(2004) 07 BOM CK 0117

In the Bombay High Court

Case No : Writ Petition No. 1568 of 2004

Ramakant Atmaram Manjerekar APPELLANT

Vs

N.T.C. (M.N.) Ltd. RESPONDENT

Date of Decision : 08-07-2004

Acts Referred:
Payment of Gratuity Act, 1972 — Section 2A(1), 4(1), 7(3A)

Citation : (2004) 6 BomCR 106 : (2005) 1 LLJ 311 : (2004) 4 MhLj 541

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : P.M. Patel, for the Appellant; Meena H. Doshi, for the Respondent

Judgement

D.Y. Chandrachud, J.—Rule, returnable forthwith. Respondent waives service. By consent taken up for hearing and final disposal.

2. The petitioner was in the employment of Kohinoor Mills from 30th March, 1962. Kohinoor Mills Company Limited Units 1 and 2 and Unit 3 were listed at items 6 and 7 of the Textile Undertakings (Taking Over of Management) Act, 1983. There is no dispute about the fact that subsequently when the Textile Undertaking were nationalised under the Textile Undertakings (Nationalization) Act, 1995, the Textile Undertakings of Kohinoor Mills Ltd. was also taken over. The petitioner was in the employment of Kohinoor Mills Ltd. as a Time Keeper Clerk in the Time Office between 30th March, 1962 and 28th April, 1995. The petitioner was a party to a complaint which had been filed jointly with co-employees of Kohinoor Mills complaining of an unfair labour practice under the Maharashtra Prevention of Trade Unions and Unfair Labour Practices Act, 1971, on the ground that though the was reporting for work, he was neither assigned any work, nor was the salary paid to him. The Industrial Court by its order dated 28th April, 1995 allowed the complaint holding that the Respondents had committed an unfair labour practice that attracted Items 5 and 9 of Schedule IV of the Act. The Industrial Court held that the petitioner would be entitled to 25% of backwages from the date of the complaint till the date of the order and 40

days'' salary for every completed year of service on the principle of introducing the voluntary retirement scheme. The Respondent was also directed to pay gratuity in accordance with law. By virtue of the order of the Industrial Court, there was a deemed termination of. service with effect from 28th April, 1995.

3. The petitioner filed an application for his gratuity before the Controlling Authority under the Payment of Gratuity Act, 1972. The case of the petitioner was that he was not on strike and he was ready and willing to work and that he was in continuous service for 33 years between 30th March, 1962 and 28th February, 1995. The petitioner claimed that since his last drawn salary in April 1995 was Rs. 4,363.74, he was entitled to gratuity in the amount of Rs. 83,075.85.

4. The Controlling authority by an order dated 23rd September, 2002 allowed the claim for gratuity in the amount of Rs. 55,873.81 and granted the petitioner interest at the rate of Rs. 10% per annum. The Controlling authority noted that the petitioner had been paid an amount of Rs. 22,170/- on 12th February, 2002 and a balance of Rs. 55,873.81 was due and payable so as to make up a total gratuity of Rs. 78,043.81. However, the controlling authority declined to allow the claim of the petitioner for the payment of gratuity during the period from 18th January, 1982 to 18th October, 1983 on the ground that there was a textile strike in this period and that the petitioner had not produced any evidence to establish that he had attended to work during the said period. The order of the Controlling authority was challenged by the petitioner on the ground that the authority had erred in declining to grant the petitioner the benefit of gratuity with reference to period between 18th January, 1982 and 18th October, 1983. The appellate authority has by its order dated 9th March, 2004 confirmed the order of the Controlling Authority.

5. The Payment of Gratuity Act, 1972 defines the expression ''continuous service'' in Section 2A. Sub-section (1) of Section 2A provides thus:

"(1) an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act."

6. Under Sub-section (1) of Section 4, gratuity is payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years. Sub-section (1) of Section 2A makes it clear that an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service. For the purposes of computing

uninterrupted service, the service which may be interrupted on several accounts has to be taken into consideration as continuous service and among them is an interruption on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee. That period cannot be excluded in computing the uninterrupted service of the employee. This interpretation is indeed one which has been accepted by this Court following the judgment of Mr. Justice R.M. Lodha in Ramchandra Ganpat Dalvi v. Phoenix Mills Ltd. 1997 2 CLR 344. The Learned Single Judge held there as follows ;

"By the artificial definition of "continuous service" in Section 2(a) of the Act of 1972, even an interrupted service on account of strike or lock-out without any fault of the employee is not treated as break in service and the employee is deemed to be in continuous service even if there was interruption in the service due to the circumstances mentioned in Section 2(a)."

7. In the present case, there is absolutely no evidence on the part of the Respondent-employer to support the contention that the petitioner had remained absent as a result of a strike which was attributable to the fault of the workman. In the absence of any such evidence both the Controlling Authority and Appellate Authority were patently in error in treating the period between 18th January, 1982 and 18th October, 1983 as a period for which the petitioner would not be entitled to benefit in the computation of gratuity. Apart from this error which has vitiated both the orders, there is merit in the contention of Learned Counsel appearing on behalf of the petitioner that the petitioner would be entitled to the payment of interest on his gratuity. Section 7(3A) provides for payment of interest by the employer at such rate of simple interest not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as that Government may, by notification specify, if the amount of gratuity is not paid by the employer within a period of 30 days from the date from which it becomes payable. In the present case, in view of the specific statutory provision for payment of interest, there is no reason to deny the entitlement of the petitioner to interest on the unpaid gratuity. As already noted earlier, an amount of Rs. 22,170 was paid to the petitioner on 12th February, 2002. The petitioner would be entitled to interest at the rate of 10% per annum which is the notified rate on the entire gratuity that is due and payable to him from 28th April, 1995 to 12th February, 2002 and to interest at the same rate of 10% per annum on the balance of the amount that is due and payable to the petitioner, after deducting the payment of Rs. 22,170/- which was made to him. Interest on the balance will be allowed and paid to the petitioner from 12th February, 2002 until payment is made. The Controlling Authority shall now proceed to make a correct computation of the total payment of gratuity to which the petitioner is entitled, taking into consideration the period from 18th January, 1982 till 18th October, 1983 and by allowing the petitioner interest as directed in

the earlier part of this order. The controlling authority shall do so within a period of four weeks from the date on which an authenticated copy of this order is produced before it. Upon the computation being made by the Controlling Authority, the respondent shall thereupon take steps to pay the entire amount inclusive of interest within a period of four weeks thereafter. The Writ Petition is disposed of in the above terms.

8. Parties to act on a copy of this order duly authenticated by the Associate/ Personal Secretary of this Court.