

(1991) 09 MAD CK 0014

In the Madras High Court

Case No : Writ Petition No. 6587 of 1983

N. Sivadasan

APPELLANT

Vs

Appellate Authority under Payment of Gratuity Act-I, Madras
and others

RESPONDENT

Date of Decision : 20-09-1991

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2

Citation : (1992) 2 LLJ 794 : (1993) 1 MLJ 212

Hon'ble Judges : K.M. Natarajan, J

Bench : Single Bench

Judgement

1. This writ petition has been filed for the issue of a writ of certiorarified mandamus calling for the records of the 1st respondent relating to Payment

of Gratuity Appeal No. 30/80 dated October 31, 1990 confirming the 2nd respondent's order in P.G. Case No. 252/79 dated December 5,

1979 and quashing the same in so far as it denies the petitioner from receiving full gratuity and consequently directing the 3rd respondent to pay the

petitioner a sum of Rs. 247.50 towards the balance of gratuity award.

2. The facts which are necessary for the disposal of this writ petition can be stated as follows : The writ petitioner herein filed a petition before the

Controlling Authority under the Payment of Gratuity Act, 1972, in which both parties made an endorsement to the effect that the parties agree

about the services of the applicant as six yeas and the parties agree that the applicant's last drawn wages in cash is Rs. 45 p.m. The contention of

the petitioner was that the cash equivalent to the food value per mensem i.e., Rs. 82.50 should be counted as wages while the respondent argued

that the definition clause of wages refers only to the amount paid in cash and

shall not include the food allowance or amount equivalent to the food or tiffin given along with wages as conditions of employment. The parties agree that the Controlling Authority may pass orders on the basis of the endorsement. The Controlling Authority came to the conclusion in view of the definition of "wages" under the Payment of Gratuity Act it is not possible to accept that the food equivalent is paid in cash and as such the petitioner is entitled to claim gratuity on the basis of last drawn wages paid at Rs. 45 p.m. and on the basis of the same he was awarded a sum of Rs. 135. He was unsuccessful before the Appellate Authority. Hence the writ petition.

3. The learned counsel for the petitioner mainly submitted that the value of food supplied to the petitioner is also included in the wages and if it is included the salary of the petitioner would come to Rs. 147 and the petitioner is entitled to get more gratuity, and he would submit that for construing the term "wages" reliance would be placed on the definition in Tamil Nadu Catering Establishment Act, 1958. He also cited a decision reported in *Management of Lakshmi Coffee Hotel, Kumbakonam Vs. Workmen of Lakshmi Coffee Hotel and Another*, which arose out of the Industrial Disputes Act."

4. The point that arises for determination in this writ petition is whether the definition of wages under the Payment of Gratuity Act would include the value of food provided. According to the learned counsel for the petitioner it would come under the word "wages" in accordance with the terms and conditions of the employment, even though the same was not paid in cash. For proper appreciation of the rival contentions it is worth while to consider the relevant definition of wages under the Payment of Gratuity Act.

"Wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance".

It is seen from this definition that the emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus

can be termed as wages. As per the definition, bonus, commission, house-rent allowance, overtime wages and any other allowance cannot be included in the definition of wages.

5. S. 2(13-A) of the Tamil Nadu Catering Establishments Act, 1953 defines wages :

"Wages" means the basis wages, dearness allowance, the cash equivalent of the meals and tiffin supplied to the employees free of charge and the value of any other amenity or of service or of any concessional supply of foodgrains or other articles which can be computed in terms of money, but does not include a bonus.

It is clear from the above definition that the cash equivalent of the meals and tiffin supplied to the employees free of charge is also included in the terms "wages". The learned counsel for the petitioner submitted that in view of the said definition in the abovesaid Act which has a special enactment the same can be imparted in the case of the petitioner in the matter of granting payment of gratuity. I do not find any force in the said contention.

6. Now we deal with the question of payment of gratuity. It is clear from the definition of "wages" in the Tamil Nadu Catering Establishments Act, 1958, that the value of food supplied cannot be included in terms of wages, as it is only the amount paid in cash equivalent to the meals. In this connection the learned Government Advocate drew the attention of the Court the decision of the Supreme Court reported in *Delhi Cloth and General Mills Co., Ltd. Vs. Workmen and Others etc.*, wherein their Lordships has observed thus : (pp. 766, 771) :

In determining the scope of an Industrial reference it cannot be held that the words used either in the claim advanced or in the order of reference made by Government under S. 10 of the Industrial Disputes Act must have by necessity the meaning they have under the Industrial Disputes Act.

Merely because the expression ""wages"" includes D.A. : within the meaning of the Industrial Disputes Act, the tribunal is not obliged to base a gratuity scheme on consolidated wages. Normally gratuity is based not on the consolidated wage but on basic wage"".

7. The learned counsel for the petitioner relied upon a decision of this Court in *Lakshmi Coffee Hotel v. Their Workmen*, (*supra*) which arose

under the Industrial Disputes Act, and wherein S. 2(rr) of the Industrial Disputes Act was considered. The definition of "wages" under S. 2(rr) of

the Act is very wide enough to include the free food and tiffin supplied to the employee. S. 2(rr) of the Industrial Disputes Act reads as follows :

Wages"" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were

fulfilled, be payable to a workmen in respect of his employment or of work done in such employment, and includes -

(i) such allowance (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any

concessional supply of foodgrains or other articles.

(iii) any travelling concession.

(iv) any commission payable on the promotion of sales or business or both

but does not include -

(a) any bonus,

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the

time being in force;

(c) any gratuity payable on the termination of his service"".

It is only in view of the definition under the said Act it was held so in the said decision that the value of the food supplied forms part of the wages.

The decisions cited by the learned counsel for the petitioner are not applicable to the facts of the case. On a careful consideration of the entire

material and the relevant provisions with regard to the definition of wages under the Payment of Gratuity Act, I am of the view that the Authorities

have rightly interpreted the word "wages" while granting relief to the petitioner and as such no case is made out for the issue of a writ of

certiorarified mandamus as prayed for.

8. In the result, the writ petition falls and is dismissed. There will be no order as to costs.