

(2001) 09 MAD CK 0039

In the Madras High Court

Case No : Writ Petition No. 18249 of 1994 and W.M.P. No. 27726 of 1994

General Manager, Sri Sarada Mills

APPELLANT

Vs

Assistant Labour Commissioner (Central) (Controlling
Authority under Payment of Gratuity Act) and Others

RESPONDENT

Date of Decision : 04-09-2001

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2A

Citation : (2002) 92 FLR 738 : (2002) 1 LLJ 261

Hon'ble Judges : K. Raviraja Pandian, J

Bench : Single Bench

Advocate : S. Ravindran, for T.S. Gopalan, for the Appellant; R. Ganesan, for the Respondent

Final Decision : Allowed

Judgement

K. Raviraja Pandian, J.—The above writ petition is filed for issuance of a writ of certiorari to call for the records of the second respondent

in Gratuity Appeal No. 5 of 1994, dated August 18, 1994, confirming the order of the first respondent, dated December 31, 1993 in P.G.

Application No. 30 of 1991 and quash the same.

2. The case of the petitioner is that respondent No. 3 herein filed an application before the controlling authority first respondent herein for payment

of gratuity; that the dispute is in respect of two years that the third respondent herein claimed gratuity for 15 years that the petitioner herein has paid

gratuity for 13 years and denied gratuity for two years on the ground that there was interruption of work due to illegal strike during the years 1979

and 1985 that the controlling authority by its order dated December 31, 1993, allowed the application filed by the third respondent and directed

the petitioner to compute the amount of gratuity due to the third respondent for the two years in dispute and pay the same with simple interest at

the rate of 10 per cent as per the provisions of the Act and Rules. Aggrieved by the order, the petitioner filed an appeal in P.G. Appeal No. 5 of

1994 before the appellate authority; and that the appellate authority also confirmed the finding of the controlling authority. Hence, the present writ

petition with the prayer as stated above.

3. Heard the arguments of either side.

4. The controlling authority has stated that unless an order in accordance with the Standing Orders or service rules has been passed by the

management to conclude that the strike in which the third respondent-workman participated is illegal one and as such the workman suffered an

interruption in the continuous service, by issuing prior notice to the workman, the management cannot deny gratuity on the ground that there was

interruption in the service of the workman during the years 1979 and 1985 on the premise of the workman participated in the strike, which

according to the management is illegal. For coming to such conclusion, the controlling authority sought to apply the qualifying sentences employed

in Section 2-A of the Act, in respect of absence from duty without leave. As per Section 2-A, an employee shall be said to be in continuous

service, for the purpose of the Act, 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 Orders, rules or regulations governing the employee of the establishment), lay-

off, strike or a lock-out or cessation of work, not due to any fault of the employee. If the said provision is construed by giving the plain and natural

meaning to the terminology employed, the qualifying sentences would be applicable only to the act of the employee absenting himself from duty

without leave. On the other hand, the absence of an employee without leave cannot be treated as break in service unless an order to that effect is

passed by the employer in accordance with the Standing Orders, rules or regulations governing employee. The language as employed and the

provision of Section 2-A as framed by the Legislature cannot be stretched or

strained to interpret even for illegal strike. Further, the wording employed in the Section ""not due to any fault of the employee"" after the words, lay-off, strike or lockout or cessation of work would also have its own significance to come to the conclusion, the qualifying words employed in the portion would be applicable only to absence from duty without leave. If the intention of the legislation is so, then the qualifying sentences would have been inserted in the provision after the word cessation of work and the further wording not due to any fault of the employee need not be there and its employment in the provision would be meaningless. Be that as it may, the controlling authority did not go into the factual aspect as to whether the strike in which the workman alleged to have participated during the years 1979 and 1985 is illegal as contended by the management and thereby he incurred break in service during the two years and gave a finding. The appellate authority also without any discussion on materials gave a finding that the third respondent herein has worked for more than required number of days and no evidence was shown for disproving the third respondent's continuous service and also gave a further finding that the appellant has not proved by getting any declaration that the strike is an illegal strike by the competent authority. It is true that the impugned legislation is a welfare legislation and has to be liberally construed, but for that, it is not permitted in law to strain the wordings.

5. The dispute is very simple. The third respondent herein filed an application on the ground that he is entitled to gratuity for a period of fifteen years. On the other hand the petitioner herein has paid gratuity only for 13 years and denied gratuity for the two years on the ground that the total period of service of respondent No.3 is 15 years, for the years 1979 and 1985, he has not been in continuous service as contemplated u/s 2-A of the Payment of Gratuity Act because he participated in illegal strike, which caused interruption in his continuous service during the period. Hence, he is not entitled to gratuity for the years 1979 and 1985.

6. The issue as to whether the third respondent has participated in an illegal strike or whether respondent No. 3 has put in continuous service of 240 days is a pure question of fact and that would have been resolved by the controlling authority on the basis of the materials made available before him, but without giving any finding of fact to resolve the dispute, the

controlling authority went on interpreting Section 2-A as stated above as if even denying the gratuity for participation in strike, the management has to issue a prior notice and follow the principles of natural justice. But on the entire reading of the order of the controlling authority as well as the appellate authority, there is no factual finding as to whether the third respondent was in continuous service during the disputed years of 1979 and 1985 or whether he has worked actually less than 240 days for the purpose of calculating 240 days as per the definition of Section 2-A. Without there being a factual finding on the basis of the material made available, the interpretation of the statutory provision as done by the authorities would not by itself resolve the issue.

7. In view of the non-availability of the factual position, the order of the controlling authority as confirmed by the appellate authority is set aside and the matter is remanded back to the controlling authority to decide the issue by giving a factual finding as discussed above. This exercise has to be done within the period of three months from the date of receipt of copy of this order from this Court. If the records are called for pursuant to the rule nisi issued, the registry is directed to despatch the records back to the controlling authority forthwith.

8. The writ petition is allowed and the rule nisi is made absolute. However, there shall be no order as to costs. Consequently, the connected writ miscellaneous petition is closed.