been transferred to any other places.

26. This Court, therefore, of the view that in the facts of the present case the reference which has been made by the Hon'ble Apex Court at paragraph no.15 of the said judgment is not applicable for aiding the appellant rather the Hon'ble Apex Court has clarifies that posting in one place and even though in the branches at adjacent places, then the appropriate authority would be the authority whose office is adjunct to the office of the factory concerned.

27. Here in the present case the respondent no.3 was never posted in different branches situated in different States. Even on the basis of the consideration so made by the Hon'ble Apex Court in paragraph no. 15 of the aforesaid judgment, this court is of the view that merely because the branches of the management company situated in different States it will not deprive the jurisdiction of the State functionary and further the fact about the registration of the management appellant under the Jharkhand Shops and Establishment Act is not in dispute.

28. This Court by taking into consideration the factual aspect of the present case as well as purport of the Jharkhand Shops and Establishment Act is of the view that herein for all particular purposes including the payment of gratuity is to be looked into by the State appointed authority.

29. Such observation is being made also on the basis of the principle that the Act 1972 is meant for the welfare of the workmen and the same is to be taken into consideration.

30. It needs to refer herein that the Payment of Gratuity Act, 1972 is enacted to introduce a scheme for payment of gratuity for certain industrial and commercial establishments, as a measure of social security. It has now been universally recognized that all persons in society need protection against loss of income due to unemployment arising out of incapacity to work due to invalidity, old age etc. For wage-earning population, security of income, when the worker becomes old or infirm, is of consequential importance. The provisions of social security measures, retiral benefits like gratuity, provident fund and pension (known as the triple-benefits) are of special importance.

31. It also requires to refer herein that The Payment of Gratuity Act was enacted in the year 1972 to provide a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shop or other establishments and for matters connected therewith and incidental thereto. It is a piece of social welfare legislation and deals with the payment of gratuity which is a kind of retiral benefit like pension, provident fund etc. Gratuity in its etymological sense is a gift, especially for services rendered, or return for favours received. The provisions contained in the Act are in the nature of social security measures to wage-earning population in industries, factories and establishments.

32. In the case of ***Beed District Central Coop. Bank Ltd. v. State of Maharashtra***reported in ***(2006) 8 SCC 514***, the Hon'ble Apex Court held that the Payment of Gratuity Act is a beneficial statute. When

two views are possible, having regard to the purpose the Act seeks to achieve being a social welfare legislation, it may be construed in favour of the workman.

33. Further in**M.C. Chamaraju v. Hind Nippon Rural Industrial (P) Ltd, (2007) 8 SCC 501** the Hon'ble Apex Court held that the Payment of Gratuity Act has been enacted with a view to grant benefit to workers, a "weaker section" in the industrial adjudicatory process. In interpreting the provisions of such beneficial legislation therefore liberal view should be taken, for ready reference the relevant paragraph of the aforesaid order is being quoted as under:

> ***"15. <u>There is another aspect also which is relevant. The Act has been enacted with a view to grant benefit to workers, a "weaker section" in industrial adjudicatory process. In interpreting the provisions of such beneficial legislation, therefore, liberal view should be taken.</u>*** *A benefit has been extended by the authorities under the Act to the workman by recording a finding that the applicant (the appellant herein) had completed requisite service of five years to be eligible to get gratuity. In that case, even if another view was possible, the Division Bench should not have set aside the findings recorded by the authorities under the Act and confirmed by a Single Judge by allowing the appeal of the employer."*

34. Same view has been reiterated in the case of ***Poonam Devi v. Oriental Insurance Co. Ltd, (2020) 4 SCC 55*** where the Workmen's Compensation Act, 1923 (now christened as "the Employee's Compensation Act, 1923") was involved, the Hon'ble Apex Court held that it was a piece of socially beneficial legislation and the provisions will therefore have to be interpreted in a manner to advance the purpose of the legislation, rather than to stultify it.

35. In the case of ***Meeta Sahai v. State of Bihar (2019) 20 SCC 17*** the Hon'ble Apex Court held that it is the responsibility of the Courts to interpret the text in a manner which eliminates any element of hardship, inconvenience, injustice, absurdity or anomaly. Legislation must further its objectives and not create any confusion or friction in the system. If the ordinary meaning of the text of such law is non-conducive for the objects sought to be achieved, it must be interpreted accordingly to remedy such deficiency. The Hon'ble Apex Court reiterated that it may be necessary to resort to purposive interpretation of the provisions of the Statute in the light of its objectives.

36. In the case of ***Hira Singh v. Union of India (2020) 20 SCC 272*** referring to its earlier judgment in the case of ***Directorate of Enforcement v. Deepak Mahajan {(1994) 3 SCC 440}*** the Hon'ble Apex Court observed that every law is designed to further ends of justice but not to frustrate on the mere technicalities. It further observed that to winch up the legislative intent, it is permissible for Courts to take into account the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the legislature inane. The Hon'ble Apex Court further observed that in given circumstances, it is permissible for Courts to have functional approaches and look into the legislative intention and sometimes it may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the

purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and the legislative exercise and its scope and object may not become futile.

37. From the above discussion, it is clear that the Gratuity Act is a beneficial legislation. It is to be construed in favour of the employees. It would be erroneous to say that one cannot go beyond the scheme of gratuity contemplated under the Gratuity Act. It is also clear that the Gratuity Act is not intended to do away with other retiral benefits already existing and available to the employees. It is to confer extra benefits. This is a social piece of legislation and the Court has to construe the provision to help in achieving the object of the legislation.

38. On the basis of the discussion made hereinabove this Court is of the view that the Deputy Labour Commissioner while acting as controlling authority in deciding the entitlement of the respondent no.3 cannot be said to suffer from jurisdictional error.

39. Accordingly, the issue no.1 has been answered.

Issue No.2

40. The second issue is whether, the nature of the relationship between the employer and employee depends solely on the designation or on the work carried out and the role played by the employee concerned.

41. At this juncture it would be apt to refer herein Section 2(e), 2(f) and 2(s) of the Payment of Gratuity Act 1972, which define the expressions ‘employee’, ‘employer’, and ‘wages’ respectively, which read as under:

(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;]

(f) "employer" means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop—

(i) belonging to, or under the control of the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,

(ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority,

(iii)in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person;

(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.

42. Thus as per section 2 (e) of the Act 1972 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 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.

43. Herein it is admitted fact that respondent no. 3 has worked with the appellant management about 16 years. However, the appellant has contended that respondent no.3 has worked under the capacity of retainer and the post of retainer does not come under the purview of the employee, therefore he is not entitled for gratuity.

44. But from the perusal of record and also from perusal of order dated 18.4.2019 passed by the respondent no.2 in Case No. GA-3/2017 and order dated 19.4.2023 passed by Labour Commissioner, Jharkhand-cum-Appellate Authority, it is evident that respondent no. 3 was engaged as regular employee.

45. The relevant part of the order dated 18.4.2019 passed by the respondent no.2 in Case No. GA-3/2017 is being quoted herein which reads as under:

उपादान भुगतान अधिनियम, 1972 की धारा-4(2) में यह उल्लेख नहीं है क रिटेमेरशीप/ कॉन्ट्रैक्ट पर (नियुक्त) कर्मचारी/ पदाधिकारी को उपादान भुगतान से वंचित किया जा सकता है।साय ही. वादी द्वारा समर्पित माननीय उच्चतम न्यायालय एवं अन्य न्यायालयों द्वारा पारित आदेश की प्रति में उल्लेखित है कि कर्मचारी की नियुक्ति पत्र में उल्लेखित शब्द कीआधार पर नहीं, बल्कि उनसे लिए जाने वाले कार्य क आधार पर किसी व्यक्ति के पद की स्थिति निर्भर करती है।चूंकि गदी को प्रदत गेट पास में उनका पन्दनाम "सिनियर एक्जीक्यूटिव वक्त्त दर्शाया गयाहै. ऐसी स्थिति में मेरा मानना है कि श्री सुरेश कुमार आ उपादान के कदार बनतेहैं।

वाद के सुनवाई के दौरान यह स्पष्टहु आहै कि वादी का कार्य में योगदान के समय वेतन सयमा30.000 प्रति माह रहा है, तथा समय- समय प्रतिवादी द्वारा बादी को वेतन वृद्धि दी गई है।इस प्रकार स्पष्ट है कि वादी का अन्तिम वेतन रूपया50,000 प्रति माह था।

उपरोक्त सभी तथ्यों, साब्य एवं प्रदशों के आधार पर अधीस्ताक्षरी का निष्कर्ष है कि वादी की एक रिटेनर के रूप में एग्रिमेन्ट कराया गया, परन्तु प्रतिवादी द्वारा उन से रिटेनर के लिए कार्य परिभाषित नहीं कराया गमा बन्कएक नियमित कर्मचारी के रूप में कार्य कराया गया है अत वादी उपदान के हकदार हैं।चूंकि बादीक के अंतिम पारिश्रमिक की राशि पर प्रतिवादी द्वारा कोई आपत्ति नहीं जताया गया है. अत उनके अंतिम पारिश्रमिक के आधार पर उपादान की राशि की गणना की जातीहै, जो निम्नवतहै-

वादी का कुल सेवा अवधि15 वर्ष11 माह, ०दिन अर्थात, 16 वर्षउ पादान की राशि(56,000+26 X 15) X 16 = 5,16,928 रूपये(पाँच लाख सोलह हजार नौ सौ अट्ठाईस रूपये मात्र)

एथ अधिनियम की धारा-7(3-A) के अनुसार चूक अवधि के लिए मूल उपदान की राशि पर8% साधारण व्याज के दर से साथ उक्त राशि आदेश निर्गत की तिथि से30 दिनों के अंदर भुगतान हेतु निर्देशित किया जाता है, साथ ही इस वाद को निष्पादित किया जाता है।आज दिनांक- 18/4/19 को मेरे हस्ताक्षर एवं मुहर सहित निर्णय दिया गया।पक्षों के सूचितकरें।

46. The aforesaid order has been affirmed by the appellate authority vide order dated 19.4.2023 passed by Labour Commissioner, Jharkhand-cum-Appellate Authority, the relevant paragraph is being quoted as under:

वाद संख्या- जी०ए० 03/2017 में उपश्रमायुक्त जमशेदपुर-सह-नियंत्री प्राधिकार उपदान संदाय अधिनियम, 1972 द्वारा दिया गया निर्णय निम्नवत है-

1. वादी(श्री सुरेश कुमार झा) को एक रिटेनर के रूप मेंAgreement कराया

गया परन्तु प्रतिवादी (Signode India Limited) द्वारा उनसे रिटेनर के लिए कार्य परिभाषित नहीं कराया गया, बल्कि एक नियमित कर्मचारी के रूप में कार्य कराया गया है, अत वादी उपदान के हकदार है।

2. अधिनियम अन्तर्गत गणना के आधार पर बादी के उपदान की राशि ₹5,16,928 है।जिस पर चूक अवधि के लिए मूल उपदान की राशि पर ४% साधारण ब्याज देय है।

निर्णय

संबंधित प्रतिष्ठान का पजीकरण झारखण्ड दुकान एवं प्रतिष्ठान अधिनियम के तहत्त करवाया गया है।अधिनियम की धारा 1 (3) (b) के तहत भी किसी प्रतिष्ठान' को राज्य केअन्तर्गत माना गया है. उक्त धारा निम्नवतहै-

1. Short title, extent, application and commencement.-

(3) It shall apply to-

(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.

सक्षम नियत्री प्राधिकार का विषय वाद संख्या- जी०ए० 03/2017 की सुनवाई में भी नहीं उठाया गया है अतः अपीलवाद में इस बिन्दु पर अभि निर्णयण समीचीन नहीहै।

माननीय सर्वोच्च न्यायालय द्वारा S.K. Maini vrs Corona Sahu Company Limited (1994 A.I.R. 1984) में दिये गये निर्णय केअनुसार किसी व्यक्ति का पदनामे नहीं बल्कि उसक कार्यकारिता & va Employmem Letter & Chatuse 7/में वर्णित कार्य की शर्त के अनुसार श्री सुरेश कुमार झा पूर्ण कालिक रूप से Signode India Ltd. के अधीन कार्य कर रहे थे।यदि उनके कार्य की प्रकृति एक Retainer के रुप में केवल परामर्शदात्री की होती तो अपने कार्यकाल केदौरान वे किसी अन्य नियोजक के अधीन/साथ भी कार्य कर सकते थे।

Employment Letter के Clause 7 में किसी अन्य प्रकार के Payment नहीं दिया जाना उल्लेखित है किन्तु इससे उपदान सदाय अधिनियम, 1972 का कार्यान्वियन प्रभावित नहीं होता है।यह एक वैधानिक अधिकार है जिससे किसी व्यक्ति को किसी Agreement के माध्यम से वचित नहीं किया जा सकता है।

अतः अपील वाद संख्या पी०जी० 05/2019 को खारिज किया जाता है।साथ ही प्रतिवादी को चूक अवधि के लिए उपदान की राशि पर 10% साधारण ब्याज की दर से भुगतान करने का निर्देश दिया जाता है।आज दिनांक- 17-04-

23 को मेरे हस्ताक्षर एवं मुहर सहित निर्णय दिया गया।उभय पक्ष को सूचित किया जाय।

47. Thus, from the aforesaid orders, it is evident that the appellate authority as well as competent authority has taken into consideration that the respondent no.3 worked as Senior Executive Works in contract work of the appellant company in M/S Tisco limited therefore he entitled for payment of Gratuity. Further it has been taken into consideration that the word used in the appointment letter does not decide the status of employee rather in Industrial Organization the work performed by him decides his status therein.

48. The Hon'ble Apex Court in the case of ***Srinibas Goradia vs. Arvind Kumar Sahu & Ors 2025 INSC 1467*** while appreciating the status of an employee as a "workman" under Section 2(s) of the Industrial Disputes Act, 1947, has observed that status must be decided by applying the dominant nature test, which focuses on the principal duties performed and not on the designation assigned by the employer, for ready reference the relevant paragraph of the aforesaid judgment is being quoted herein which reads as under:

5.7 In the modern-day nature of management, in every industrial organisation the employees of a particular class may be required and also expected to do the work which may have blend of supervision with clerical or manual duties. An incidental performance of supervisory work and vice versa may not become decisive to bring an employee within the meaning of 'workmen' or to get him out of the purview. Nature of duties to be performed by an employee, more often than not would overlap therefore real criteria to judge whether a 'workman' within the meaning of Section 2(S) of the Act is the test

what is called 'dominant nature test'. It is the main nature of work assigned to the employee would become decisive.

In all such cases, the decisive aspect considered is whether an employee is a "workman" or not, is the substantial, essential and principal nature of work for which the employee is engaged. In Burmah Shell Oil Storage and Distribution Company of India Limited, this Court, after referring to Ananda Bazar Patrika, referred to, with approval, certain English decisions which also advocated and emphasized the criteria of substantial nature of employment. In Re Dairymen's Foremen and Re Tailor's Cutters16, it was observed that although the employees might perform manual labour, the question was whether that was the real substantial employment for which they were engaged or whether it was incidental or accessory to it. It was observed, "the actual labour of cutting out cloth might be manual labour, but the position he really occupied was a manager of a business department. His duties therefore substantially were not those involving manual labour and he was not workman within the Act".

6. Therefore, the acid test is, what may be called the dominant nature test to determine whether the employee is a "workman" or not. It is the dominant nature of work or the main employment to which the employee is engaged, that would make or unmake the status as a "workman" for such employee. This test is based on the realistic consideration of the principal nature of work performed by the employee. On the other hand, incidental trapping of supervisory work does not make an employee the supervisor. Even in manual duties, certain supervisory work would be in-built, but it cannot be a ground to exclude the employee from the definition of workman. What is to be applied is the acid test of dominant nature. Supervisor may have to perform clerical work attendant to his principal job.

6.1 Furthermore, the designation or nomenclature is also not the

guiding consideration. One has to look and assess only the prominent and dominant nature of work in which the employee is engaged by the employer.designations and nomenclatures are often designed by the management to suit itself and to embellish the post with high sounding names such as manager or supervisor or executive, as in the present case. When an employee so designated substantially and essentially works manually without any supervisory domain, he cannot be termed as supervisor, to put him out of the purview of the definition in Section 2(s) of the Act. Such an employee, notwithstanding the designation given to him, would be a "workman" for the reason that the substantial and essential nature of duties assigned to him and performed by him, are manual and non-supervisory, who possesses no command over other."

49. Thus, from the aforesaid it is evident that the dominant nature of work or the main employment to which the employee is engaged, that would make or unmake the status as a 'workman' for such employee.

50. Further it has also been taken into consideration by the appellate authority as well as by the competent authority that the retainers are free to work with many organizations at a time but this respondent (respondent no.3) was prohibited to work with any other organization during the entire tenure of his appointment.

51. Further, the question of appointment of the respondent no.3 on the post of Retainer based upon the terms and conditions of the contract/agreement has been raised by the learned counsel for the appellant.

52. In order to appreciate the aforesaid issue this Court has gone through the same from where it is evident that the appellant has been

conferred with the work as per terms of the contract/agreement was to give advice but as it has come on record that in addition to the consultancy work, the day to day work was also being taken by him**,** which has been taken note by the Deputy Labour Commissioner in the order dated 18.4.2019 which has been affirmed in the order dated 19.4.2023 passed by the appellate authority. The fact about taking work in addition to the consultancy work has not been disputed by the learned counsel for the appellant-management and the same cannot be disputed since the same has been considered by the competent authority based upon the documents.

53. The employee has been defined under section 2(e) of the Payment of Gratuity Act 1972 as per which any employee, directly or indirectly, as referred in the aforesaid provision, the work is being taken by him then he will be entitled for gratuity.

54. Herein also, it has not been disputed that the respondent no.3 had been engaged to take work directly or indirectly on making payment or remuneration and, as such, even though some terms and conditions referred in the offer of appointment, it will not dilute the statutory provision rather the fact which has been taken into consideration is regarding the work which has been performed by the respondent no.3, on the basis of which he was taking remuneration then he will come under the fold of the employee within the meaning of section 2(e) of the Payment of Gratuity Act, 1972.

55. This Court, therefore, answered the issue no.2 against the appellant and in favour of the respondent no.3.

56. This Court adverting to the judgment passed by the learned Single Judge has found that the learned Single Judge has taken into consideration the order passed by both the competent authorities as also taken into consideration the definition of the employee within the meaning of section 2(e) of the Payment of Gratuity Act, 1972 and the offer of appointment and nature of work being taken by the respondent no.3 and accordingly has not interfered with the impugned orders.

57. Therefore, the view as has been taken by the learned Single Judge according to our considered view is a correct approach taking into consideration the object and intent of the Payment of Gratuity Act, 1972 which has been enacted for the purpose of providing security measure to the employee(s).

58. Accordingly, the instant appeal fails and is dismissed.

59. Pending IA(s),if any, stands disposed of.

I Agree **(Sujit Narayan Prasad, J.)**

(Arun Kumar Rai, J.) **(Arun Kumar Rai, J.)**

Jharkhand High Court
Dated:08/ 01/202
KNR/AFR