

(1979) 06 MAD CK 0001
In the Madras High Court

S.P. Janakipatti

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 19-06-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2
Payment of Bonus Act, 1965 — Section 2
Payment of Gratuity Act, 1972 — Section 2
Payment of Wages Act, 1936 — Section 2

Citation : (1979) 2 LLJ 340

Hon'ble Judges : Varadarajan, J

Bench : Single Bench

Judgement

Varadarajan, J.—The petitioner was working as an accountant under the 2nd respondent, the Madras Circle Postal Co-operative Bank

Limited, Madras-1. He entered the service in January, 1936, and attained the age of superannuation on 16.6.1971 In the claim petition filed u/s

33C(2) of the Industrial Disputes Act, 1947, he prayed for computation of the gratuity payable to him on the basis of the award Ext. P1, dated

29.5.1970 made in I.D. No. 53 of 1969 on the file of the Additional Labour Court, Madras. That award provides for payment of gratuity at half a

month's salary for every year of service subject to a maximum of 15 months salary. The award has considered the question of even basic wages

and dearness allowances separately and a note has been added to the award saying that ""Pay"" means the average monthly salary drawn during the

last year of the employee's service. There is no dispute regarding the petitioner's right to claim gratuity as per that award. The dispute between the

parties was only on the question whether salary for computing gratuity should be

taken as basic pay on the basis of which a sum of Rs. 4,593-75

had been paid as gratuity to the writ petitioner or whether it should also include dearness allowance, in which even it is not disputed that the

petitioner would be entitled to a sum of Rs. 2,100 claimed in the claim petition. The Labour Court upheld the contention of the 2nd respondent-

management and held that ""salary"" mentioned in the award, Ext. P1 with reference to gratuity would mean only basic pay and would not include

dearness allowance and thus disallowed the petitioner's claim. The writ petition has been filed challenging the correctness of that interpretation of

the word ""salary"" used in the award, Ext. P1, with reference to gratuity and it is submitted that the salary should be construed to include basic pay

and dearness allowance. The contention urged on behalf of the management is that the salary should be construed as merely basic pay and should

not be held to include dearness allowance. Kailasam, J., as he then was, has held in Madurai District Co-operative Supply and Marketing Society

Ltd. Vs. Kumaravelu Pillai and Another, , that on a proper construction the word ""pay"" in the by-law which was being interpreted by the learned

Judge in that case could only mean basic pay without including the dearness allowance. The learned Judge has referred in his judgment to the

decision of the Supreme Court in Hindustan Antibiotics Ltd. Vs. The Workmen and Others, , where the Supreme Court has overruled that

dearness allowance may be included in ""pay"" for the purpose of arriving at the gratuity payable and that a decision on the question will depend

upon the nature of industry, whether it is a flourishing one and has the capacity to pay and upon the other facts and circumstances of the case. It

may be stated in the present case that the Labour Court while framing the scheme in the award, Ext. P1, has taken into consideration the various

circumstances including the capacity of the management to pay the gratuity. The said decision of Kailasam, J., as he then was, went up for

consideration before a Bench of this Court in Kumaravelu Pillai Vs. The Madurai District Co-operative Supply and Marketing Society Ltd. and

Another, . The learned Judges have observed that the by-law itself, in the context of computing gratuity defined ""pay"" as the salary drawn, that the

Labour Court has construed it as inclusive of dearness allowance and that it cannot be said that such a construction was. not possible or

unreasonable. The learned Judges have differed from the view expressed by Kailasam, J., in that decision and held that for computing gratuity the

word "pay" should be held to include dearness allowance. It may be stated in this connection that the learned Counsel for the management does

not seek to rely upon the said decision of Kailasam, J. But he submits that he would rely upon the aforesaid decision of the Bench of this Court in

Kumaravelu Pillai Vs. The Madurai District Co-operative Supply and Marketing Society Ltd. and Another, . Stressing the following the

observation made in that decision, viz., "a by-law of a society is not a rule having the force of law and an error in its interpretation by the Labour

Court cannot normally, therefore, be removed by this Court on a petition under Article 226 of the Constitution" he submits that this Court has no

jurisdiction to entertain a petition under Article 226 of the Constitution to correct any error in an interpretation by the Labour Court in the

impugned order that salary for the purpose of computing gratuity should be held to mean only basic pay and not to include dearness allowance.

The learned Counsel submits that in the present case the award in which the scheme for payment of gratuity has been framed is more or less in the

same position as a by-law and, therefore, this Court has no jurisdiction to entertain the writ petition. The learned Judges in Kumaravelu Pillai Vs.

The Madurai District Co-operative Supply and Marketing Society Ltd. and Another, , had not stated that in all cases where the question of

interpretation of a by-law of a society is involved, no writ petition under Article 226 of the Constitution of India will lie. But they have only stated

that normally an error in the interpretation of the Labour Court cannot be removed by this Court on a petition under Article 226 of the

Constitution. So this decision of the Division Bench does not, in my opinion, help the management in the present case.

2. "Wages" have been defined in Section 2(vi) of the Payment of Wages Act, 1936 as meaning:

All remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would,

if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in

such employment, and includes (a) any remuneration payable under any award or settlement between the parties or order of a Court, etc.

Certain kinds of payments, like bonus, travelling allowance are excluded from the definition of ""wages"" in Section 2(vi) of the Payment of Wages

Act. It is significant to note that dearness allowance is not one of the things excluded from the definition, according to which ""wages"" mean all

remuneration, (whether by way of salary, allowance or otherwise) as stated earlier.

3. In Section 2(rr) of the Industrial Disputes Act, 1947, ""wages"" have been defined as meaning:

all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be

payable to a workman in respect of his employment or of work done in such employment, and includes-

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to....

4. In Section 2(21) of the Payment of Bonus Act, 1965, ""salary or wages"" has been defined as meaning:

all remuneration (other than remuneration in respect of overtime work) capable of being expressed in terms of money, which would, if the terms of

employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and

includes ""dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of

living), but does not include-

(i) any other allowance which the employee is for the time being entitled to....

5. In Section 2(s) of the Payment of Gratuity Act, 1972, ""wages"" have been defined as meaning:

all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and

which are paid or payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance,

overtime wages and any other allowance.

6. Thus, it is seen that in the Industrial Disputes Act, 1947, the Payment of Bonus Act, 1965, and the Payment of Gratuity Act, 1972, dearness

allowance is specifically included in the definition of the word ""wages"" and in the Payment of Wages Act, 1936, it appears to have included in the

words "all remuneration" and is not specifically excluded in the definition. It is not possible to hold that the Labour Court in the present case while

exercising powers under the Industrial Disputes Act, 1947, in framing the scheme for payment of gratuity in the award, Ext. P1, intended to give a

meaning to the word "pay" different from one given to it in the very same Act where, no doubt, the word "wages" has been defined and not the

word "pay". In my opinion, there can be no difference between the word "pay" and the word "wages" in the matter of computing the benefit of

gratuity in the present case. Relying upon the decision of the Bench of this Court in Kumaravelu Pillai Vs. The Madurai District Co-operative

Supply and Marketing Society Ltd. and Another, and of the Supreme Court in Hindustan Antibiotics Ltd. Vs. The Workmen and Others, ,

referred to in the decision in Madurai District Co-operative Supply and Marketing Society Ltd. Vs. Kumaravelu Pillal and Another, , and on the

definition of the word "wages" in Section 2(rr) of the Industrial Disputes Act, 1947, I hold that the words "wages" and "pay" used by the Labour

Court in the award Ext. P1 should be held to include dearness allowance and that it is not possible to come to a different conclusion merely

because the Labour Court had separately considered the question of basic pay and the question of dearness allowance in the same award.

7. The writ petition is, therefore, allowed: with costs and the gratuity is computed at the sum of Rs. 2,100 as claimed in the petition filed u/s 33C(2)

of the Industrial Disputes Act, 1947. Counsel's fee Rs. 100.