
(2010) 10 BOM CK 0141
In the Bombay High Court
Case No : Writ Petition No. 2883 of 2005

Phoenix Mills Limited

APPELLANT

Vs

Shri Manohar Arjun Rasal

RESPONDENT

Date of Decision : 11-10-2010

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2A

Citation : (2011) 7 ALLMR 600 : (2011) 128 FLR 856 : (2011) 2 LLJ 39 : (2011) LLR 382 : (2011) 1 MhLj 121

Hon'ble Judges : S.J. Kathawalla, J

Bench : Single Bench

Advocate : Kiran S. Bapat and Jayesh K. Desai, for the Appellant; P.M. Shah, for the Respondent

Final Decision : Allowed

Judgement

S.J. Kathawalla, J.—Heard learned Advocates for the parties. Perused records.

2. By this Writ Petition, the Petitioner Company has challenged the Judgment and Order dated 23rd March 2004 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 and the Judgment and Order dated 19th August 2005 passed by the Appellate Authority. By the impugned Judgments and Orders, it is held that the Respondent. Workman was in continuous service of the Petitioner from 1967 to 1997 and therefore, the Petitioner was directed to pay to the Respondent an amount of Rs. 63,600/being difference of gratuity with 8% simple interest from the date of the order of the Controlling Authority i.e. 23rd March 2004 upto realization of the amount.

3. The facts in the matter are as follows:

4. The Respondent joined the services of the Petitioner on 4th November 1968 as a badli employee in the Ring Department and subsequently he was made permanent on 1st September 1974. Thereafter, the Respondent was working with the Petitioner till 17th January 1982. The last drawn salary of the Respondent in

the year 1982 was Rs. 27.28 paise per day. The Respondent participated in the illegal textile strike in the year 1982 and failed to report for duty. Hence, his services were terminated in the year 1982. The Respondent was in continuous service of the Petitioner only for six years.

5. According to the Petitioner, the representative Union i.e. Rashtriya Mill Mazdoor Sangh had raised an industrial dispute and the matter was referred before the Industrial Court being Reference (IC) No. 21 of 1986 and the name of the Respondent appeared at serial No. 218 of the annexure to the said Reference. According to the Petitioner, in the said Reference, the Respondent settled the dispute with the Petitioner and consequently, his name was deleted from the Reference by Part I Award dated 24th July 1989. In the meanwhile, the Respondent withdrew his provident fund amount from the provident fund office and collected his gratuity amount a little later i.e. on 30th September 1990.

6. According to the Petitioner, on 13th February 1990, the Respondent approached the Petitioner for his reemployment and accordingly, he was reemployed as a fresh badli employee. The Respondent continued to work as badli employee till he resigned on 22nd August 1997 and accepted the benefits under the voluntary retirement scheme (VRS). According to the Petitioner, during the period 1990-97, the Respondent had failed to put in five years continuous service and had completed 240 days in only one year.

7. According to the Petitioner, on 1st December 1997, the Respondent approached them with a claim for gratuity for the period 1967 to 1997. Since the Respondent had already collected the gratuity for the period 1982 to 1990 and was now incorrectly claiming gratuity on the basis of continuous service from the year 1967 till 1997, Petitioner did not entertain the request of the Respondent. Despite the above facts, the Respondent by an Application before the Controlling Authority under the Payment of Gratuity Act, 1972, claimed an amount of Rs. 63,600/being his alleged gratuity dues from 1967 to 1997. The Petitioner appeared before the Controlling Authority and filed its written statement contending inter alia that the Respondent was appointed as a badli employee afresh in the year 1990 and he had failed to complete five years continuous service in any year except for one year. The petitioner denied the claim of the Respondent in toto.

8. The Respondent examined himself in support of his case wherein he claimed that he was in continuous service of the Petitioner from 1967 till 1997.

9. The Petitioner in support of its case examined one Mr. Chandrakant Chawan who deposed that the Respondent was given fresh employment as a badli worker during the period 1990 to 1997. During this period, except for one year, the Respondent has not worked for 240 days and hence, the Respondent was not entitled to claim any amount towards gratuity.

10. According to the Petitioner, the Controlling Authority thereafter, without considering the submissions raised by the Petitioner by its order dated 23rd

March 2004 allowed the Application filed by the Respondent and directed the Petitioner to pay to the Respondent an amount of Rs. 63,600/being difference in gratuity (after adjusting Rs. 2,455.20 paid on 30th September 1990) with 8% simple interest from the date of the order upto realization of the amount.

11. Being aggrieved by the order of the Controlling Authority, the Petitioner preferred an Appeal before the Appellate Authority. The Appellate Authority by its Judgment and Order dated 19th August 2005 rejected the Petitioner's Appeal and confirmed the order of the Controlling Authority.

12. The Petitioner has submitted that the decisions of the Controlling Authority as well as Appellate Authority are based on the finding that the Respondent was in continuous employment of the Petitioner between the years 1967 to 1997. The Petitioner has pointed out that the Respondent had earlier filed an Application being (IDA) No. 116 of 1998 before the Fourth Labour Court, Mumbai for recovery of certain amounts as per the statement annexed to the said Application. The said Application was dismissed by the Fourth Labour Court by its Judgment and Order dated 14th November 2003. In the said Judgment and Order, the admission of the Respondent in his cross-examination, viz. that he joined the Petitioner on 13th February 1990 and his last drawn salary was Rs. 127.72 is recorded. The admission of the Respondent that prior to 1990, he has collected his provident fund and from 1990, he has become a fresh member of provident fund as he was taken in service as a new worker is also recorded. The learned Advocate appearing for the Petitioner has submitted that the Respondent has not preferred any Appeal from the said Judgment and Order dated 14th November 2003. It is, therefore, submitted that in view of the Respondent's own admission that he is in service with the Petitioner as a new worker from 1990, his case before the Controlling Authority as well as the Appellate Authority of being in continuous service of the Petitioner from 1967 to 1997, is false and incorrect to his knowledge and the impugned Judgments and Orders need to be set aside on this ground alone.

13. The learned Advocate appearing for the Petitioner has relied on the decisions of this Court in Baburam Rameshwar v. Phoenix Mills Limited and Ors. reported in 1998 I CLR 240 and Ramappa Bhimappa v. Phoenix Mills Limited and Others, reported in 1999 I CLR 187. In both the cases, the services of the workmen were terminated since the general strike in the textile industry in Mumbai was declared illegal in the year 1982 and the workmen were reemployed. In both the cases, the workmen had contended that there was no break in their service and they are entitled to gratuity on the ground of continuous service. In both the cases, it was held by the Controlling Authority as well as the Appellate Authority that there was no continuous service as claimed by the workman in as much as Section 2A of the Payment of Gratuity Act, 1972 does not take into consideration a case where the services of the workmen were terminated for whatsoever reason and the said termination has not been set aside or withdrawn. The said view was confirmed by this Court.

14. The learned Advocate appearing for the Respondent has fairly stated that in view of the admission of the Respondent recorded in the Judgment and Order dated 14th November 2003 passed by the Fourth Labour Court in Application (IDA) No. 116 of 1998, namely that he was taken in service as a new worker on 13th February 1990, he is unable to defend the decisions impugned in the present Writ Petition treating the Respondent to be in continuous service of the Petitioner during the period 1967 to 1997.

15. I have considered the submissions advanced on behalf of the Petitioner. I have also perused the impugned Judgments and orders as well as the Judgment and Order dated 14th November 2003 passed by the Fourth Labour Court in Application (IDA) No. 116 of 1998 wherein the Respondent has admitted that he was taken in service as a new worker from 13th February 1990. I have also gone through the decisions of this Court in Baburam Rameshwar v. Phoenix Mills Limited and Ors. (supra) and Ramappa Bhimappa v. Phoenix Mills Limited and Ors. (supra). I have also noted the fact that the Respondent has not impugned the said Judgment and Order dated 14th November 2003 dismissing his Application seeking compensation and recording his admission that he was taken in service as a new worker from 13th February 1990 and thereafter, he has worked with the Petitioner upto the year 1997. The orders impugned herein directing the Petitioner to pay gratuity to the Respondent are based on a finding that the Respondent was in continuous service of the Petitioner from the year 1967 upto 1997. The said orders deserve to be set aside in view of the admission of the Respondent himself as recorded in the Judgment and Order dated 14th November 2003 passed by the Fourth Labour Court, Mumbai, namely that he was taken in service by the Petitioner as a new worker from 13th February 1990. However, the Judgment and Order dated 14th November 2003 was not brought to the notice of the Controlling Authority as well as the Appellate Authority when the impugned Judgments and Orders dated 23rd March 2004 and 19th August 2005 were passed. In any event, it was brought to the notice of the Controlling Authority as well as the Appellate Authority that the services of the Respondent were terminated in the year 1982 after the said textile mill strike was declared illegal. The Rastriya Mill Mazdoor Sangh had raised an industrial dispute and the matter was referred before the Industrial Court in Reference (IC) No. 21 of 1986 and the name of the Respondent appeared at serial No. 218 of the annexure to the said Reference. Since the Respondent settled the matter with the Petitioner, his name was subsequently deleted from the Reference by Part I Award dated 24th July 1989. Thus, the admitted termination of the Respondent's service by the Petitioner was neither set aside nor withdrawn. The Controlling Authority as well as the Appellate Authority without taking into consideration the above facts and the fact that the Respondent had already collected his gratuity amount of Rs. 2,455.20 on 3th September 1990 for the period 1967 upto the date of the termination of his service and had taken fresh employment with the Petitioner in the year 1990 and had worked upto 22nd August 1997, have erroneously come to the conclusion that the Respondent was in continuous service of the Petitioner

from the year 1967 upto the year 1997 and was entitled to claim an amount of Rs. 63,600/towards gratuity. The facts of the case in hand are identical to the facts in the case of Ramappa Bhimappa v. Phoenix Mills Limited and Ors. (supra) and Baburam Rameshwar v. Phoenix Mills Limited and Ors. (supra), where the Controlling Authority and the Appellate Authority had rejected the case of the workmen that they were in continuous service of Phoenix Mills Limited which decisions of the Controlling Authority and the Appellate Authority are confirmed by this Court. In my view, the impugned decisions are, therefore, erroneous and perverse and deserve to be quashed and set aside.

16. Under the circumstances, Rule is made absolute and the judgment and order of the Controlling Authority dated 23rd March 2004 and the Judgment and Order of the Appellate Authority dated 19th August 2005, are quashed and set aside. The Writ Petition is allowed in the above terms. However, there shall be no order as to costs. The Petitioner is allowed to withdraw the amount deposited within the Prothonotary and Senior Master of this Court.