

(2002) 06 MAD CK 0147

In the Madras High Court

Case No : Writ Petition No. 12833 of 1995

Kaleeswarar Mills A Unit, Coimbatore

APPELLANT

Vs

The Asst. Labour Commissioner (Central), (Controlling Authority under the Payment of Gratuity Act), Shastri Bhavan, Madras, The Regional Labour Commissioner (Central), (Appellate Authority Under the Payment of Gratuity Act), Madras and Smt. K. Jayalakshmi

RESPONDENT

Date of Decision : 07-06-2002

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2(1), 2A

Citation : (2003) 96 FLR 662

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : S. Ravindran, for T.S. Gopalan, for the Appellant; K.M. Ramesh, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—The facts giving rise to the present writ petition are as follows :-

The deceased husband (hereinafter called the employee) of present respondent No.3 was working under the petitioner. He retired from the service

and was paid a sum of Rs.10,187.10 towards gratuity excluding the amount for the years 1984, 1985, 1987, 1989 and 1990, when the employee

along with others had abstained from the work because of the strike. The Management refused to pay any gratuity for the aforesaid 5 years on the

ground that strike was illegal and there was interruption in service within the meaning of Section 2(a)(1) of the Payment of Gratuity Act. The

employee filed an application before the first respondent claiming that he should be paid gratuity for the years during which he had abstained from

work due to strike. Such claim allowed by the original authority was challenged in appeal which having proved futile, the present writ petition has been filed.

2. The sole contention raised by the petitioner is that the employee was not entitled to the gratuity during the years when he had remained absent from the work due to the illegal strike.

3. The relevant provision of Section 2-A of the Payment of Gratuity Act is extracted hereunder :-

2-A. Continuous service - For the purposes of this Act,-

(1) an employee shall be said to be in continuous service 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 employees of

the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted

service was rendered before or after the commencement of this Act.

(2)

4. A perusal of the aforesaid provision makes it clear that if the service of the employee is interrupted due to strike for no fault of the employee,

then such employee shall be deemed to be in continuous service. However, where the absence due to strike is on account of default of the

employee, such period of absence cannot be considered as uninterrupted service and he would not be eligible for gratuity for the particular year if

he does not complete 240 days in the year by excluding such period of absence due to strike on account of the mistake of the employee. It seems

that a similar view has been taken in an unreported decision of this Court in the judgment dated 4.9.2001 in W.P.No.18249 of 1994.

5. Learned counsel appearing for the third respondent placed reliance upon the decision of the Bombay High Court reported in 1999 III L.L.J

(Supp) (RAMACHANDRA GANPAT DALVI Vs. PHOENIX MILLS LIMITED & OTHERS). On a perusal of the aforesaid decision, I feel

that the decision does not lay down in absolute terms that in all cases of absence of the employee due to strike, such employee would be entitled to

gratuity. It is obvious that the Bombay High Court has only taken the view that where the absence on account of the strike is not relatable to any

fault on the part of the employee, the absence during such strike would not be considered as interruption in service. This is apparent from the

following observation :-

By the artificial definition of ""continuous service"" in Section 2(a) of the Act of 1972, even an interrupted service on account of strike or lock-out

without any fault of the employee is not treated as break in service and the employee is deemed to be in continuous service even if there was

interruption in the service due to the circumstances mentioned in Section 2(a). Though the employee's evidence that there was no fault on his part

which led to interruption in service for the period from 1982 to 1985 yet no evidence was led by the employer in rebuttal to prove otherwise.

6. As already indicated, in the unreported decision of this Court referred to above, it is apparent that a view is taken that if the absence is due to

illegal strike and consequently there is fault on the part of the employee, gratuity may not be payable for the relevant year. As has been observed in

the aforesaid unreported decision, the question would depend on the factual aspect relating to the strike. If it is found that the strike was illegal and

the absence was on account of the fault of the employee, the gratuity may not be payable. On the other hand if it is found that there was no fault on

the part of the employee, the period of absence would not be considered as interruption in service.

7. In the present case, neither the original authority nor the appellate authority has tried to find out as to whether the strike during the relevant

period was illegal or not. Since the basic facts are not found, I am inclined to quash the orders passed by the original authority and the appellate

authority and to remand the matter to the original authority for fresh disposal. Since the employee had died in the meantime, his legal representative,

namely the widow would be allowed to participate in such proceedings and thereafter the matter shall be decided in accordance with law.

8. Hence, the writ petition is allowed and the matter is remanded to the original authority for fresh disposal in accordance with law. There shall be

no order as to costs.