
(2005) 02 MAD CK 0123

In the Madras High Court

Case No : Writ petition No. 4003 of 1998

Kone Elevators India Limited

APPELLANT

Vs

The Assistant Commissioner of Labour II, Controlling
Authority under the Payment of Gratuity Act, The Deputy
Commissioner of Labour (Appeal) and M.S. Rajaraman

RESPONDENT

Date of Decision : 04-02-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 2 LLJ 652

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

Bench : Single Bench

Advocate : S. Ravindran and T.S. Gopalan and Co, for the Appellant; P.S. Jayakumar, Government Advocate For respondents 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—Heard Mr. S. Ravindaran, learned counsel appearing for the petitioner, and Mr. P.S. Jayakumar, learned Government

Advocate, appearing for the respondents.

2. This matter relates to the question of computation for payment of gratuity, as contemplated u/s 4 of the Payment of Gratuity Act, 1972. The

management had initially calculated and paid the amount for thirty years. Subsequently, an application was filed by the workman, stating that

computation should be made for 31 years, as he had put in 31 years of service. During pendency of that application, further amount was paid.

3. However, the contention of the workman that calculation should be made by dividing the monthly salary with 22 and not 26 was not accepted

by the original authority. Such a contention had been made by the workmen, on the footing that Saturday was also a non-working day and,

therefore, the calculation should be done on the basis of actual working days in a month, namely, on an average of 22 days per month. The

aforesaid submission, though was not accepted by the original authority, was accepted by the appellate authority.

4. Learned counsel for the petitioner has submitted, that in view of the clear provision contained in Section 4 of the Payment of Gratuity Act, 1972,

there is no scope for coming to a conclusion that the monthly wages are to be divided by 22. For the aforesaid purpose, he has placed reliance on

Section 4(2) (Explanation).

5. It is only necessary to extract the said explanation hereunder :

Explanation.- In the case of a monthly rated employee, the fifteen days" wages shall be calculated by dividing the monthly rate of wages last

drawn by him by twenty-six and multiplying the quotient by fifteen.

6. The said explanation makes it clear, that in respect of a monthly rated employee, the 15 days" wages shall be calculated by dividing the monthly

rate of wages by 26 and multiplying the quotient by 15. As a matter of fact, it is obvious that such explanation was added by the Legislature, on the

basis of the decision of the Supreme Court, reported in Digvijay Woollen Mills Ltd. Vs. Shri. Mahendra Prataprai Buch, .

7. It is, of course, true that the workmen were working for 22 days in the particular industry, but, in view of the clear legislative provision, the

reasoning given by the appellate authority cannot be accepted. A similar question was decided by the Bombay High Court in 1991 (1) L.L.N. 477

(May and Baker (India) Ltd., Bombay, vs. J.S. Coutinho, National Union of Commercial Employees and Ors.).

8. Following the clear provision contained in Section 4, more particularly the explanation and also following the ratio laid down by the Supreme

Court as well as the Bombay High Court, the present Writ Petition is allowed and the order of the appellate authority is quashed. No costs. The

amount deposited by the petitioner before the first respondent, pursuant to the orders passed by this Court during the pendency of the Writ

Petition, shall be refunded.