(2006) 05 KAR CK 0009

In the Karnataka High Court

Case No : Writ Petition No. 16581 of 2001

The General Manager, Yellamma Cotton Woolen and Silk Mills — APPELLANT

Vs

Regional Labour Commissioner (Central) and Appellate Authority Under Payment of Gratuity Act, 1972 and Others — RESPONDENT

Date of Decision : 30-05-2006

Acts Referred:
Industrial Disputes Act, 1947 — Section 2 (s)
Payment of Gratuity Act, 1972 — Section 2 A

Citation : (2006) ILR (Kar) 194 : (2006) 4 KarLJ 265 : (2007) 3 LLJ 278

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : M.R.C. Ravi, for the Appellant; N.R. Bhaskar and D.B. Rajanna, Central Government Standing Counsel, for R1 and H.N. Venkatesh, for R2-10, R12-15, R17-19, R21-23 and R26, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—The petitioner is engaged in the manufacture of cotton and polyester yarn, is one of the units of National Textile Corporation, a Government of India Undertaking. In November, 1996, the petitioner had announced a Voluntary Retirement Scheme (hereinafter referred to as ''the VRS'' for brevity) for its employees. About 250 workmen, including respondents Nos. 2 to 26 opted for the Scheme. They were given all the assured benefits and retired from service.

2. The said respondents Nos. 2 to 26 were all engaged as trainees, in the first instance and some were taken on Badli workmen Rolls, later and some were either confirmed or promoted or not at all. Some were even confirmed as permanent employees from trainee as detailed in the body of the petition.

3. After a lapse of 30 months from the date of opting the VRS and having availed of all benefits without demur, had approached the Assistant Labour Commissioner and Controlling authority under The Payment of Gratuity Act, 1972

(hereinafter referred to as ''the authority'' for brevity) alleging short payment of gratuity. The contention being that the training period was not taken into account and that the break in service for unauthorised absence ought not to have been taken into consideration, in computation and that they were entitled for gratuity as Badli even during the period when they had not completed 240 days of continuous work.

4. The contention of the petitioner herein that the respondents, as trainees were not entitled for gratuity during the period of training, Badli workmen would not be entitled to gratuity if they had not put in 240 days of work in a year and that an employee will not be entitled to gratuity when unauthorised absence is treated as break in service as per the Certified Standing Orders and that the claim was barred by time, were all negatived by the authority.

5. Aggrieved by the order passed by the Controlling Authority, the petitioner filed appeals before the Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as ''the Act'' for brevity). The appeals having been rejected by a common order, the present writ petition is preferred.

6. Shri. M.R.C. Ravi, appearing for the petitioner, would contend that in terms of Rule 9 of The Payment of Gratuity Rules, 1972 (hereinafter referred to as ''the Rules'' for brevity), the claimant has to approach the Controlling Authority within a period of 90 days for filing an application seeking a direction with regard to any shortfall in payment of gratuity. No reasons were assigned by the concerned respondents in approaching the authority belatedly and hence the application was not maintainable.

7. It is stated that a combined reading of Section 2A of the Act read with 13(g) of the Certified Standing Orders, would require that absence from duty be treated as break in service and would result in interruption of continuous service. It is contended that Respondent No. 1 has failed to consider that as per Clause 3-F of the Certified Standing Orders of the Company - A trainee or apprentice is an operative engaged in the Mill to learn work. Such a person is eligible for stipend and is not entitled to gratuity, Provident Fund, Bonus and other Schemes, as applicable to permanent employees.

8. The counsel relied on the following authorities in support of the case:

Sundaram Industries Lid. v. Regional Provident Fund Commissioner (Karnataka) 88 FJR 13: In answering the question whether """trainees" engaged by a company would come within the purview of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. Relying on the judgment of the Supreme Court in ESIC v. Tata Engineering and Locomotive Co. Ltd. 48 FJR 206 held that a trainee in the course of his training receives remuneration or turns out work of not much consequence and this circumstance would not elevate him to the status of an employee.

Regional Provident Fund Commissioner v. Management of Hotel Highway Limited, Mysore 1999 III LLJ 43: A Division Bench of this Court has held that for purposes of Section 2(f) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, a person only receiving training, cannot be called an employee.

In Lalappa Lingappa and Ors. v. Laxnu Vishnu Textile Mills, Sholapur 1981ILLJ SC 308: While answering the question whether permanent employees are entitled to payment of gratuity for the years in which they remained absent without leave for a number of days in a year and had worked for less than 240 days due to absence without leave, whether badli employees are entitled to gratuity on becoming permanent employees for the badli period in respect of the years in which there was no work allotted to them due to their failure to report to duty. Held, that the expression "actually employed" found in Explanation I to Section 2(c) would mean "actually worked". And therefore, permanent employees were not entitled for gratuity for the years they remained absent without leave and had actually worked for less than 240 days in a year. And that badli employees are not covered by the substantive part of the definition of continuous service in Section 2(c) but come within Explanation I and therefore, are not entitled to payment of gratuity for the badli period.

9. Per contra, the counsel for the respondent contends that the petitioner has not challenged the order of the Controlling Authority and in any event, there is no case made out to judicate any perversity in the impugned order and hence that there is no interference warranted. The counsel would further contend that the respondents Nos. 2 to 26 are not appointed as apprentices but as trainees and hence, ought to be considered as permanent employees during the training period. He places reliance on the case of S. Arunachalam v. The Managing Director, Southern Structurals, Pattabhiram, Madras and Ors. 2001 (91) FLR 444 to support the contention that the words "apprentice" and "trainee" are not similar or identical. Under the Payment of Gratuity Act, Section 2(e) provides that all employees are entitled to gratuity except apprentices - therefore the exclusion ought not to be extended to "trainees" when the legislature has not specifically intended to.

10. On these rival contentions, there is ample authority to support the proposition that a trainee cannot be held to be entitled to gratuity. A trainee could, at best be, considered as a "workman" in terms of the definition u/s 2(s) of the Industrial Disputes Act, 1947, but in the absence of any statutory provision under the Payment of Gratuity Act, which could be pressed into service a trainee cannot be held entitled to gratuity. It is not possible to subscribe to the view in S. Arunachalam''s case, supra. On the other hand, the several decided cases under the Apprentices Act, 1961 where apprentices are held to be "trainees" and hence not entitled to wages like regular employees - would render the tenor of Section 2(e) of the Payment of Gratuity Act, entirely unfavourable to the respondents.

11. Further, in the light of the judgment of the Supreme Court in the case of Lalappa Lingappa, supra, that there can be no claim towards gratuity for the

years during which the employee remains absent without leave and had actually worked for less than 240 days and also to the effect that Badli employees are not covered by the substantive part of the definition of continuous service and are not entitled to payment of gratuity for the badli period - the same has to be held against the respondents.

12. In the result, the impugned order in which the order of the Controlling Authority stands merged, is clearly in error of law, resulting in miscarriage of justice.

13. Accordingly, the writ petition is allowed and the impugned order stands quashed.

