
(1995) 02 GUJ CK 0036
In the Gujarat High Court
Case No : S.C.A. No. 3117 of 1981

Dungerbhai Meghabhai

APPELLANT

Vs

Shree Arbuda Mills Ltd. and Another

RESPONDENT

Date of Decision : 02-02-1995

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2

Citation : (1995) 02 GUJ CK 0036

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Advocate : J.G. Shah, for the Appellant; V.B. Patel, for the Respondent

Judgement

1. This petition raises a short issue. Undisputed facts are that the petitioner was employed by the respondent-Arbuda Mills Ltd. in January 1942, and thereafter, due to closure of the shift, the petitioner was discharged after giving terminal benefits somewhere in the year 1952-53. Thereafter, the petitioner, on commencement of the shift, was again re-employed in October 1954, and he continued as such until his retirement in the year 1978. The petitioner claimed gratuity on retirement. The claim of the petitioner was for Rs. 12,185.55 by treating him in continuous service from January 1942 till his retirement in 1978. The petitioner was paid an amount of Rs. 7,186.35 only towards that benefit and therefore, he claimed that he was entitled to Rs. 4,395.00 by treating him to be in continuous service from 1942 till his retirement. Therefore, the dispute now relates to the payment of Rs. 4,395/- which depends on determination of the question whether the petitioner is entitled to treat his service prior to re-employment as continuous service for the purpose of claiming gratuity under the Payment of Gratuity Act, 1972.

2. The Controlling Authority under the Act allowed the claim of the petitioner while appellate authority disallowed his claim by his order dated October 17, 1980.

3. The word "continuous service" at the relevant time is defined in Section 2(c) of the 1972 Act as was then in force. The learned Counsel for the petitioner contended that the expression "cessation of work not due to the fault of the employee concerned" includes closure of establishment which is not the fault of the workman and, therefore, it is a continuous service and such period cannot be treated as an interruption.

4. It may be noticed that in all the contingencies envisaged u/s 2(c) which relates to cessation of work which cannot be used against the workman for the purpose of treating his break in service, but the basic thread of continuous in employment is distinct from continuous of actual working has been treated as fundamental. Cessation of work has different connotation than cessation from employment. A person may or may not be actually working either due to his own fault or for no fault of his own but contract of employment continues during that period and the employer-employee relationship continues to exist. Unless that is so, there cannot be continuous service. It may be noticed that the definition of continuous service as it stood prior to its amendment in the present form u/s 2A of the Act, Explanation-I was appended thereto importing the ingredients of Section 25-B of the Industrial Disputes Act for the purpose of giving benefit of continuous service even in case where a workman though has not continuously served for one year or so but has actually worked more than requisite days in period of 12 months depending upon the fact whether given establishment is mining or other than mining or seasonal establishment. In Explanation-I, the legislature has used the word "actually employed" and the matter was taken to the Supreme Court for the purpose that 240 days of actual working must be continuous and not by interrupted service. The Supreme Court in *Lalappa Lingappa and Others Vs. Laxmi Vishnu Textile Mills Ltd.*, held that by introducing Explanation-1, legislation gave enlarged meaning to the expression "continuous service, and Section 2(c) and it being beneficial legislation, must become true in its context. It may be noticed that even if this extended meaning is not given to the explanation whether the workman has actually worked for less than 240 days in a year, the benefit intended to extend to that workman who has actually worked for 240 days becomes redundant inasmuch as the person who has worked intermittently for 240 days or more in a year, and they will not be continuous in employment, it is really to that workman benefit was intended to go. I am supported in my conclusion by the decision of the Bombay High Court reported in 1981 IC . 1445. "Continuous service in a year to be rendered must be prospective contract of employment while rendering of service of an employee is necessary contract of employment. There may be contract of employment between employee and employer but it may be that during the entire period during which, the contract of employment was subsisting and the employee may not be rendering service."

I am in respectful agreement with the aforesaid pronouncement of the term "continuous service".

5. In somewhat similar circumstances in a recent decision reported in *State of Tamil Nadu and Others Vs. Nellai Cotton Mills Ltd. and Others*, the Supreme Court held that the period of non-employment of period after discharge cannot be counted for the purpose of giving continuity of service under the cessation of work for no fault of the workman.

6. As is apparent from the facts stated above, that immediately before 1954, when the petitioner was appointed afresh, employee-employer relationship ceased to exist when on closure of shift the petitioner was lawfully discharged after paying terminal benefits. Therefore, interruption was not on account of cessation of work, but was on account of cessation of employment due to lawful termination of service of the petitioner by the employer, in accordance with law. Had the termination been held unlawful and illegal, obviously, the petitioner would have been entitled to the consequential benefits of continuity of service during that period because that would have resulted in reinstatement of the employee concerned. That being not so, in my opinion, appellate authority was right in coming to the conclusion that the petitioner cannot get the benefit of service in 1952-53. Accordingly, the petition fails and is hereby dismissed. Rule discharged. No order as to costs.