

(2011) 06 MAD CK 0248

In the Madras High Court

Case No : Writ Petition No. 27494 of 2009 and M.P. No. 2 of 2009

P. Malligarjunan and Others

APPELLANT

Vs

The Joint Commissioner of Labour (Appellate Authority under the Payment of Gratuity Act, 1972), The Assistant Commissioner of Labour (Controlling Authority under the Payment of Gratuity Act, 1972) and The Management of Dhanalakshmi Mills Limited

RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 25O
Payment of Gratuity Act, 1972 — Section 2A

Citation : (2011) 06 MAD CK 0248

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : K.M. Ramesh, for the Appellant; R. Ravichandran, Additional Government Pleader for Respondents 1 and 2, Ravi, for Ravi and Gupta for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The 23 Petitioners have filed the present writ petition challenging the common order dated 18.06.2009 passed by the first Respondent Joint Commissioner of Labour cum Appellate Authority under the Payment of Gratuity Act, 1972, in A.G.A. Case Nos. 1/2009 to 29 of 2009. Though the order had covered 29 workers, only 23 of them have come before this Court. By the impugned order, the authority held that the workmen, who are the Petitioners before this Court, are entitled for limited Gratuity namely for the period from 20.03.1998 to 28.06.2005, from the date of closure of "A" Mill of M/s. Dhanalakshmi Mills Limited, Thiruppur i.e., nearly for a period of seven years, they will not be eligible for gratuity. In respect of "B" Mill workers, they will not be eligible for gratuity for the period from 20.07.1992 to 28.06.2005 i.e., for a period of 13 years. In respect of interest, it was also directed that the workers

will get interest only from the natural date of retirement, till the date of their filing the claim before the Controlling Authority. It is this order dated 18.06.2009, which is the subject matter of challenge in this writ petition.

2. When the writ petition came up on 30.12.2009, the same was admitted. Pending the writ petition, an interim injunction was granted preventing the authorities from disbursing the balance amount to the third Respondent Management. With reference to the direction application, the amount covered by the Controlling Authority's order dated 03.11.2009 alone, which was the revised calculation, was directed to be paid, by order dated 12.03.2010 of this Court. On notice from this Court, the third Respondent has filed a counter affidavit dated 02.03.2011.

3. Heard the arguments of Mr. K.M. Ramesh, learned Counsel for the Petitioners and Mr. Ravi for M/s. Gupta and Ravi, learned Counsel appearing for the third Respondent Management.

4. It is seen from the records that the Petitioners moved the Controlling Authority under the Payment of Gratuity Act, 1972 claiming gratuity in respect of their entire service, including the service in which the Mills were closed (Both "A" and "B" Mills). The third Respondent Management contended that the Mills consisting of two Mills. So far as the "B" Mill was concerned, it was started in the year 1960 and an application for closure of the Weaving Unit and Weaving Preparatory Section in "A" Mills was made u/s 25-O of the Industrial Disputes Act, 1947, vide application dated 27.07.1990. At the time of filing of the closure application, there were 422 workers including staff and apprentices in the "B" Mills and there were 1143 workers in the "A" Mills. The Commissioner of Labour, by an order dated 16.09.1992 rejected the application for closure. The company filed a review application before the Government. The Government, by G.O.(D) No. 250, Labour and Employment Department, dated 06.04.1993 reviewed the order of the Commissioner of Labour and referred the issue for adjudication before the Special Industrial Tribunal. It was stated that whether the Management's demand to close down the "B" Mills in the premise of "A" Mills was justified. In the meanwhile, the Management signed a Memorandum of Understanding on 19.12.1992 for deployment of workers of the "B" Mills in "A" Mills. Consequently, 139 workers got redeployed in the "A" Mills, which is the Spinning Mills, without any loss of wages or break in service. The Industrial Tribunal vide its order dated 28.11.1994 passed in I.D. No. 4 of 1993 upheld the closure of the "B" Mills and directed the Management to redeploy all the workers of "B" Mills in "A" mills within four weeks. But one of the Unions did not accept the award and refused to accept alternate employment. The Union has also filed a writ petition in W.P. No. 21568 of 1994 challenging the award of the Industrial Tribunal in I.D. No. 4 of 1993 and the same was dismissed by this Court on 16.04.2001. A writ appeal in W.A. No. 1979 of 2001 was also dismissed by a Division Bench of this Court on 24.09.2008. Immediately after the dismissal of the application for closure by the Commissioner of Labour, individual workers

of the "B" Mills filed batch of claim petitions before the Labour Court claiming wages for the period from 20.07.1992 to 30.06.1993. The Labour Court allowed the claim petitions on 31.03.1994. But however, the Management has filed writ petition in W.P. No. 8225 of 1994 and batch cases. This Court, on 16.04.2001 allowed those writ petitions and set aside the order dated 31.03.1994 of the Labour Court. In fact, once the award is upheld by this Court, it is clear that "B" Mills workers became employees of the "A" Mills, not because of any right, but they had right to receive compensation only and the employment from "B" Mills to "A" Mills cannot be said to be continuous. Therefore, the workmen are entitled to claim gratuity only in respect of the years, in which they have put in service, and by stressing Section 2A of the Payment of Gratuity Act, 1972, they cannot get gratuity in respect of the periods in which they are not employed and the closure was also upheld by the Industrial Tribunal.

5. Similar was the case in respect of "A" Mills workers where the Mills was closed from 20.03.1998 to 28.06.2005. The Controlling Authority, on erroneous reading of Section 2A of the Payment of Gratuity Act, 1972, held that the workers are entitled for the entire period of service and during the period in which they did not attend to work, cannot be treated as break in service, as no orders were passed in this regard by the Management. But however, the appellate authority, on appeal, has correctly held that the dispute in I.D. No. 326 of 1999 was resolved by an award dated 17.08.2004 and it took it account the pleadings and evidences let in by the parties, including the settlement reached between the Unions and held that they are eligible for the relief. Therefore, the workmen, having not worked for 240 days of actual work and not covered by the exception found u/s 2A of the Payment of Gratuity Act, 1972, are not eligible to count the said period for the purpose of gratuity. Similar was the case in respect of other set of workmen, who refused to join the other Mills despite being offered to join and continued to stay away till their appeals were exhausted and hence, for that period, they are not eligible for gratuity and it correctly held that for the period in which the Mills was under closure, they are not eligible for any gratuity.

6. Under the circumstances, this Court is not inclined to interfere with the common order dated 18.06.2009 passed by the first Respondent Joint Commissioner of Labour, Coimbatore and hence, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.