
(1971) 06 BOM CK 0005

In the Bombay High Court

Case No : Special Civil Application No. 2968 of 1967

Gujarat Wood Works

APPELLANT

Vs

General Kamgar Union (Red Flag) and Another

RESPONDENT

Date of Decision : 18-06-1971

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1971) 2 LLJ 246

Hon'ble Judges : K.K. Desai, J;G.N. Vaidya, J

Bench : Division Bench

Judgement

Vaidya, J.—The above petition is filed by Messrs Gujarat Wood Works, Bombay, challenging the validity of an award passed by the Industrial Tribunal in a dispute between the petitioner-firm and its workers regarding a scheme of service-gratuity and sick leave. After fairly considering all the contentions raised by the parties, the Tribunal framed the following scheme with regard to gratuity :-

"The employer shall pay gratuity to -

(1) a workmen on the termination of his services -

(a) on his death,

(b) on account of physical or mental disability to continue in service;

Explanation. - In case of death, the gratuity shall be paid to the legal heirs and successors of the deceased workman.

(2) A workman who has completed service of not less than ten years, on the termination of his services -

(a) by retirement on superannuation,

(b) by voluntary resignation,

(c) by discharge or dismissal from service;

Provided that the payment of gratuity to a workman who is discharged or dismissed from service for misconduct involving financial loss to the employer, shall be subject to a deduction of such loss caused by him.

(3) The amount of gratuity shall be equivalent to ten days' consolidated wages for every completed year of service subject to a maximum of twelve years.

"Explanation :- The ten days' wages shall be computed on the basis of the average of the wages earned by the workman concerned during a period of six calendar months next preceding the month in which the gratuity accrues due."

The Tribunal gave the workmen sick leave with half wages for four days in a year. The award is challenged before us by Mr. Shetye only so far as the gratuity scheme is concerned.

2. The first contention raised by Mr. Shetye is that the Tribunal committed an error of law in granting gratuity on the basis of consolidated wages, notwithstanding that the workers of the petitioner-firm were separately getting basic wages and dearness allowance and the normal rule is to grant gratuity only on the basis of the basic wages. The second contention raised by him is that the Tribunal committed an error of law in making no distinction between termination of service on death or on account of physical or mental disability and dismissal from service on account of misconduct. Thirdly, Mr. Shetye contended that the Tribunal ought to have fixed a minimum of 15 years as qualifying period of service for entitling the workmen to claim gratuity. In support of his contentions, Mr. Shetye relied on the decisions of the Supreme Court in *Delhi Cloth and General Mills Co. v. Its Workmen* 1969 II L.L.J. 765, and *Ghaziabad Engineering Co. v. Its Workmen* 1961 II L.L.J. 777. He also relied on the decision of the Supreme Court in *Remington Rand of India Ltd. Vs. The Workmen*, .

3. The contentions of Mr. Shetye must be rejected, firstly because none of these grounds were urged before the Tribunal and it is not open to the petitioner to urge these points for the first time in this Court in the petition under Art. 226. Moreover, the second and third contentions referred to above are not even mentioned in the petition filed in this Court. Even the decisions cited by Mr. Shetye do not lay down any absolute rule with regard to the scheme of gratuity which requires the Tribunal to fix the gratuity on the basis of basic wages or to lay down 15 or more years as the minimum qualifying period of service as contended by Mr. Shetye. The Tribunal had a discretion in these matters and in the absence of any contention, the Tribunal has awarded the gratuity scheme referred to above. We, therefore, find no reason to interfere with the award in the exercise of our jurisdiction under Art. 226.

4. Ruse discharged with costs.