

(2002) 02 MAD CK 0115

In the Madras High Court

Case No : Writ Petition No. 19815 of 1994

The Management, Korakundah Estate, Koprakundah Post,
The Nilgiris

APPELLANT

Vs

Smt. Sagunthala, The Controlling Authority under the
Payment of Gratuity Act 1972 Assistant Commissioner of
Labour, O/o. The Deputy Commissioner of Labour,
Coimbatore and The Appellate Authority Under the Payment
of Gratuity Act/Deputy Commissioner of Labour, Coimbatore

RESPONDENT

Date of Decision : 21-02-2002

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2A, 2A(1), 4(1)

Citation : (2004) 1 LLJ 99

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : B. Ramamoorthy, for the Appellant; Hariparanthaman and M. Liyagat Ali, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Rajan, J.—The brief case of the petitioner is as follows:- The first respondent herein joined the services of the petitioner on 15.10.1969 and left the employment on 16.11.1990. Thereafter, she did not apply to the petitioner management for the payment of gratuity by filing necessary forms as required. But she filed an application for payment of gratuity before the controlling authority under the Payment of Gratuity Act 1972, Coimbatore, the second respondent herein, in G.A. Case No. 135 of 1992 against the petitioner, claiming that the first respondent herein has put in 21 years of service from 18.2.1969 to 18.02.1991. But the second respondent has held that the first respondent herein has rendered 10 years of service to earn gratuity and granted a sum of Rs.3730..50Ps. towards gratuity. Against which, the first respondent herein filed an appeal before the Appellate Authority Under the Payment of Gratuity Act who in turn modified the order of the Controlling Authority and awarded a sum of

Rs.7834/- towards gratuity. Aggrieved against the same, the Management has come forward with the present writ petition.

2. Heard both sides.

3. Learned counsel appearing for the petitioner contended gratuity is payable only in cases where the worker works atleast 240 days in a year. But all these years, the worker-first respondent did not work for 240 days and hence, he is not entitled for gratuity under the Act. Therefore, the order of the original authority ie. Controlling Authority was correct and the order of the Appellate Authority modifying the same is not legal and in support of his contention learned counsel has relied on a decision reported in Lalappa Lingappa and Others Vs. Laxmi Vishnu Textile Mills Ltd., wherein the Supreme has held as follows:

" Permanent employes are not entitled to payment of gratuity under sub-section (1) of Section 4 of Section 4 for the years in which they remained absent without leave for a number of days in a year and had actually worked for less than 240 days, due to absence without leave.

4. Relying on the above decision, learned counsel for the management/petitioner contended that the order of the Controlling Authority is valid and the order of the Appellate Authority is liable to be set aside.

5. Section 2-A(1) of the Act reads 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;"

Sub Section 2A was introduced in the year 1987, therefore, the term "continuous service" has been defined to mean differently as stated therein. According to this provision employees shall be said to be in continuous service including the period of absence due to sickness, accident and leave etc. Therefore, the definition "continuous service" is modified subsequent to the decision of the Supreme Court referred to above. As per new definition, the petitioner can be said to be in continuous service from 1969 to 1991.

6. A perusal of the order of the Appellate Authority makes it clear that the Management has not taken a plea that the services of the appellant was not continuous within the meaning of Section 2A of the Act and hence, the appellate authority has held that the workman/first respondent herein, has put up continuous service even during the years 1972 to 1974, 1976 to 1980, 1982, 1983 and 1990 and consequently held that the first respondent herein is entitled

to gratuity for a total period of 21 years which includes the 10 years entitlement ordered by the lower authority and that the appellant is entitled to a sum of Rs.7834/-.

7. Therefore, even if a person has not worked for full year, even where a person works for six months in a year, that shall be taken into account and the person is entitled for gratuity of 15 days wages. Therefore, the order of the appellate authority is justifiable and legal and there is no illegality in that order and hence, the order of the appellate authority is confirmed.

8. It is stated that the admitted amount of gratuity has already been deposited before the Controlling Authority. It is strange that no application has been filed so far to withdraw the said amount for all these years. The management is directed to pay the balance of gratuity amount to the first respondent together with interest at the rate of 12% per annum from 16.11.1990 the date on which the employee left the employment, within a period of one month from the date of receipt of a copy of this order.

9. The writ petition is dismissed. No cost. Consequently, connected W.M.P. Is also dismissed.