

(1996) 07 MAD CK 0077

In the Madras High Court

Case No : Writ Petition No. 6587 of 1987

Senniappan M.

APPELLANT

Vs

Deputy Commissioner of Labour and Others

RESPONDENT

Date of Decision : 02-07-1996

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2A(1)

Citation : (1998) 3 LLJ 938

Hon'ble Judges : S.M. Abdul Wahab, J

Bench : Single Bench

Advocate : S. Ayyathurai, for the Appellant; G. Rajagopal, for the Respondent

Final Decision : Allowed

Judgement

S.M. Abdul Wahab, J.—This writ petition has been filed by the petitioner for a writ of certiorari to quash the order dated October 24, 1986, in A. G. A. Case No. 22 of 1986 of the first respondent. The petitioner was employed in the third respondent-company in March, 1970, as an apprentice. He was absorbed in service on March 12, 1972, as a regular employee. On April 6, 1985, he resigned his job. The third respondent paid a sum of Rs. 6,559.85 to the petitioner towards gratuity for 11 years of service only. Hence he filed an application before the second respondent claiming the balance of gratuity of Rs. 2,400. The third respondent tiled a counter-affidavit stating that in the period of two years from March 23, 1970, to March 12, 1972, there were break in service due to the petitioner's participation in several one-day strikes. The third respondent contended that by applying the rule of 240 days work in a period of 12 months immediately preceding the break, there was no continuity of service. Hence the petitioner would be entitled to gratuity for 11 years and not 15 years.

2. The second respondent passed an order on March 20, 1986, disallowing the claim for gratuity for the remaining period of two years. The second respondent, accordingly directed the third respondent to pay the sum of Rs. 1,192.70. Against the said order, the third respondent filed the appeal before the first

respondent who has allowed the appeal. Hence the writ petition.

3. The contention raised by counsel for the respondent is that the finding of the appellate authority that the third respondent is of public utility service is not correct. This contention is unacceptable because there is a specific statement by the appellate authority that the authorised representative for the respondent did not deny the said fact.

4. The next contention is that even though there was strike it must be proved to be illegal, as per Section 2-A of the Payment of Gratuity Act, 1972, Section 2-A(1) reads as follows :

"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."

5. Citing the said Section of the Act, learned counsel for the petitioner says that the third respondent should prove before the second respondent or before the first respondent that the alleged strikes were due to the fault of the petitioner. On the other hand, learned counsel for the third respondent contended that since the petitioner claims a benefit under the provisions of the said Act, the burden is upon him to prove the said fact. Unfortunately, both of them have not let in any evidence on his aspect.

6. Therefore, it is just and necessary that the matter is sent back to the appellate authority to decide the matter afresh, after giving the parties an opportunity to give evidence on this particular aspect only, i.e, whether the absence of the petitioner from duty during March 12, 1982, to March. 1985, was due to fault of him. The controller of authority has observed that Section 2-A of the Payment of Gratuity Act is very wide and the burden is upon the employer to prove that the strike was illegal. On the other hand, the appellate authority observed that since the strike was in a public utility service, it must be illegal.

7. Both the views are wrong. The Sections do not state that the strike in a public utility service is illegal, only when the condition mentioned therein are present the strike is illegal. But at the same time, Section 2-A of the Payment of Gratuity Act does not state, by implication otherwise that the burden is upon the employer. However, the normal rule is that the person who claims a benefit under a particular circumstance has to prove the existence of that circumstance. Hence the orders of the controlling authority as well as the appellate authority have to be set aside. Accordingly, they are set aside. However, an opportunity should be given to both the parties to lead evidence on this aspect.

8. The appellate authority is directed to dispose of the matter expeditiously within four months from today. He shall give an opportunity to both the parties to let in evidence on the aspect mentioned above The writ petition is allowed on the above terms. No costs.