
(1959) 10 BOM CK 0015
In the Bombay High Court
Case No : Reference (I.T.) No. 81 of 1959

Jeewanlal (1929) Ltd.

APPELLANT

Vs

Jeewanlal Employees" Union

RESPONDENT

Date of Decision : 12-10-1959

Acts Referred:

Industrial Disputes Act, 1947 — Section 36A(1)

Citation : (1960) 1 LLJ 86

Hon'ble Judges : Indrajit G. Thakore, J

Bench : Single Bench

Judgement

1. This matter has been referred to me under Sub-section (1) of S. 36A of the Industrial Disputes Act, 1947 (XIV of 1947), for interpretation of certain terms of my award dated 28 April, 1951 in Reference (I.T.) No. 158 of 1950 as in the opinion of Government a difficulty has arisen as to the interpretation of the term "continuous service" occurring in the above decision. The directions given by me in respect of gratuity which require interpretation are as follows :-

"I therefore direct the company to pay to its workers gratuity as follows :-

(i) On the death of an employee while in the service of the company or on an employee becoming physically or mentally disabled to continue further in service - Half a month's wages for each year of service subject to a maximum of ten months' wages to be paid to him or to his heirs, executors, assigns or nominees as the case may be.

(ii) On the termination of his service by the company after five years' continuous service - Gratuity at the same rate as above.

(iii) On voluntary retirement or resignation of an employee after 15 years' continuous service - Gratuity at the same rate as above."

2. A copy of the letter dated 26 February, 1959, from Jeewanlal Employees" Union, Bombay, requesting Government to refer the above question for my

interpretation and explaining as to how the present dispute arose is on the record of these proceedings. The question involved is one of interpretation of the phrase "continuous service" used in Clause (ii) and (iii) of the gratuity scheme reproduced above. The company has filed its written statement wherein it is inter alia stated that the words "continuous service" defined under S. 2(eee) of the Industrial Disputes Act apply to the interpretation occurring in the aforesaid award; that the unauthorized absence of employees is meant to be an interruption of continuous service of such employees and such employees would not be entitled to be paid gratuity. The company has also submitted that the words "continuous service" are not new in industrial law and the said words were already there in the Factories Act when the said award was made and they were also the subject-matter of interpretation and decision of the tribunals, courts, as also the Supreme Court and the accepted well-established rule is that even unauthorized leave for one day or absence from work due to strike, etc., would interrupt service and their service could not be continuous service. The company has further submitted that in the case of the company the words "continuous service" have all along been understood both by the company and its employees not only in the sense that the service was formally terminated by notice or otherwise but in the sense that there was interruption or breach in the continuous service due to absence without leave. At the hearing the company relied upon a decision of the Supreme Court in *Buckingham and Carnatic Co. Ltd. Vs. Workers of The Buckingham and Carnatic Co. Ltd.*, . The union has submitted that the said decision is based upon the construction of a particular definition given of the words "continuous service" as used in the Factories Act and should therefore be ignored. It has also relied upon the observations of the Supreme Court in *Budge Budge Municipality v. P. R. Mukherjee and others* 1953 I L.L.J. 195 , wherein their lordships have observed :

"The same words may mean one thing in one context and another in a different context. This is the reason why decisions on the meaning of particular words or collection of words found in other statutes are scarcely of much value when we have to deal with a specific statute of our own : they may be helpful but cannot be taken as guides or precedents."

I agree with the union that the decision of the Supreme Court is not of much help in this case as it is based only upon the construction of the definition of "continuous service" as given in the Factories Act and must only be confined to the provisions regarding leave, etc., in the Factories Act. The words "continuous service" as defined in the Industrial Disputes Act also cannot be of much help in this respect as that definition was introduced after the award was made and is also a definition for the purpose of certain provisions of the Industrial Disputes Act.

2. The words "continuous service" if given their natural meaning would mean uninterrupted service. The question for consideration is what could be considered to be an interruption in service whether unauthorized absence for a period

however short or a resort to strike which is illegal of however short duration, etc., would automatically amount to an interruption of service or whether there would be interruption in service only if it was interrupted or put an end to either by the employer or the employee. In this connexion certain observations of the Bombay High Court on the construction of the definition of "continuous service" under the Industrial Disputes Act are very helpful. The definition of "continuous service" as given in S. 2(eee) is as follows;

""continuous service" means uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lockout or a cessation of work, which is not due to any fault on the part of the workmen."

In the case relied upon, namely, *Jairam Sonu v. New India Rayon Mills Company, Ltd.*, and others 1958 I L.L.J. 28 their lordships observed :

"With respect, it is difficult to accept as sound this reasoning. Taking part in an illegal strike amounts to misconduct on the part of an employee and for misconduct an employee invites an order of dismissal; but unless an employee is dismissed from service, it is difficult to see how there can be no continuity of service so far as an employee is concerned. The learned Judge says that the applicant must be deemed to to be re-employed. This would imply that there was an order of dismissal made by the respondent company and the petitioner was re-employed upon a fresh employment after the dismissal. In this case, there is no suggestion that the petitioner was at any time dismissed from service. Actually, the time dismissed from service. Actually, the petitioner was retrenched on 15 October, 1954, and, in our view, the learned Judge was not right in concluding that the continuity of the service of the petitioner was broken by reason of his having taken part in an illegal strike."

The citation makes it clear that interruption in service contemplated in the definition under consideration must be by way of termination of the contract of employment by either parties or by the operation of law. In the case cited even though there was interruption of service by an illegal strike, it was not considered to be one which would amount to a break or interruption of the continuous service of the workmen, the employer not having terminated his service. The same having terminated his service. The same would be the case where a person is absent without leave. These observations are very helpful in interpreting the words in question. It could hardly have been intended by me when making the said award or by any other tribunal in making similar awards because these are very common expressions used in awards that even one day's unauthorized absence in the course of 15 or 20 years service if there was such unauthorized absence or resort to a strike which is illegal would constitute a break in the continuous service of the employee when the employer has at the time not chosen to do so. That would be the effect of my accepting the interpretation put by the company. The words "continuous service" as used by me mean service not broke or interrupted by the termination of the contract of

employment by either the employer or employee or by operation of law. There may be an unauthorized absence but if the contract of employment is not put an end to or terminated or an indication given that the person concerned was re-employed, the continuity of service would not be broken and it cannot be considered that the service was interrupted.

3. This award may be communicated to Government.