
(1996) 06 BOM CK 0005
In the Bombay High Court
Case No : Writ Petition No. 491 of 1996

Phoenix Mills Ltd.

APPELLANT

Vs

Balasaheb Dagdoo Hinge and Others

RESPONDENT

Date of Decision : 17-06-1996

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2A, 4

Citation : (1996) 74 FLR 2086 : (1998) 3 LLJ 52

Hon'ble Judges : V.P. Tipnis, J;F.I. Rebello, J

Bench : Division Bench

Judgement

Rehello, J.—Respondent no. 1 Balasaheb Dagdoo Hinge, joined the services of the petitioner as badli-workman with effect from 27.6.1962. The respondent no. 1 was thereafter taken in regular service from 1.9.1971 and worked upto 17.1.1982.

2. It is the contention of the petitioners herein that between 18.1.1982 and 25.5.1985 that the Respondent No. 1 did not report for duty. It is the further contention of the petitioners that the respondent No. 1 was taken as a fresh employee from 21.5.1985. It is the further case of the petitioners that the Respondent No. 1 on 25.4.1990 submitted a letter of resignation which was with retrospective affect from 17.1.1982. It is the further case of the petitioners that the said resignation was accepted and accordingly Respondent No. 1 was paid gratuity, in the year 1990 for the period from 1.9.1971 to 17.1.1982. It is the further case of the petitioners that as the Respondent No. 1 was taken as a fresh employee from 21.5.1985 and on account of his resignation, thereafter on 1.4.1993 be has also been paid his gratuity for the said period.

3. By this petition the petitioners impugned the order dated 20.11.1995 passed by the appellate authority under the Payment of Gratuity Act, 1972. The appellate authority by the said judgment and order has held that the appellant was in continuous service and, therefore, was entitled to gratuity right from the period 17.6.1962 till the date of his resignation on 1.4.1993. The appellate

authority by the said judgment reversed the order dated 11.8.1995 of the Controlling Authority under the Payment of Gratuity Act, 1972 and Judge, 3rd Labour Court at Bombay. By the said order the authority under the Payment of Gratuity Act, had rejected the claim of the 1st respondent preferred by his application u/s 4 of the Payment of Gratuity Act, 1972. By the said application the Respondent No. 1 had claim the balance amount of gratuity to the tune of Rs. 26,709.75 being the difference between the amount which he claimed as gratuity which was payable to him and the amount already paid to him by the petitioners.

4. Shri Naphade, learned counsel appearing for the petitioners contended that the Respondent No. 1 was not in continuous service within the meaning of section 2A of the Payment of Gratuity Act, 1972 and as such the petitioners were not liable to pay gratuity to the Respondent No. 1 for the period from 17.6.1962 to 1.9.1993. It was the contention of the learned counsel that there was admittedly a finding by both the authorities that the 1st respondent had not worked between the period from 18.1.1982 to 21.5.1985 and consequently it cannot be said that he was in continuous employment and as such his entire service could not be held to be continuous.

5. As against this Shri Shah appearing for the respondent No. 1 contended that the finding of the appellate authority was a finding of fact and there was no perversity in the order and in fact the material on record show that the respondent no. 1 was reporting for duty for the period wherein he was not in employment but was not given employment. It is therefore his contention that on the facts and circumstances of the case this Court should not interfere with the order passed by the appellate authority dated 20.11.1995.

6. The appellate authority has come to the conclusion on the basis of the material on record that the petitioners have not brought any material on record to show that there was break in service in so far as the Respondent No. 1 is concerned. In fact the provisions of section 2A would require the employer to establish that there was break in service for whatsoever reason as contemplated under the provisions of section 2A of the Payment of Gratuity Act, on perusal of the material on record and the finding of the lower authorities it is clear that there is no reason for us to interfere with the said finding of the appellate authority when he has come to the conclusion that there is no material on record to show that there was any break in service in so far as the respondent No. 1 is concerned. That being the case and on the facts and circumstances of the case we do not see any reason for interference with the finding recorded by the appellate authority. For the aforesaid reasons the ad interim reliefs granted on 18.3.1996 is vacated and Rule is discharged. In the circumstances of the case there shall be no order as to costs. We also direct that the petitioners to make the aforesaid payment within a period of four weeks from today.

In view of this order the notice of motion No. 154 of 1996 does not survive and the same stands disposed of accordingly with no order as to costs.

7. Certified copy expedited.