

(2014) 03 KAR CK 0135

In the Karnataka High Court

Case No : Writ Petition Nos. 39138 of 2012 and 2046 of 2013 (L-PG)

HMT Watches Limited

APPELLANT

Vs

The Regional Labour Commissioner (Central)

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2(e), 2-A

Citation : (2014) 3 KarLJ 664

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Joshua H. Samuel, Advocate for the Appellant; C. Ramakrishna, Central Government Standing Counsel and S. Nova Bethania, Advocate for the Respondent

Judgement

Ram Mohan Reddy, J.—There is no more dispute that the term "workman" as defined in Clause 2.6 of the Standing Orders of the petitioner-factory includes a "Trainee". The question as to whether a Trainee would fall within the definition of the term "employee" u/s 2(e) of the Payment of Gratuity Act, 1972 (for short, "Act") was required to be answered by the authorities before reckoning the period of training for the purpose of continuous service u/s 2-A of the Act. Apparently, there is no dispute that for certain period of time, the claimants "were engaged as "Trainees" under a contract and thereafter absorbed into the establishment as regular workmen against regular vacancies. In order to establish that during the course of training, "Trainees" were, in fact, discharging duties of workman required evidence both oral and documentary by either of the parties, which apparently is not forthcoming from the records.

2. Sri Joshua H. Samuel, learned Counsel for the petitioner submits that being under the genuine belief that there was no dispute that training was imparted to the trained during the subsistence of the contract hence no question arose whether it was only training or they had performed duties of regular workman. According to the learned Counsel, the authorities under the Act did not take into

consideration this aspect of the matter, but on the perverse misconception-that the definition of the term "workman" under Clause 2.6 of the Standing Orders, included a "Trainee", opined that Trainees performed duties as "regular workmen", entitled to reckon that period of training as service for the purpose of gratuity, calling for interference.

3. Contesting respondent though represented by Counsel is absent, conspicuously. Suffice it to notice that the order of the Appellate Authority suffers from an error apparent on the face of the record. This is so because the employees having advanced a contention that their status from "Apprentice Trainee" was changed to that of "workman" during the period of training must therefore necessarily plead and prove the requisite facts. In the absence of pleadings or proof, either, of novation of contract or by reason of conduct of parties; such change had been brought about, it is not proper to hold that the "Trainees" were in fact "workmen". Without expressing any opinion, over the aforesaid dispute, in the facts of this case, with an intention to extend an opportunity to place material in that regard, if any, before the Appellate Authority by either of the parties, ends of justice would be met by remitting the proceeding for consideration afresh.

4. In the result, this petition is allowed in part. The order of the Appellate Authority - Annexure-F is quashed and proceeding remitted for consideration afresh.

5. The Appellate Authority may also be guided by the opinion of the Apex Court in Mukesh K. Tripathi Vs. Sr. Divisional Manager, L.I.C. and Others, . Parties since represented by learned Counsel, are directed to be present before the Appellate Authority on 3-4-2014 without further notice.