
(1979) 07 MP CK 0022

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 423 of 1977

Agent/Manager, Chirimiri Colliery-cum-Sub Area Manager,
Kurasia Colliery, Western Coalfields Ltd.

APPELLANT

Vs

Chaturi Singh and others

RESPONDENT

Date of Decision : 30-07-1979

Acts Referred:

General Clauses Act, 1897 — Section 3

Payment of Gratuity Act, 1972 — Section 2(c), 2(s), 4, 4(1), 4(2)

Citation : (1979) 07 MP CK 0022

Hon'ble Judges : G.P. Singh, C.J;U.N. Bhachawat, J

Bench : Division Bench

Advocate : P.S. Nair, for the Appellant; Gulab Gupta, for the Respondent

Final Decision : Dismissed

Judgement

U.N. Bhachawat, J.—This order shall also govern the disposal of Misc. Petition No. 424 of 1977 (Agent/ Manager, Chirimiri Colliery-cum-Sub Area Manager, Kurasie Colliery, Western Coal Fields Limited v. Karamdin and others).

2. Both the writ petitions arise out of the proceedings taken under the Payment of Gratuity Act, 1972 (hereinafter for short referred to as the Gratuity Act). In both the petitions, there is a common question of law involving the interpretation of the words "twenty months"wages" in section 4(3) of the Gratuity Act.

3. The facts giving rise to both the petitions are identical except the monthly wages. To appreciate the question involved, we shall briefly state the facts of this petition. The petitioner-company, Western Coalfields Limited, Nagpur has one of its collieries in Chirimiri area known as Chirimiri Colliery. Respondent No. 1 was its monthly rated employee, whose employment terminated on superannuation on 1-7-1975. His last drawn monthly wage was Rs. 626.40. On his retirement, the petitioner-company paid him Rs. 12,528 as the amount of gratuity calculating it as under:

Last drawn Salary Rs. 626.40?20 months = 12.528

4. Respondent No. 1 claimed Rs. 14,412 on computation as under:

Last drawn monthly wages Rs. 626.40,

divided by 26 (working days in a month)

multiplied by 600 (the days of 20 months calculated at the rate of 30 days in a month).

5. In view of the dispute, respondent No. 1 made an application under Rule 10 of the Payment of Gratuity (Central) Rules, 1972 (hereinafter for short referred to as the Gratuity Rules) to the controlling authority under the Payment of Wages Act, that is, the Assistant Labour Commissioner (Central), Shahdol-respondent No. 3 herein (hereinafter for short referred) to as respondent No. 3) praying that the petitioner-company should be directed to pay the balance amount of gratuity Rs. 1926. Respondent No. 3-accepted the contention of respondent No. 1 and vide his order dated 10-11-76 Annexure-B allowed the application. The petitioner-company, being aggrieved by this, filed an appeal u/s 7 of the Gratuity Act before the Appellate Authority (Regional Labour Commissioner (Central) Jabalpur-respondent No. 2 (hereinafter for short referred to as respondent No. 2), who has, vide order dated 26-3-77 Annexure-D, dismissed the appeal. The petitioner-company by the present petition prays for quashing these orders Annexures-B and D.

6. The only contention raised by the learned counsel for the petitioner-company was about the interpretation of the words "twenty months" wages" in section 4(2) of the Gratuity Act. He argued that as the Legislature has specifically used the expression "twenty months" wages", the computation should be 20 times of the last drawn wages. His argument was that 20 months mean 20 months and not days of 20 months. In support of his argument, he relied on section 2(35) of the General Clauses Act, 1897 and contended that month has been defined as month reckoned according to British calendar and not as 30 days. He argued that if the intention of the Legislature was that even in cases where section 4(3) was attracted, the amount of gratuity should be computed in terms of days; it would not have used the words "twenty months" wages" and would have put the particular number of days as the unit as is done in section 4(2) of the Gratuity Act. The other argument of the learned counsel for the petitioner company was-that to earn the monthly wages, or an employee works only for 26 days, there being 4 Sundays or rest days; the month's wages are virtually 26 days" wages; therefore, a month must be construed to mean 26 days and accordingly 20 months must be construed to mean 562 days. He argued that on construing 20 months" wages as 600 days and computing the amount of gratuity as 600 times of the daily wages evolved by dividing monthly rate by 26 days would result in payment of an amount which would be in excess of 20 months" wages and thus section 4(a) of the Gratuity Act would be violated. As the wages u/s 2(s) of the Gratuity Act, means wages earned while on duty, in that context the Legislature

should be assumed to have intended to calculate 20 months wages on the basis of 26 days in a month taking into account the 4 days' holidays in a month of 30 days. The learned counsel had placed strong reliance to support his argument on the decisions of the Andhra Pradesh High Court in Associated Cement Co. Limited Kistna Cement Works Vs. Appellate Authority under Payment of Gratuity Act (Regional Assistant Commissioner of Labour) and Others, and Swami and others v. The Controlling Authority 1976 L & I C 1285.

7. The learned counsel for respondent No. 1 in his arguments in counter submitted that section 4(3) of the Gratuity Act has to be read in context of section 4(2) of the Gratuity Act. It cannot be read in isolation and on reading it in that context, the orders Annexure-B and D are correct. He also argued that if the interpretation of the learned counsel for the petitioner-company is accepted, it would lead to a discrimination between a daily rated employees and monthly rated employees.

8. After having heard the learned counsel for parties, we are satisfied that this petition should be dismissed.

9. We shall like to set out herein below section 4(1), 4(2) and 4(3) of the Gratuity Act:

4. Payment of gratuity. ? (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years.--

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years

shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made to his heirs.

Explanation--For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and for this

purpose, the wages paid for any over time work shall not be taken into account:

Provided further that in the case of an employee employed in a seasonal establishment, the employer shall pay the gratuity at the rate of seven days' wages for each season.

(3) The amount of gratuity payable to an employee shall not exceed twenty months' wages.

10. Section 4(1) of the Gratuity Act lays down the eligibility of an employee for gratuity on his retirement. Section 4(2) of the Gratuity Act provides the mode of qualification of the gratuity amount payable to an employee. Section 4(2) puts a ceiling on the amount of gratuity payable to an employee.

11. In the light of the arguments advanced before us, two questions arise for determination: First, whether the words "twenty months" in section 4(3) of the Gratuity Act should be read as 20 months only or days of 20 months. Second, whether 20 months should be construed to mean 520 days or 600 days.

12. We shall deal with the above questions ad seriatim.

13. The definitions of various words or expressions defined in section 3 of the General Clauses Act, 1897 apply only if there is nothing repugnant in the subject or context as is evident from the qualifying expression "unless there is anything repugnant in the subject or context."

14. It is a well recognised rule of construction that to arrive at a true meaning of a particular word or phrase in a statute so as to bear out the real intention of the law makers, it must not be viewed isolated from the context. It must be viewed in context of other enacting part of the statute. At this stage, it would be pertinent to quote with advantage the following observations of Lord Greene in *Bidis v. General Accident, Fire and Life Assurance. Corporation Ltd.* (1948) 2 All E R 995:

The first thing one has to do, I venture to think, in construing words in a section of an Act of Parliament is not to take those words in vacuo so as to speak and attribute to them what is sometimes called their natural or ordinary meaning. Few words in the English language have a natural or ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context. The method of construing statutes that I prefer is not to take particular words and attribute to them a sort of *prima facie* meaning which you may have to displace or modify. It is to read the statute as a whole and ask oneself the question:

In this state, in this context, relating to this subject matter, what is the true meaning of that word ?

15. In the light of what we have said above, the meaning of the words "twenty months" in section 4(3) of the Gratuity Act has to be construed in the context of the preceding section 4(2) of the Gratuity Act, more so in view of the setting of

sub sections (1), (2) and (3) of section 4 of the Gratuity Act.

16. We have already observed hereinabove that section 4(2) of the Gratuity Act provides for the computation of gratuity amount and the unit provided is 15 days' wages per year and 7 days wages per season in case of an employee of a seasonal establishment. The unit has not been expressed as half month's wages or a week's wages, which bears out the legislative intent that unit for computation of gratuity amount is days only.

17. The expression "at the rate of fifteen days' wages" based on the rate of wages last drawn by the employee concerned" had come up for construction before a Division Bench of this Court at Indore in *Manager, Hope Textiles Ltd., Indore v. Appellate Authority under the Payment of Gratuity Act and others* 1979 M P L J 341 to which one of us (Honourable G.P. Singh, Chief Justice) was a party. In that case, it was contended on behalf of the employer that 15 days' wages meant what an employee would have earned in a period of 15 days at the time of termination of his services. On this interpretation, it was submitted that in 15 days an employee works only for 13 days and earns 13 times of daily wages, therefore, the rate of gratuity of 15 days wages should be calculated by evolving daily wages by dividing the monthly, at by 26 working days of month and then multiplying those daily wage (sic) 13. The Division Bench while agreeing with the method of evolving the daily wages (that is of dividing the last drawn monthly wages by 26 working days) disagreed that 15 days wages means 13 times of the daily wages. It held that 15 days wages means 15 times of the daily wages. In so holding, the Division Bench disagreed with the view taken by the Andhra Pradesh High Court in the fore referred decisions. The relevant observation of the fore referred Division Bench decision of this Court reads as under:

In our opinion, the scheme of the Act is to treat the daily wage as the unit for calculating the quantum of gratuity. Therefore, the plain meaning of "fifteen days' wages" would be 15 times the daily wage and not wages earned during a period of 15 days.

18. The decision in *Hope Textiles's case* has been followed in *Kripa Shankar Verma v. Depot Manager, Jabalpur Depot*, M. P. S. R. T. C. M. P. No. 110 of 1977 decided on 20-10-1978.

19. Now in the light of the fore referred decisions of this Court, the position so far as section 4(2) of the Gratuity Act is concerned is that employee shall be paid gratuity at the rate of 15 times the daily wages per year of completed service. Thus, according to section 4(2) of the Gratuity Act, the formula for computing the amount of gratuity is:

Last drawn monthly wages x 15 x number of completed years of 26 service.

20. To illustrate; There is a monthly rated employee who retired after completion of 45 years of service. The wages last drawn by him are Rs. 520. Then according

to the aforesaid formula, his amount of gratuity would be Rs. 13,500 as detailed below:

$$520 \times 15 \times 45/26 = 13,500$$

The above amount of Rs. 13,500 is decidedly the amount of wages for 675 days (15 x 45) which is a period more than 20 months --whether we construe a month of 26 days or 30 days, a question with which we shall deal hereafter. In such a situation, section 4(3) of the Gratuity Act, according to which an employee is not entitled to get an amount of gratuity which is in excess of 20 months wages, comes into play. Out of the amount of Rs. 13,500, the employee shall not be paid an amount which is in excess of 20 months' wages or in other words, the amount of gratuity shall be confined to 20 months wages.

21. Thus, what follows from the foregoing discussion is that albeit sub-section (3) of section 4 of the Gratuity Act has been put as an independent sub-section. In effect, it is a further proviso to sub section (2) of section 4 of the Gratuity Act as it qualifies the main enactment in section 4(2) of the Gratuity Act. To iterate, but for section 4(3), an employee would be entitled to an amount of gratuity computed on the basis of fore quoted formula u/s 4(2) of the Gratuity Act even if it is in excess of 20 months' wages. In this view of the matter, section 4(3) of the Gratuity (sic) cannot be read as divorced from section 4(2). It has to be read as a part of section 4(2) of the Gratuity Act Therefore, the unit for computing the gratuity amount where section 4(3) of the Gratuity Act is attracted cannot be different than the unit u/s 4(2) of the Gratuity Act. As sequel of this, we hold that the words "twenty months" mean days of 20 months.

22. We now advert to the second question; whether a month should be construed to mean 26 days or 30 days.

23. We have earlier, while dealing with the first question, held that month in section 4(3) of the Gratuity Act means days of a month. Under this second question, we are required to decide whether a month should be construed to be of 26 days or 30 days for the purpose of section 4(3) of the Gratuity Act.

24. It is a well established canon of construction that words are primarily to be construed in their ordinary meaning. In other words, the words should be understood in the sense in which they are understood in common parlance or popular sense unless the subject or the context suggest otherwise. On this question of interpretation, we would like to quote here-in below the observations of their Lordships of the Supreme Court *Nasiruddin v. State Transport Appellate Tribunal*:

If the precise words used are plain and unambiguous, they are bound to be construed in their ordinary sense.....

Where the words are plain, the Court would not make any alteration

(Emphasis supplied by us)

25. It is in the book (sic)

Matter Missing

In short, virtually the argument of the learned counsel is to the effect that 20 months' wages mean the wages earned during the period of 20 months and not the wages for actual days of 20 months.

29. It may be pointed out here that the argument of the learned counsel runs counter to the principles laid down in Hope Textiles's case. In that decision, while construing the expression 13 days wages u/s 4(2), the Court negated the argument on behalf of the employer which virtually was to reduce 15 days wages to 13 working days wages and thus to equate 15 days to 13 days. Therefore, on the ratio of Hope Textiles case, the monthly wages which as per the ordinary meaning discussed by us hereinabove, the words "twenty months" would cover 500 days (20 x 30 days) and not 520 days (20 x 26 days). To put it more clearly, in our opinion, the 20 months are equivalent to 600 days. Accordingly, 20 months wages mean wages of 600 days i. e. 600 times of daily wages.

30. Examining the matter from a different angle also, in our opinion, the arguments of the learned counsel do not appear to be sound. The fundamental principle behind enacting the law for grant of gratuity, as observed by their Lordships of the Supreme Court in a number of decisions, is to reward an employee, as defined in the Gratuity Act, for his good, efficient and faithful services rendered to his employer for a considerable time. The definition of employee, as defined in section 2(c) of the Gratuity Act, reads as under:

"employee" means any person (other than an apprentice) employed on wages, not exceeding one thousand rupees per mensem, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical, or clerical work, whether the terms of such employment are express or implied, but does not include any such person who is employed in a managerial or administrative capacity, or who holds a civil post under the Central Government or a State Government, or who is subject to the Air Force Act, 1950, the Army Act, 1950 or the Navy Act, 1957.

31. On a plain reading of the aforesaid definition, it is evident that the Gratuity Act makes no distinction in an employee on the basis of mode of payment of wages. An employee whether he is daily rated or weekly rated or monthly rated, which depends upon the contract between the employee and the employer, is an employee for the purpose of Gratuity Act. Similarly, section 4(2) of the Gratuity Act which provides the formula for quantification of the amount of gratuity payable to an employee makes no distinction between a daily rated, weekly rated and monthly rated employees. The unit for calculation in each one's case is uniform; but if the argument of the learned counsel for the petitioner-company is accepted, it will lead to a discrimination between a daily rated employee and the monthly rated employee.

32. It is undisputed that a daily rated employee as well as monthly rated employee both in fact work for 26 days in a month, but in case of monthly rated employee, the wages, inclusive of 4 wageless days would be wages of 30 days and in case of daily rated employee, it would be wages of 26 days. In this way, the daily rated employee gets advantage of two wageless days in each completed years gratuity and of 80 days at the rate of 4 wageless days in one month. This discrimination would not be inconsistent with the object of the Act which is to treat all employees, whether monthly rated or weekly rated or daily rated equally. It may also be pointed out that on accepting the argument of the learned counsel for the petitioner-company, it would result in reducing the rate of gratuity in case of an employee who has put in more than 40 years of continuous service. His rate of gratuity would, on the interpretation of the learned counsel for the petitioner-company, certainly be less than his co-employee who has put in less than 40 years service. For this reason also, the interpretation put by the learned counsel for the petitioner-company cannot be accepted. The uniformity can be maintained only on the interpretation that 20 months means 600 days.

33. In the light of the foregoing discussion, we are of the firm opinion that "twenty months" wages" mean 600 days wages. The same is the view taken by the Bombay High Court in *The Laxmi Vishu Textile Mills Ltd. v. P. S. Malavankar and others* 1979 Lab. I C 562 (1). The relevant observations from this decision are extracted hereinbelow:

...The concept of 20 months" wages by way of ceiling on gratuity amounts is indeed a measure of the same pattern necessitating its calculation by reference to the days, a month is supposed to contain and not by reference to days on which he could have worked and earned. In other words, the context and setting of section 4(3) does justify reliance on the literal meaning of the word "month" as understood in common parlance and not any departure therefrom.

...This interpretation rather eliminates the discrimination implicit in calculating a month to be of 26 days for one set of workmen and of 30 days for another set of workmen for no relevant reasons.

34. In the result, the contentions raised by the learned counsel for the petitioner-company have to be rejected. The writ petition does not merit to be allowed. We accordingly dismiss the petition. We, however, make no order as to costs. The amount of security, if any, shall be refunded to the petitioner.