

(1975) 12 AP CK 0002
In the Andhra Pradesh High Court

Associated Cement Co. Limited Kistna Cement Works	APPELLANT
Vs	
Appellate Authority under Payment of Gratuity Act (Regional Assistant Commissioner of Labour) and Others	RESPONDENT

Date of Decision : 02-12-1975

Acts Referred:

Maternity Benefits Act, 1961 — Section 4, 5(1)
Payment of Gratuity Act, 1972 — Section 4

Citation : (1976) 1 LLJ 222

Hon'ble Judges : Ramachandra Raju, J

Bench : Single Bench

Judgement

Ramachandra Raju, J.—This writ petition arises out of proceedings taken under the Payment of Gratuity Act, 1972 (hereinafter referred to as " the Act,") The petitioner is a company registered under the Companies Act engaged in the manufacture of cement and having for that purpose a number of factories, one of which is Kistna Cement Works in Guntur District. The writ petition is filed to quash the orders dated 12-1-1974 of the Appellate Authority under the Act, viz., the Regional Assistant Commissioner of Labour, Guntur, the 1st respondent herein, confirming the order of the Controlling Authority under the Act dated 27-8-1973. The 3rd respondent was employed by the petitioner-company on 13-2-1945 and was retired on and with effect from 1-4-1973 on his reaching the age of superannuation which is 60 years of age. The rate of wages drawn by the 3rd respondent at the time of retirement was Rs. 14,37 per day. The 3rd respondent was offered payment of Rs. 5,230.68 towards the amount due to him as gratuity for 28 years of service as per the provisions of Section 4(2) of the Act. Payment of gratuity is provided u/s 4(1) of the Act. It is provided under Sub-section (2) of Section 4 that 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. The question involved in the writ petition is what is meant by "fifteen days" wages." Is it 15 times the rate of daily wage drawn by the 3rd

respondent at the time of retirement or the wages he was drawing at the time of retirement in a period of fifteen days. According to the petitioner-company the gratuity has to be worked out only on the basis of the wages a retired employee was drawing in a period of fifteen days at the time of his retirement, and not fifteen times the daily wage based on the rate of wages last drawn by the employee. According to the recommendations of the Second Wage Board accepted by the Government with some modifications and the request made to the managements to implement the said recommendations for the operatives in Grades E to A the conversion ratio between monthly wages and daily wages is given as 1:26, i.e., for instance if the monthly wage is Rs. 52 the daily wage will work out to Rs. 2 and similarly if the daily wage is Rs. 2 the monthly wage will work out to Rs. 52. This is on the basis of actual working days in a month excluding: the four Sundays which are holidays. On this basis, according to the petitioner-company the gratuity payable to the third respondent has to be worked out based on the rate of wages last drawn by the employee. It is not in dispute that the daily wage of the 3rd respondent based on the rate of wages last drawn by him at the time of his retirement was Rs. 14.37 per day. If according to the petitioner-company the gratuity at the rate of fifteen days' wages based on the rate of wages is to be worked out, it will be thirteen times the daily wage and not fifteen times the daily wage as claimed by the 3rd respondent as in a period of 15 days there will be two Sundays and the actual working days will be 13 days. If gratuity is worked out on that basis it would come to Rs. 5,230-68 for the period of service rendered by the 3rd respondent and that is the amount which was offered to the 3rd respondent by the petitioner-company. If it is calculated as claimed by the 3rd respondent at the rate of fifteen times the daily wage per year of service it would come to Rs. 6,035-40, the difference between the two being Rs. 804-72. The 2nd respondent-controlling Authority, which is the authority under the Act as provided u/s 71 for determining the amount of gratuity whenever there is a dispute between the employer and the employee about its quantum by its order dated 27-8-1973 held that the 3rd respondent was entitled to the payment of the additional amount of Rs. 804-72 and directed the company to pay the said additional amount. In the appeal filed by the company against the order of the Controlling Authority, the Appellate Authority confirmed the order of the Controlling Authority by the coming to the conclusion that the words " at the rate of 15 days wages based on the rate of wages last drawn by the employee concerned " would clearly mean 15 times the daily rate of wage. It is this view taken by the Controlling Authority and the Appellate Authority that is assailed by the company in this writ petition.

2. According to the petitioner-company the method of fixing the daily rate of operatives by dividing the monthly rate by 26 has a crucial bearing on the wage structure in the cement industry and that as the daily rate of wage of the 3rd respondent was evolved by dividing the monthly rate by 26, it already contained an element of wages for the weekly day of rest and, therefore, fifteen days wages would only mean 13 times the daily wage. Further, the expression " fifteen

days " wages can only mean half a month's wages in view of the scheme of the Act and the context in which it is used, according to the petitioner, would appear from the following ;

1. The Selection Committee appointed by the Parliament on Payment of Gratuity Bill 1971 in its report dated 27-4-1972, while recommending raising of the ceiling of gratuity from 15 months to 20 months, has observed at para 12(iii) " ceiling on the. gratuity amount to be paid to an employee be raised from 15 months" wages to 20 months" wages as to provide an incentive to employees to work beyond 30 years of service". From the above it will be seen that the object was to provide gratuity at half a month's wages per year of service. If the intention was that the gratuity should be calculated @ 15 times the daily rate per year of service, the ceiling of 15 months wages would be reached by 26 years " service and not by 30 years service. The Bill was finally passed by the Parliament in the light of the recommendations made by the Select Committee and the Act accordingly provided for the ceiling of 20 months" wages. This makes it clear that the Parliament had also intended that " 15 days" wages meant " half a month"s wages,"

2. While Sub-section 2 of Section 4 lays down that an employee shall be paid gratuity at the rate of 15 days" wages per year of service, the very next sub-section of the same section, i.e., Section 4(3) of the Act lays down that the gratuity shall not exceed 20 months" wages. Thus, for the purpose of computing one and the same amount, two different units of measuring time have been used and hence these two terms must stand in some relationship to each other. Since a month is generally considered to consist of 30 days, 15 days, when related to this figure can only mean half of it or half a month. This is borne out by numerous examples in every day usage. One often comes across instances where a lower unit of measuring time is substituted for the next higher denomination one in the scale or where a switch is made from one unit to another to convey the same meaning. Thus, seven days is often used to signify a week or 365 days to mean a year. Thirty minutes is used in place of half an hour or six months in place of half a year. Thus when 15 days is used in the context of a month it can only be taken to mean half a month.

3. I see considerable force in the contention of the petitioner. When it is mentioned in Sub-section (3) of Section 4 of the Act that the amount of gratuity payable to an employee shall not exceed twenty months" wages it must have been meant only at the rate of half a month for each year and equivalent to 15 days wages based on the rate of wages last drawn by the employee for each year. By a reading of the two provisions together, in my opinion, there is no escaping of the conclusion that when the Legislature mentioned 15 days" wages based on the rate of wages for each year in Sub-section (2) of Section 4 it only means half a month"s wage, i.e., the wages the employee was drawing by working half a month prior to the termination of his employment and that would become to 13 times the wages based on the rate of wages. In the context in

which it is used, the expression " 15 days " wages based on the rate of wages can only mean the wages the employee would have got by working 15 days and not 15 times the daily wage. If really the Legislature intended it to be 15 times the daily wages, it would have mentioned it so clearly in the section. This interpretation only would be harmonious and consistent with the provisions contained in Sub-section (3) of Section 4. A similar view was taken by the other High Courts in interpreting similar provisions in other enactments.

4. In the decision *B. Shah, Mount Stuart Estate v. Labour Court, Coimbatore* (1971) Vol. 40 Indian Factories Journal, p. 302 the Madras High Court was dealing with the scheme of Section 5(1) of the Maternity Benefit Act, 1961 which prescribes the period for which the maternity benefit shall be payable. It is provided under S 5(3) of the Maternity Benefit Act that the maximum period for which any woman shall be entitled to maternity benefit, shall be twelve weeks that is six weeks upto and including the day of her delivery and six weeks immediately following that day. There, the question arose whether the expression of " six weeks immediately following that day" occurring in that section should be construed as meaning " six weeks of work " which would exclude Sundays. There, the contention urged on behalf of the woman worker is that she is entitled to maternity benefit calculated for all the seven days in a week on the basis of daily wages and not as claimed by the employer at the rate of six days per week. The word " week " is not defined in that Act. The Madras High Court came to the conclusion that the twelve weeks for which maternity benefit is provided in Section 5(3) of the Act should be taken as twelve weeks of work computed with reference to the actual days on which the woman could have worked but did not work on account of maternity. It does not mean that a woman is entitled to wages for 84 days irrespective of the number of actual working days.

5. A similar view was taken by a Full Bench of the Kerala High Court in *Malayalam Plantations Limited, Cochin v. Inspector of Plantations, Mundakayam* (1975). 30 I.F. & L.R.. 148. The Full Bench of the Kerala High Court also held that it cannot be said that the Legislature intended to give anything more than a worker would have earned had she worked for the twelve weeks provided for u/s 5(3) of the Maternity Benefit Act.

6. In the case before us also when it is provided u/s 4(2) of the Act that the employee is entitled to gratuity at the rate of 15 days" wages, what was meant by the Legislature must have been what the employee would have earned in a period of 15 days at the time of termination of his employment. On this interpretation on the 3rd respondent is entitled only to gratuity at the rate of 13 times the daily wages which he would have earned in a period of 15 days per year of his service. Accordingly the writ petition is allowed and the order of the 1st respondent dated 12-1-1974 confirming the order of the 2nd respondent dated 27-8-1972 is quashed and it is declared that the amount of gratuity to which the 3rd respondent is entitled to is Rs. 5,230-68 offered by the petitioner-

company.

7. Before closing the judgment, I may also observe that that Sri K. Srinivasamurthy, learned Counsel for the petitioner-company, has made a statement in Court that irrespective of the result of this writ petition the petitioner-company is prepared to pay gratuity to the 3rd respondent as claimed by him as the petitioner-company is not very much concerned with the payment to the 3rd respondent but with the principle as enunciated by respondents 1 and 2 in their orders.

8. In the circumstances of the case, I direct the parties to bear their respective costs in this writ petition. Advocate's fee Rs. 100.