

(1993) 02 AHC CK 0037

In the Allahabad High Court

Case No : C.M.W.P. No's. 23039, 23040, 23042 and 23043 of 1990 etc.

Co-operative Cane Development Union Ltd.

APPELLANT

Vs

Nahar Singh and Others

RESPONDENT

Date of Decision : 15-02-1993

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2, 4, 7

Citation : (1995) 71 FLR 670 : (1999) 3 LLJ 305

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : Shashi Nandan, for the Appellant; Shyam Narain and SC, for the Respondent

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—Whether the respondent No. 1 in these nine analogous writ petitions (hereinafter referred to as first, second and third petitions and so on), was entitled to payment of gratuity u/s 4 of the Payment of Gratuity Act, 1972 (compendiously the Act) and under similar other law, or whether the respondent No. 1 in all these petitions were seasonal employees and not entitled to be paid gratuity as their services were governed by the U.P. Cane Co-operative Service Regulations, 1975 (for short the Regulations) are the short questions for determination. As these petitions involve similar questions, consequently it is convenient to dispose them of by a common judgment. Civil Misc. Writ Petition No. 23042 of 1990 shall, however, be the leading case.

2. Factual matrix of the case is that the petitioners in these petitions are the Cane Growers Union, the employer, whereas respondent No. 1 in all these petitions are the workmen. Respondent No. 1 in the Writ Petition No. 23042 of 1990 retired on December 31, 1985 and made an application for payment of gratuity as he had rendered continuous service for not less than 5 years. Consequently he was entitled to payment of gratuity u/s 4 of the Act.

3. The case set up by Respondent No. 1 was contested by the petitioners with the averments that respondent No. 1 was the seasonal employee and not a permanent employee. Consequently the service conditions of respondent No. 1 were governed by the provisions of U.P. Cane Cooperative Service Regulations, 1975, framed u/s 122 of the U.P. Co-operative Societies Act, 1965. Under Regulation 141 an employee who retires on completing 58 years of age or after completion of the age of 55 years, or in case he does any service to the Cane Union or the Federation, as the case may be, and puts in five years' good, efficient and faithful service, will be paid gratuity at the following rate for every completed year of service i.e. 1 month's pay for each year service for five years or over, subject to the limit of 15 month's pay. But according to petitioner as respondent No. 1 has not put in 5 years continuous good, efficient and faithful service, hence there was no question of payment of any gratuity. In the alternative it was the case of petitioner that as the respondent No. 1 was seasonal workman employed only during sugar cane crushing season, hence not entitled to payment of gratuity.

4. As there was dispute with regard to payment of gratuity, the employer, the petitioner having denied the same, whereas the respondent No. 1 having claimed the same, hence an application was made by respondent No. 1 and the Controlling Authority u/s 7(4)(c) of the Act, after making due enquiry and after giving parties to the dispute reasonable opportunity of being heard, decided the matter in favour of respondent No. 1 by order dated May 14, 1988 (Annexure-1 to the petition), holding that respondent No. 1 was not a casual or seasonal workman, rather he has put in more than 5 years continuous service, hence was entitled to payment of gratuity.

5. The petitioner preferred an appeal before the Appellate Authority u/s 7(7) of the Act, but the Appellate Authority confirmed the decision of the Controlling Authority by judgment and order dated July 26, 1990 (Annexure-2 to the petition). The petitioner has preferred the present petitions to quash those orders by issuing a writ of certiorari.

6. Sri Shashi Nandan, learned counsel for the petitioners urged that respondent No. 1 in every writ petition was not in continuous service for more than five years, rather he was seasonal employee employed only during the crushing season and the case of respondent No. 1 was not covered by Section 4 of the Act, nor he was covered by the definition of "employee" as given u/s 2(e) of the Act, inasmuch as his services were governed under Chapter XVI Regulation 141 of the Regulations, hence the provisions of sub-section 4 of Section 4 of the Act for payment of gratuity would not apply and respondents 2 and 3 have committed manifest error of law in passing the impugned orders directing the payment of gratuity. It was further contended that there was an agreement dated January 5, 1987 (Annexure-3 to the petition) between the Cane Growers Union, the petitioner and the seasonal employees about payment of gratuity and it was decided that seasonal employees retiring after December 19, 1986 would

be entitled to payment of gratuity. As the respondents No. 1 in these petitions retired prior to that date, hence they were not entitled to payment of any gratuity. It was also submitted that part C of Schedule 1 of the U.P. Shops and Commercial Establishments Act, 1962, (for short the Establishment Act) applicable to commercial establishments of all the Cane Cooperative Societies in the State and the Commercial establishment has been defined u/s 2(4) of the Establishment Act, which means any premises, not being premises of a factory or a shop wherein any trade, business, manufacturing or any other work in connection with or incidental thereto is carried on for profits. Consequently respondent No. 1 in all the petitions was not entitled to payment of gratuity.

7. Sri Shyam Narain, learned counsel appearing on behalf of respondents No. 1 in all these petitions refuted the submissions of the learned counsel for the petitioner and contended that respondents No. 1 in all the petitions were in continuous service for not less than 5 years and were not seasonal employees. Consequently every respondent No. 1 of these petitions were entitled for payment of gratuity in view of the provisions of Section 4 of the Act. Section 2A of the Act defines "continuous service" and an employee is said to be in continuous service in case he has been in uninterrupted service. In case they would have been employees, categories would have been made under Regulation 21. Neither any category of the seasonal employee was made nor he was placed either under category "A" or category "B", nor ever any disciplinary proceedings were initiated against them. Consequently, there was no question for not awarding gratuity to respondents No. 1. It was open to petitioners to have filed the attendance register or other documentary evidence to prove as to whether respondents No. 1 were in continuous service or were they seasonal employees. But the petitioner failed to prove the same either before the Controlling Authority or the Appellate Authority and an inference to this effect has to be drawn as the petitioner failed to furnish the attendance register and other relevant registers and documents in their possession. The findings recorded by the Controlling Authority and the appellate authority were findings of facts. Under these circumstances there was no escape from the conclusion that the petitioner was liable to pay gratuity. The agreement between the petitioner and the representative of respondents (Annexure-3), was an agreement between the petitioner and seasonal employees. As respondents No. 1 in all these petitions were not seasonal employees that agreement for payment of gratuity to seasonal employees after December I, 1986 would not be applicable. Reliance was placed on State of Punjab Vs. Labour Court Jullunder and Others, and U.P. Co-operative Union v. P.D. Srivastava, 1988 (57) FLR 70(All).

8. Having scrutinised the submissions of the learned counsel for the parties, the points that fall for determination are as to whether respondents No. 1 in all these petitions were entitled to be paid gratuity being in continuous service, or they were seasonal employees and whether their services were governed by the Regulations, hence they would not be paid gratuity under the provisions of Sections 4 and 7 of the Act.

9. Before grappling with the problem in these petitions, it is convenient to notice that the Act is not a single piece of legislation, rather it is a Statute of predominant social nature with a view to extend certain post retrieval benefits in the form of gratuity, which means in common parlance "kindness", "gift", or a "present" generally in the form of money to be paid and given in return for sincere and efficient service rendered in the past few years. While interpreting such social beneficent legislation the Court must take a broad view of the background and policy of the Statute in question. To interpret these provisions there must be purposive approach in order to ascertain the meaning of a particular provision so as to accomplish social ends envisaged in the Act. With this end one has to consider the scheme of the Act also. The changing social attitude towards workmen in the last decade of the 20th century has to be noticed. The provisions of the Act should not be construed too rigidly and restrictively as it was intended for the protection of workmen who have rendered efficient and satisfactory service to the employer in the past few years (i.e. at least 5 years). The construction of such a Statute must be made by the Court entrusted with the duty in such a way so as to subserve the purpose of enactment and should not defeat the same. At the same time construction should be such that no part of enactment is rendered otiose or surplus (See *Okeroke v. B. London Borough Council*, 1967 1 CB 42, *Brown v. Brash and Ambrose*, 1948 1 All ER 922, *Amirtbem Kudumbah v. Sernum Kudumban* AIR 1991 SC 1256 , *Othayath Lekshmy Amma and Another Vs. Nellachinkuniyil Govindan Nair and Others*, , *Maharashtra State Financial Corporation Vs. Jaycee Drugs and Pharmaceuticals Pvt. Ltd. and Others*, .

10. As regards the first point it has to be ascertained as to whether respondents No. 1 in all these petitions were seasonal employees or they were in continuous service for more than 5 years. A finding to this question would undoubtedly be a finding of fact, inasmuch as there would be required oral and documentary evidence, to ascertain whether a particular employee happens to be a seasonal employee meaning thereby that he was employed only during the crushing season. Apart from legal aspect the question as to whether respondent No. 1 in all these petitions were seasonal employees, facts and evidence have been considered by the Controlling Authority and the appellate authority. Continuous service has been defined u/s 2(4) of the Act and different period has been provided. In one year the employee to prove continuous service has to be in employment (in view of Sections 2A(ii)) for 240 days. The appellate authority seems to be conscious about the continuous service of 240 days and it has considered that aspect in para 3 (page 19 of the paper book) and it has been held that the employer did not produce any documentary or oral evidence including attendance register to prove that respondents No. 1 in each case was not in continuous service, rather the workmen were seasonal employees. In such matters the burden of proof was on the employer, the Cane Growers Union, to prove it beyond any doubt, as to whether the workmen were seasonal employees or they were in continuous service and having served at least 240 days in each

calendar year as required by Section 2(c) read with Section 2(a) of the Act. The employer failed to prove the same and the finding of fact recorded was that the workmen were in continuous service and they were not seasonal employees. This finding of fact was based on appraisal of oral and documentary evidence on record. Hence there is no justification to interfere with this finding in the writ jurisdiction under Article 226 of the Constitution of India. Against an order of judicial or quasi judicial authority, unless of course, the finding is based on no evidence or beset with surmises and conjectures by the principles of judicial review, this Court would not be justified to appreciate the finding afresh as suggested by the learned counsel for the petitioner as to arrive at a different conclusion. (See *State of West Bengal v. Atul Krishna Shaw* AIR 1990 SC 1205). As the respondents No. 1 in these petitions, the workmen, were in continuous service having completed 240 days in each calendar year and being not seasonal employees, they were entitled to the benefit of Sections 4 and 7 of the Act.

11. There is another aspect emanating from this aspect that in case this could have been a fact that the respondents' service would have been governed by the provisions of Regulations, in that event in view of the provisions of Regulation 21 there would have been categories of workmen, but that was not so. This also indicates that respondents No. 1 in each case were not seasonal employees.

12. The matter can be viewed from another angle as well. The object of the Act was indicated in the preamble and the same was to provide for a scheme for the payment of gratuity to employees engaged in a factory, mines, oil fields, plantations, port, railways, companies, shops or other establishments and for the matters connected therewith or incidental thereto. The object of the Act is couched in a language having a very wide sweep. It envisages scheme for payment of gratuity to employees engaged in factory and also in shops and other establishments. Consequently the workmen in shops or other establishments cannot be excluded from the operation of the Act. I am conscious that maxims need not be stated mechanically, but whenever it appears necessary to explain certain aspect in that event it becomes inevitable to refer them. There is a maxim "INTERPRETATION ET CONCORDER1 LEGES LEGIRUS EST OPTINUS INTERPRETANT MODUS" which connotes that harmonious construction of different provisions having bearing is commended. There is another maxim "STATUTE PRO PUBLIC LATE INTURPRETETUR" which means that where Statute is made for public good, the provisions should be liberally construed and not in a rigid way. Liberal construction should be made in such a way so as to make the legislative purpose operative (See *Polliseti Pullamma and others Vs. Kalluri Kameswaramma and others*, , *K. Veeraswami Vs. Union of India (UOI)* and *Others*, .

The legislature was conscious that the object of the Act envisaged in the preamble may not be defeated. Consequently it has taken precaution to enact Section 14 which runs as under:

" 14. Act to override other enactments, etc.--The provisions of this Act or any

rule made thereunder shall have effect, notwithstanding anything inconsistent therewith contained in any enactment, other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."

13. The aforesaid provision has got overriding effect even though there may be some other inconsistent provisions contained in any other enactment other than under this Act or in any other instrument or contract. The legislature appears to be emphatic about the enforcement of provisions of this Act in place of certain other similar provisions, the effect of which may not be conducive to the workmen. In other words, Section 14 of the Act overrides all inconsistencies that may occur in the orders or as learned counsel for the petitioner pointed out about Regulation 21 of the Regulations. At the same time there would be no implied repeal of the provisions of Regulation 21 in view of the provisions of Section 14 of the Act. I am accordingly of the opinion that keeping in mind the preamble of Act read with Section 14 of the Act, the Act was intended by the legislature to be comprehensive and exhaustive law dealing with entire subject of the payment of gratuity to the persons, the workmen, as defined u/s 2(a) of the Act and to other persons to whom the provisions are intended to apply. In my opinion any agreement even if entered into by the workmen to the contrary, even though that was not found to be correct either by the Controlling Authority or by the appellate authority, as is obvious from the observations made in those orders and conclusions reached would not debar respondents No. 1 in each case to be entitled to gratuity directed to be paid by the Controlling Authority and the same has been maintained by the appellate authority. Even if to some extent the services of the respondents No. 1 in each petition may be governed by the provisions of Regulations, but that itself would not be a ground in place of Section 14 of the Act to disentitle them to claim gratuity u/s 7 of the Act.

14. Learned counsel for the respondents rightly relied upon *State of Punjab v. Labour Court, Jullundur* (supra) wherein their Lordships of the Supreme Court held that the provisions of Section 13(b) of the Act would apply to every establishment within the meaning of any law for the time being in force in relation to establishment in a State. The respondents in each writ petition being employed in establishment would be governed by the provisions of the Act, particularly with the provisions of Section 14 of the Act. *U.P. Co-operative Union and Ors. v. P.B. Srivastava and Ors.* (supra) was a Division Bench case of this Court to which I had occasion to be a member, and there the principles of interpretation of Statute, particularly social and beneficent legislation were pointed out and I am of the view that those principles do apply to the present case. In that case provisions of Section 1(3)(c) were also considered in order to consider the scope of operation of the Act and in that Division Bench case it was made clear that in view of provisions of Section 1(3)(b)(c), the Act was to apply to every shop and establishment within the meaning of "any law" for the time being in force. In the present case also the provisions of the Act would apply even to establishment in which the workmen were serving.

15. In brief the answer to question posed is that the respondents No. 1 in each petition are entitled to payment of gratuity and even though their services are governed to some extent by Regulations, that would not affect the applicability of the Act in view of Section 1(3)(b)(c), Section 4 and 7 read with Section 4 of the Act, and that the respondents No. 1 in all these petitions are not seasonal employees.

16. In view of the premises aforesaid and applying inductive and deductive reasonings, I do not find any justification to interfere with the findings arrived at by the Controlling Authority and the appellate authority in the impugned orders. Consequently the petitions being devoid of merits, are hereby dismissed without any order as to costs. The interim stay dated September 13, 1990 in all these petitions are vacated.