

(1982) 02 MAD CK 0010

In the Madras High Court

Case No : Writ Petition No. 1713 etc. 1979 and 350 etc. of 1980

Management of Pankaja Mills

APPELLANT

Vs

Controlling Authority and Others

RESPONDENT

Date of Decision : 06-02-1982

Acts Referred:

Companies Act, 1956 — Section 443, 445
Payment of Gratuity Act, 1972 — Section 2, 4

Citation : (1983) 1 LLJ 260

Hon'ble Judges : S. Mohan, J

Bench : Single Bench

Judgement

1. The short facts are as follows : On 20.3.1968, the petitioner mill was closed and on 5.7.1968 in Company petition No. 14 of 1968 on the file of

this Court, a winding up was ordered, which was confirmed in appeal as well by an order dated 7.1.1970. Thereupon, on 9.2.1970 the Official

Liquidator took charge. On 1.4.1974, the Sick Textile (nationalisation) Act, 1974 was passed. As a result of that, the petitioner-mill came to be

vested in the National Textile Corporation. Prior to this, on 14.1.1973, the custodian under the Tamil Nadu Textile corporation assumed

management. Under these circumstances, the short question that arises for consideration in these cases is whether in between the two dates,

namely, 20.3.1968 and 14.1.1973 the relationship between the management and the employees continued as employer and employee or was

there a cessation. This becomes material for the purpose of deciding the entitlement of the employees to gratuity the entitlement of the employees to

gratuity. In W.P. No. 1979 of 1976 (N. Ramakrishnan v. The Presiding Officer, Labour Court, Coimbatore and another), a Division Bench of this

Court, to which I was also a party, was of the view that in relation to the very same period and the very same Mills there was no such relationship

and consequently it was not possible for an employee to seek re-employment. On the basis of that ruling, bound as I am by the same, these writ

petitions will stand allowed. There will be no order as to costs in all these writ petitions.

2. These writ petitions having been set down this day for being mentioned, the Court made the following order.

3. The matter having been set upon for being mentioned. It is argued by the learned counsel for the respondents, that in view of the statutory

obligation contained in S. 4 of the Payment of Gratuity Act read with the definition of "continued service occurring in S. 2(c) of the Act, the decision

in W.P. No. 1979 of 1976 will not apply. If at all it could only be a case of discharge as provided for under S. 443 and 445 of the Companies

Act. It is further argued on the strength of the decision in Life Insurance Corporation of India Vs. D.J. Bahadur and Others, , the special Act

overrides the general provision.

4. As to the last of the propositions advanced, there may not be any demur whatever. But S. 4 will clearly indicate that the statutory obligation is

only on the employer and if the relationship between the parties had ceased to be that of an employer and employee, I see no scope for applying

the provisions of the Payment of Gratuity Act irrespective of cessation of such a relationship. Section 4 categorically throws this obligation on the

employer and the payment is to the employee because of the following wordings :

Section 4. PAYMENT OF GRATUITY :

(1) Gratuity shall be payable to an employee on termination of his employment ...". Therefore, I am unable to agree with the contention raised on

behalf of the respondents. No further orders are necessary.