(2002) 06 MAD CK 0073

In the Madras High Court

Case No : Writ Petition No. 12405 of 1983

The Management of Kaleeswarar Mills, Coimbatore	APPELLANT
Vs	
The Appellate Authority under the Payment of Gratuity Act (The Dy. Commissioner of Labour), Coimbatore, The Controlling Authority under the Payment of Gratuity Act (Asst. Commissioner of Labour), Coimbatore, Angamuthu, Nagappan, Thannasi, Muniammal, Pappammal, Ponnian, Arunachalam, Kumaraswamy, Anthonimuthu, Arumugam, Marimuthu, Masannan, Nanjappan, Chinnaswamy, Ramasamy, Rangasamy, Vellingiri, Muthuswamy, Velayutham, Ranganathan, Annamalai, K. Muthuswamy, Lakshmi, Vellingiri, G. Govindaswamy, Nanjammal, Angamuthu, Subbammal, Nanjappan, Rajamanickam, Mariappan, Marudhachalam, Raman, Angathal, P. Natarajan, M. Karuppusamy, V. Arumugam, Periannan, Marudhachalam, Kuppusamy, Ramasamy, Somasundaram, Kathamuthu, Krishnan, S.B. Natarajan, R. Chinnasamy, Subramanian, R. Narayanasamy, Rangasamy, Rangapandaram, A. Arumugam, Karuppusamy, Urumandu Gounder, Ramasamy, Subbiah, Mariappan, Marappan, Muthusamy, Mariappan, Angannan, Mariappan, Karuppannan, Muthu, Rangammal, Kaliammal, Arukutti, Murugesa Gounder, Kunhiraman, Valliammal, Ammasai, Rangasamy, Selvamery, Maruthakutty, Subbanna Gounder, Maruthachalam, Arayee, Shanmugam, Ganapathy Gounder, Ramachandran, Arumugam and Krishnapillai	RESPONDENT

Date of Decision : 28-06-2002

Acts Referred:

- Industrial Disputes Act, 1947 — Section 2
- Payment of Gratuity Act, 1972 — Section 7(7)
- Sick Textile Undertakings (Nationalisation) Act, 1974 — Section 14(4)

Citation : (2003) 1 LLJ 354

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : Sanjay Mohan, for Ramasubramaniam Associates, for the Appellant; N.G.R. Prasad, for Row and Reddy for R-3 to R-15, 18 to 81 and 83 and K. Muralidharan, Government Advocate for R1 and R-2, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—Aggrieved by the order of the Appellate Authority under Payment of Gratuity Act (Deputy Commissioner of Labour),

Coimbatore/first respondent herein in A. G. A. Case No. 88/79 dated 31-10-1979 confirming the order of the Controlling Authority in granting

gratuity to the workers for the period from December, 1970 to March, 1972, the Management of Kaleeswarar Mills, Coimbatore has preferred

the above writ petition.

2. The case of the petitioner is briefly stated hereunder:

The petitioner is a textile Mill under the control of National Textile Corporation (Tamil Nadu and Pondicherry) Limited. The Mills originally

belonged to a public limited company by name The Kaleeswarar Mills Limited, Coimbatore. The Mill remained closed on 3 different occasions for

the period from 1958 to 1973. Subsequently in terms of the provisions of the Sick Textile Undertakings (taking over of Management) Ordinance,

1972 , the petitioner Mill was taken over by the Central Government. Subsequently on 1-4-74 under the provisions of the Sick Textile

Undertakings (Nationalisation) Act, 1974, the Mills were taken over by the Government of India and vested with the National Textile Corporation

(Tamil Nadu and Pondicherry) Limited. The petitioner Mills is an establishment covered by the Payment of Gratuity Act, 1972 and the rules

framed thereunder. Respondents 3 to 83 were employees of the petitioner Mills and left the Mills on various dates between 30-5-71 and 11-3-77

on account of superannuation. On the basis of their last drawn wages and the years of service excluding the period of closure, put in by them, they

were offered gratuity in terms of the Provisions of the Payment of Gratuity Act, 1972. All those persons accepted the amounts paid to them

without any demur or protest and passed stamped receipts in full and final settlement of their claim for gratuity. While so, after a lapse of nearly two

to six years, the applicants preferred applications before the 2nd respondent, the Controlling Authority under the Payment of Gratuity Act, praying

for a direction to be issued to the petitioner for payment of amounts claimed therein. They alleged that the petitioner had not taken into account the period of closure of the Mills for the purpose of computing the number of years of service put in by them. The 2nd respondent, by a common

order dated 27-1-1979, after holding that there was no closure of Mills in legal sense and there was only a cessation of work not due to the fault

of the employees concerned notwithstanding the provisions of Sick Textiles (Nationalisation) Act, directed the petitioner Mills to pay the amounts

mentioned against the name of every individual/employee in Annexure ''C'' of the writ petition. Aggrieved by the said order of the 2nd respondent,

the petitioner preferred an appeal u/s 7(7) of the Payment of Gratuity Act to the first respondent (Appellate authority). By the impugned order, the

first respondent confirmed the order of the controlling authority and dismissed the appeal. Hence the present writ petition.

3. Heard Mr. Sanjay Mohan, learned counsel for the petitioner-Management and Mr. N.G.R. Prasad for respondents 3 to 83.

4. Even at the outset, Mr. Sanjay Mohan, by relying on a Division Bench decision of this Court in The Management of Kaleeswarar Mills,

Coimbatore-9 v. The Appellate Authority under the Payment of Gratuity Act, 1972 (W.P.Nos. 10304 of 1983 etc., batch dated 20-9-1989),

would contend that in the absence of employer-employee relationship in the petitioner mills, the employees cannot be granted gratuity and prayed

for similar order as passed by the Division Bench. On the other hand, Mr. N.G.R. Prasad, learned counsel for the workmen, contended that it was

not a closure within the meaning of Section 2(cc) of the Industrial Disputes Act and both the authorities have correctly issued direction to the

Management for payment of gratuity during the period of closure.

5. There is no dispute that the petitioner mills were taken over under the provisions of Sick Textile Undertakings (Nationalisation) Act, 1974 by the

Government of India and vested with the National Textile corporation (Tamil Nadu and Pondicherry) Limited. It is also not disputed that the

employees in question left the mills on various dates between 30-5-71 and 11-3-77 on account of superannuation. It is also not disputed that on

the basis of their last drawn wages and the years of service excluding the period of closure, put in by them, they were offered gratuity in terms of

the provisions of the Payment of Gratuity Act, 1972. However, it is the definite case of the petitioner mills that the mills remained closed on 3 different occasions as detailed below:

SPINNING DEPARTMENT:

a) From 13-8-58 to 15-11-59) Totalling 5 years,

b) From 10-12-66 to 11-11-69) 9 months and 17 days.

c) From 30-5-71 to 13-1-73)

WEAVING DEPARTMENT;

a) From 13-8-58 to 15-11-59) Totalling

b) From 10-12-66 to 26-7-70) 7 years, 1 month

c) From 30-5-71 to 16-8-73) and 5 days.

The question to be answered is whether during the period of closure there was employer and employee relationship between the petitioner and the

workmen; and whether such closure constituted a break in service. In this regard, as rightly pointed out by Mr. Sanjay Mohan, it is relevant to

refer the decision of the Division Bench of this Court in W.P.Nos. 10304/83 etc., batch dated 20-9-89 (cited supra). The very same defence was

taken by the Management before the Division Bench saying that gratuity claimed by the employee is not payable because during the period in

question, there was no relationship between employer and employee. Accepting the contention of the Mills, the Division Bench allowed all the writ

petitions. The said order is as follows:

In these writ petitions, the petitioner-mills wants to say that the gratuity claimed by the employees is not payable because during the period in

question there was no relationship of employer and employee, the petitioner-mills having had been would up, and there having had been cessation

of work in the petitioner-mills. The Controlling Authority and the Appellate Authority under the Payment of Gratuity Act, did not countenance this

case of the petitioner-mills. That is why the petitioner-mills is here by way of these writ petitions. The pronouncements of this Court have

countenanced in the case of the petitioner-mills itself that during the relevant period, there existed no employer-employee relationship in the

petitioner-mills. Adopting the same ratio, we have to hold that for the period in question, the employees cannot claim gratuity. Accordingly, these

writ petitions are allowed....

Though Mr. N.G.R. Prasad has argued that the relationship of employer and employee continued even during the closure, in the light of the

conclusion of the Division Bench in respect of the very same mills and on the very same issue, namely, payment of gratuity to the employees

concerned, I am unable to accept his contention and I hold that the judgment of the Division Bench governed the issue raised in this writ petition.

6. It is also relevant to refer section 14(4) of Sick Textile Undertakings (Nationalisation) Act, 1974 which reads as follows:

Section 14(4) Where, under the terms of any contract of service or otherwise, any person whose services become terminated or whose services

become transferred to the National Textile Corporation by the reason of the provisions of the Act is entitled to any arrears of salary or wages or

any payment for any leave not availed of or other payment, not being payment by way of gratuity or pension, such person may, except to the

extent such liability has been taken over by the Central Government u/s 5 enforce his claim against the owner of the sick textile undertaking but not

against the Central Government or the National Textile Corporation.

The above provision makes it clear that gratuity is payable only to those employees whose services were terminated by the reason of the

provisions of the Act.

7. Apart from the above legal position, the second respondent failed to note that the applications have been filed after enormous delay and the

applicants had not adduced any reason at all for the delay.

8. In view of the fact that the provisions of Section 14(4) of the Sick Textile Undertakings (Nationalisation) Act, 1974 apply only to those persons

who had been terminated by reason of the provisions of the Act and in the light of earlier Division Bench decision in W.P.Nos. 10304/83 dated

20-9-089 (cited supra), holding that there existed no employer-employee relationship in the petitioner-mills, the employees cannot claim gratuity

during the period in question. Accordingly, the Writ Petition is allowed. No costs. It is made clear that the petitioner-mills is not entitled to ask for

the refund of the amount paid by them to the respondents 3 to 83 during the pendency of the above proceedings.

