

(2009) 08 P&H CK 0207
In the Punjab And Haryana At Chandigarh

District Food and Supplies Controller and Another	APPELLANT
Vs	
Prem Chand and Another	RESPONDENT

Date of Decision : 31-08-2009

Acts Referred:

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

Citation : (2010) 124 FLR 279 : (2010) 1 LLJ 735 : (2009) 156 PLR 375 :
(2010) 1 RCR(Civil) 682

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—The order under challenge is a direction by a Controlling Authority under the Payment of Gratuity Act for calculation of gratuity including the period when a workman had not worked by virtue of an order of termination operating against him. This order of termination, which was purported to have been issued on 26.02.1983, was set aside by the Labour Court by an award directing reinstatement with continuity of service, but without back wages. The reinstatement was effected on 11.08.1993. It is an admitted case that he was put on regular pay scales and served in the establishment till he was superannuated on 31.12.1998.

2. It was a case of a workman, who had been employed as a Chowkidar on daily wages from 07.12.1979 to 26.02.1983 with breaks in between, when the termination was made on 26.02.1983. It became a point of contention and subject of a reference to a Labour Court which in turn resulted in a direction for reinstatement referred to above. The Controlling Authority found for the purpose of computation of gratuity the period when the person had been illegally terminated to also avail for reckoning the period of continuous service and for calculating the amount of gratuity payable to the workman.

3. The learned Counsel appearing for the management, Ms. Monica Chhibbar Sharma, refers me to the definition in Section 2A

(1) of the Payment of Gratuity Act, which reads as follows:

An employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing order, rules or regulations governing the employees of the establishment), lay off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.

4. The learned Counsel would submit that it is the actual service that alone can be taken in case of daily rated worker. The learned Counsel also relies on a judgment of the Hon"ble Supreme Court in *Lalappa Lingappa and Others Vs. Laxmi Vishnu Textile Mills Ltd.*, , that dealt with an interpretation under the Payment of Gratuity Act, Section 2(c) in its unamended form brought through Explanation 1 to Section 2(c) for the meaning of the expression "actually employed". The Hon"ble Supreme Court has held in the following words:

Two questions arising for a decision in these appeals are: (1) Whether permanent employees are entitled to payment of gratuity u/s 4(1) for the years in which they remained absent without leave for a number of days in a year and had actually worked for less than 240 days due to absence without leave; and (2) whether the badli employees are entitled to such gratuity on becoming permanent employees, for the badli period in respect of the years in which there was no work allotted to them due to their failure to report to duty.

Held: It is important to bear in mind that in Explanation I the Legislature has used the words "actually employed". If it was contemplated by Explanation I that it was sufficient that there should be a subsisting contract of employment, then it was not necessary for the Legislature to have used the words "actually employed". It is not permissible to attribute redundancy to the Legislature to defeat the purpose of enacting the Explanation. The express on "actually employed" in Explanation I to Section 2(c) must in the context in which it occurs, must mean "actually worked".

The High Court was right in holding that the permanent employees were not entitled to payment of gratuity for the years they remained absent without leave and had actually worked for less than 240 days in a year. The badli employees are not covered by the substantive part of the definition of "continuous service" in Section 2(c). but come without Explanation I and, therefore, are not entitled to payment of gratuity for the badli period, i.e., in respect of the years in which there was no work allotted to them due to their failure to report to duty.

The Hon"ble Supreme Court has held that badli employees would not be covered by the substantive part of the definition of "continuous service" in Section 2(c) and that they shall not be entitled to payment of gratuity for the badli period,

that is, in respect of the periods for which there had no work allotted to them due to their failure to report to duty. In my view, it is this particular observation of the Hon''ble Supreme Court that denied to them their entitlement namely, of the failure of the workman to report to duty. The daily rated workers who abandoned the duty or who had failed to report for duty for no conduct that could be attributed to the management, cannot count themselves to be in an actual service and seek for computation on that basis. It would make all the differences in this case, for the workman who had been terminated on 26.02.1983, was complaining that he had been wrongly terminated. The Labour Court had accepted such a premise and directed reinstatement as well as continuity of service. The provision for continuity of service in the award of the Labour Court could only be seen in the context of every other benefit which the workman would have been entitled to, other than the back wages, which, by express order, the Labour Court was disallowing in this particular case. If it had not been a case of reinstatement with continuity of service and merely an incident where a workman, who was badli worker, who on being regularized, could have been disentitled for reckoning the period when he was not actually employed for the purpose of computation of gratuity. This shall not be in a case where there is an intervention through an award of the Labour Court that provides for continuity in the service. The continuity in the sense employed by the Labour Court ought, in my view, to be applied also to the entitlement of gratuity.

5. The order of the competent authority, under the circumstances, is justified and there is no warrant for an intervention before this Court.

6. The writ petition is, therefore, dismissed. There shall be, however, no order as to costs.