
(1985) 07 CAL CK 0011
In the Calcutta High Court
Case No : C.W.J. No. 2897 of 1977

Coal India Ltd.

APPELLANT

Vs

Regional Labour Commissioner and Others

RESPONDENT

Date of Decision : 15-07-1985

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4

Citation : 90 CWN 370 : (1994) 3 LLJ 825

Hon'ble Judges : P.K. Mukherjee, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.K. Mukherjee, J.—The short point that calls for determination in this case is whether an employee is entitled to the gratuity in terms of Section 4 of the Payment of Gratuity Act, 1972, after leaving the service and being re-appointed subsequently by the Company, as, in view of clear provisions contained in the said section that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not more 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.

2. In this matter, the employee claimed a sum of Rs. 4,745.25 ps. being gratuity payable to him, on the basis of 19 years of continuous service, and the controlling authority refused the claim but in an appeal, the Appellate Authority had allowed the claim and the petitioner moved the present writ petition against the appellate order.

3. Although the Rule was issued by this Court as far back on June 13, 1977, but initially no interim order was granted, but on Dec. 15, 1977, upon filing affidavit

of service, the impugned appellate order dated October 24, 1976 and the Certificate proceedings mentioned in the petition were stayed by Amiya Kumar Mukherjee, J. (as His Lordship then was) when no one appeared on behalf of the respondent workman or the Union.

4. It appears from the Order Book that the Respondent Nos. 1 and 3, i.e. The Regional Labour Commissioner (Central) and Koyla Khani Mazdoor Union, had been respectively served on July 4, 1979. But it appears from different noting in the Order Book that the Opposite Party No. 2 could not be served and finally from the noting dated May 5, 1982, it appears that neither any postal acknowledgement nor any undelivered cover returned to this Court. In that view of the matter by the default clause inserted in the order dated July 22, 1983, passed by M.N. Roy, J. the Rule was discharged against the Respondent No. 2 i.e. the workman concerned.

5. When the matter was taken up for hearing initially on June 5, 1985, this fact of discharge of Rule against Respondent No. 2 was pointed out by this Court, and liberty was given to the learned Advocate for the writ petitioner to file an application for restoration of the Rule against the respondent No. 2 and on considering the said application for restoration of the Rule in respect of the Respondent No. 2 by my earlier order dated June 27, 1985, the Rule in respect of respondent No. 2 was restored to file and this Court was satisfied that the said respondent was avoiding service and by the said order in view of the amended provision of Order V, Rule 19A of the Code of Civil Procedure, as neither the acknowledgement due, nor the undelivered registered cover had returned back to this Court, this Court was satisfied that there was a good service and I have directed for hearing of the Rule accordingly and the Rule was heard ultimately on July 8, 1985 and judgment was reserved.

6. Regarding facts of the case, there is no dispute and it lies in a short compass as follows:

The petitioner No. 1 is a Government Company and the management of Ningah Colliery (hereinafter referred to as the said Colliery), P.O. Kalipahari in the district of Burdwan was vested in the Central Government and thereafter the Coal Mines Authority Ltd. took over the management under the Coal Mines Nationalisation Act, 1973. The respondent No. 2 Chhotu Gowala, was an employee of the said Colliery under the previous management and he started absenting himself from work without any leave and as a matter of fact, he left the service with the erstwhile owner since then. Thereafter, on or about April 27, 1971, the respondent No. 2 was, however, re-appointed by the erstwhile owner of the said colliery as wagon loader at the said colliery and the respondent No. 2 was issued a re-appointment card on 27th April, 1971 and he had accepted the same without any objection whatsoever.

7. The Respondent No. 2 applied before the Assistant Labour Commissioner (Central), Asansol, being the controlling authority, under the Payment of Gratuity

Act, 1972 and raised a dispute in the matter of payment of gratuity to him and claimed a sum of Rs. 4,745.25, being the alleged amount of gratuity payable to him on the basis of nineteen years continuous service in the said colliery.

8. It was the case of the respondent No. 2, i.e. the employee before the Controlling Authority that since 1957 he was working in the said colliery continuously up to January 15, 1976 and as such, he was entitled to the payment of gratuity, according to the provisions of Section 4 of the said Act.

9. Before the said Controlling Authority, Koyla Khani Mazdoor Union (respondent No. 3 herein) also filed its written statement supporting the alleged claim of the said respondent No. 2 (although not appearing before this Court in spite of service) alleging that the respondent No. 2 while in service fell sick due to his continued sufferance from Tuberculosis and he was under treatment for about six months and it was alleged that due to political movement in the colliery a massive disturbance took place in the colliery as a result of which many workers including the respondent No. 2 could not attend the colliery out of fear and subsequently when normalcy returned, the management allowed the workers to resume their duties. So, according to the said respondent Union, re-employment did not mean that the continuity of service was taken away.

10. In the written statement filed on behalf of the petitioners, however, such assertion was denied and it was stated that as the respondent was not "continuously" serving in the said colliery, for more than five years at a stretch, as provided by Section 4 of the said Act, the respondent No. 2 was not entitled to any gratuity whatsoever.

11. The Controlling Authority was, however, satisfied that the respondent No. 2 had not completed five years of continuous service and by his order dated June 9, 1976, had rejected the claim of the respondent No. 2 with the finding that the respondent No. 2 remained absent for a long time from the month of Dec. 1970, but the employer instead of taking any disciplinary action against the said respondent for such long and unauthorised absence, on the basis of the appeal or representation of respondent No. 2 re-appointed him. The Controlling Authority further came to the finding that the employer considered his case and he was re-appointed as Wagon Loader of the self-same company. The said Controlling Authority also recorded that from the record it appeared that he was "re-appointed" on April 27, 1971, in the said colliery and the respondent No. 2 had "accepted", the said re-appointment.

12. The appeal was preferred by the respondent No. 2 before the Regional Labour Commissioner (Central) (Respondent No. 1 herein) and that appeal was registered as Appeal No. 3 of 1976.

13. The said Appellate Authority by his appellate order dated Oct. 23, 1976, reversed the finding of the Controlling Authority on the plea that the appellant could not resume with effect from April 27, 1971 because of the circumstances beyond his control.

14. According to the Appellate Authority, in the eyes of law the respondent No. 2 had merely resumed his duties with effect from April 27, 1971, with continuity of service.

15. The Appellate Authority further observed that the remarks "re-appointment" on April 27, 1971 appearing, under the column heading "date of commencement of employment and date of termination or leaving of employment" is totally inappropriate or incorrect and the management should have indicated the date of termination of service, under column 8 of the Register.

16. Mr. Biswaroop Gupta, learned Advocate, appearing for the petitioner company, submits that the appellate order cannot be sustained in law, as by allowing appeal of the employee the said authority acted on extraneous reasons. He further submitted that the appellate authority also committed error apparent on the face of record, in coming to such perverse finding.

17. In my opinion, by arriving at the above conclusion, the Appellate Authority committed an error apparent on the face of the record, as there was no scope for arriving at such an inference by the appellate authority, as in terms of Rule 48(3) of the Rules, in terms of which the Register of Employees had to be maintained in Form "B" by the employer, the statutory form has been prescribed and the applicant has to fill in the said form strictly according to the said form and as such there is no scope for such inference by the appellate authority.

18. No one appear on behalf of Respondent Nos. 1 and 3; in spite of service, no affidavit has been filed.

19. I, accordingly, set aside the order of the Appellate Authority dated Oct. 23, 1976 (Annexure "D" to the writ petition) and the consequential certificate proceedings, if any, initiated for realisation of the aforesaid sum of Rs. 4,745.25p. from the petitioner-company.

20. Let a writ in the nature of Certiorari issue accordingly, quashing the aforesaid appellate order dated Oct. 23, 1976 including the consequential certificate proceedings.

The Rule is made absolute. There will be no order as to costs.