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In the Madras High Court

Case No : Writ Petition No''s. 1446, 1605, 1971 to 1973 and 1627 of 1987

The Management of Spencer and Co. Ltd. and Another — APPELLANT

Vs

Appellate Authority under the Payment of Gratuity Act and Others — RESPONDENT

Date of Decision : 12-06-1996

Acts Referred:
Payment of Gratuity Act, 1972 — Section 4, 4(2), 4(3), 7, 7(2)
Tamil Nadu Payment of Gratuity Rules, 1973 — Rule 10, 7

Citation : (1996) 74 FLR 2592 : (1997) 1 LLJ 269 : (1996) 2 MLJ 294

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

Bench : Single Bench

Judgement

1. The first six W.P. Nos. 1446, 1605, 1606, 1971 to 1973 of 1987 arise out of a common order dated December 31, 1986 made in P.G.A. Nos. 9, 7, 8, 6, 10 and 11 of 1986 respectively, while W.P. No. 1627 of 1987 arises out of an order dated August 1, 1986 in P.G.A. No. 14 of 1985, on the file of the appellate authority, namely, the Deputy Commissioner of Labour (Appeals), Madras 6. In the first 6 writ petitions, M/s. Spencer & Co. Ltd., Madras-2 is the writ petitioner, while, the Brooke Bond India Limited is the petitioner in the seventh writ petition.

2. The six employees of M/s. Spencer & Co. Ltd., Madras-2 and one employee of M/s. Brooke Bond India Ltd., have filed applications before the controlling authority claiming balance of gratuity paid to them, since according to them. gratuity paid by the management was less than the amount which they were entitled to. Those applications were allowed by the Controlling Authority. Hence, appeals were preferred by the management to the appellate authority. Since their appeals were also rejected, the present writ petitions have been filed before this Court for quashing the order passed by the appellate authority, confirming the order passed by the controlling authority. In all the cases, the employees retired from their services. Thereupon gratuity amounts were paid to them and as they were not satisfied, they moved the controlling authority. Since there is no dispute with reference to the date and amounts, computed by the controlling

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authority and confirmed by the appellate authority in the writ petition, I think it is not necessary to give details about the date of retirement and the amount computed by the controlling authority in each of the writ petitions. The writ petitions have been preferred mainly on an interpretation of the relevant sections of the Payment of Gratuity Act. The contention raised in all these writ petitions is that the computation of the gratuity payable to the employees made by the controlling authority and confirmed by the appellate authority is not in accordance with the provisions of the Payment of Gratuity Act, 1972. Sec. 4(2) of the Payment of Gratuity Act, 1972 hereinafter referred to as "the Act", enables the retired employee to claim gratuity, on the termination of his employment after a continuous service for not less than 5 years. The gratuity becomes payable as per the said Sec.(a) on his superannuation; (b) on his retirement or resignation, or (c) on his death or disablement due to accident or disease. Sub-sec.(2) of Sec.4 is the relevant Section, which is as follows :

"For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days'' wages based on the rate of wages last drawn by the employee concerned"

Explanation : In the case of monthly rated employee, the fifteen days'' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

(3) The amount of gratuity payable to an employee shall not exceed one lakh rupees.

The learned counsel for the petitioners contends that the 3rd respondents in all these writ petitions are undoubtedly entitled for gratuity. The petitioners in all these petitions calculated the gratuity strictly in accordance with the provisions contained in sub-secs.(1) to (3) of Sec. 4. After such computation the amounts have also been paid. Not satisfied with the amount paid to them, they have filed these writ petitions, on a misreading of the abovesaid sub-sec.(4) of the Act.

3. The 3rd respondents are monthly wage earners. To arrive at the daily wage, for the purpose of sub-sec.(2) of Sec.4, the last drawn monthly wage has to he divided by 26. To arrive at the total wage, the same has to be multiplied by 520 because as per the explanation month means 26 days. Therefore for 20 months of 26 days, the total number of days are 520. So, if the daily wage calculated as above is multiplied by 520, the total amount can be arrived at and the total amount arrived at as mentioned above alone is payable to the employees. Only in the manner mentioned above, the total amount was calculated in each case and the same was paid to each of the employees.

4. The learned counsel for the petitioners contended that the calculation mentioned above is in accordance with the decision of the Supreme Court. He relied upon the decision of the Apex Court reported in Jeewanlal (1929) Limited v. Appellate Authority, 1984 XI LLJ 464. He mainly laid his stress upon para 13 of the said is judgment which is as follows :

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"The next question is : whether a month cannot mean 26 working days for purposes of Sub-sec. (2) of Sec.4 of the Act and 30 days for purposes of sub-sec (3) thereof. It is said that if a month under sub-sec. (2) connotes 26 working days in a month for purposes of calculating the amount of gratuity, then the rule of harmonious construction requires that the words "20 months'' wages" in sub-sec. (3) thereof must mean wages for 520 working days taking the actual working days in 20 months and not 600 days taking that a month consists of 30 days. The contention is wholly misconceived. Sub-secs. (2) and (3) of Sec. 4 of the Act are designed to achieve two separate and distinct objects and they operate at two different stages. While sub-sec. (2) provides for the mode of calculation of the, amount of gratuity, sub-sec. (3) seeks to impose a ceiling on the amount of gratuity payable at 20 months'' wages. It is meant to provide an incentive to employees to serve for the period of 30 years or more. By no rule of construction, can Sub-sec. (2) of Sec. 4 of the Act, which uses the words ''fifteen days'' wages'' and not half a month''s wages, be called in aid for construction of the words ''20 months'' wages'' appearing in sub-sec.(3) of Sec. 4 of the Act."

5. I am not able to agree with the interpretation put by the learned counsel for the petitioner on para 13 of the said judgment. The Apex Court has clearly mentioned that the calculation of multiplying the daily wage by 526 days is misconceived. The theory of 26 days has been evolved for the purpose of arriving at the monthly wage for the purpose of sub-sec. (2) of Sec. 4.

6. As regards the meaning for the month mentioned in sub-sec. (3) of Sec. 4, it is the full month consisting of 30 days and not 26 days. That is why the Supreme Court has specifically mentioned that while sub-sec.(2) provides for the mode of calculation of the amount of gratuity, sub-see. (3) seeks to impose a ceiling on the amount of gratuity on the 26 days wage. The Supreme Court has categorically mentioned that sub-sec. (2) and sub-sec. (3) of Sec. 4 have been designed to achieve separate and distinct objects at two different stages. That means the sub-sections must be understood without reference to the other. The confusion arises only if these two sections are sought to be interpreted together as if each one depends upon the other for a proper appreciation or understanding of the meaning.

7. Jeevanlal (1929) Limited and Others Vs. Controlling Authority Under the Payment of Gratuity Act and Others, is the decision of the Bench of this Court against which judgment only the Supreme Court has rendered the decision. In fact, the decision of this Court reported in Jeevanlal (1929) Limited and Others Vs. Controlling Authority Under the Payment of Gratuity Act and Others, , in para 14 is as follows :

"The question as to how sub-secs. (2) and (3) of Sec. 4 of the Act should be interpreted is no longer res integra.. Lakshmi Vishnu Textile Mills Vs. P.S. Mavlankar, , a Division Bench of Bombay High Court had to consider whether the fifteen days wages referred to in Sec. 4(2) should be construed as fifteen days wages or 13 days wages, and whether the words, twenty months'' wages

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occurring in Sec. 4(3) should be taken to mean wages for 600 days or wages for 520 days. The employees concerned in that case were all daily rate workmen. They worked out their claim for gratuity at the rate of actual fifteen days'' wages for every completed year of service by multiplying the amount of their actual daily wages by 15 and of ''twenty months'' of wages, in terms of Sec. 4(3), by multiplying it by 600, treating each month to be of 30 days. The employers, on the other hand, contended that all the workmen, without regard to the mode of payment of their wages, worked only for 26 days in a month, that fifteen days'' period is equivalent to half a month, that in the case of monthly rated workmen half a month''s wages turned out only to be those of 13 days'' wages, that the legislature could not have intended to fix a higher rate of gratuity for daily rated workmen and discriminated against monthly rated workmen and therefore, a month must be equated with 26 days and thirteen days with half a month. Hence the employers insisted on limiting the yearly rate of gratuity at 13 days actual wages. The Division Bench rejected the contentions of the employer and held that the rate of 15 days'' wages in Sec.4(2) cannot he construed to mean 13 days'' wages and if the rate of 15 days wages under Sec. 4(2) cannot be reduced to thirteen working days wages, and then the wages of a twenty months covering 600 days also cannot be reduced to 520 days'' wages. It may thus be seen that contentions similar to the ones raised before the Bombay High Court, but were not accepted by the learned Judges. The only difference is that in the case before us the employees are monthly rated personnel whereas in the case dealt with by the Bombay High Court the employees were daily rated workmen. However it has been pointed out by the Division Bench that the rule of construction has to be the same for daily rated employees as well as monthly rated employees."

As per the decision of this Court the theory of 26 days for a month evolved for arriving at the daily wage of an employee should not be taken in aid of interpreting 20 years mentioned in sub-sec. (3) of Sec. 4. This has been upheld by the Apex Court as mentioned above in the decision reported in Jeewanlal (1929) Limited v. Appellate authority, (supra).

8. The learned counsel for the petitioners has not brought to my notice any other decisions in support of his contention. Therefore, in my view, the matter has been already settled and the interpretation of sub-secs. (2) and (3) of Sec. 4 is no longer res integra. Therefore, the Writ Petition Nos. 1446, 1605, 1606, 1971 to 1973 of 1987 deserve to be dismissed.

9. As regards W.P. No. 1627 of 1987, the most important point to be considered is the belated claim of the 2nd respondent. The controlling as well as the appellate authority have treated the application of the petitioner as one failing under sub-rule 1 of Rule 10, and as per the (1)(Sic) proviso contained in sub-rule (1)(sic) of Rule 10. According to them, the 2nd respondent applied to the employer under Form No. 1 as provided under sub-rule (1) of Rule 7. As the request was rejected by the employer, he filed the petition before the controlling authority under sub rule (1) of Rule 10. It is time that the second respondent

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applied to the petitioner under sub-rule (1) of Rule 7. Even in the said form, the claim is only for balance as due according to the calculation of the 2nd respondent. But the petitioner has rejected the claim of the 2nd respondent dated February 18, 1985 stating that the gratuity was settled already and there was no arrears payable to the 2nd respondent. Therefore, the claim of the 2nd respondent and the refusal are not for claiming gratuity simpliciter and the refusal to pay gratuity. Rule 7 contemplates an application for payment of gratuity when it becomes payable. But this is not a case of falling under sub-rule (1) of Rule 7. This is not an application within 30 days from the date the gratuity became payable. Sec. 4 of the Payment of Gratuity Act, 1972 indicates when gratuity becomes payable. As per the said sub-section gratuity becomes payable on superannuation, on retirement or resignation or on his death or disablement. In this case, the 2nd respondent left the company of the petitioner on voluntary retirement scheme. On July 22, 1977 the gratuity was paid to him. Thereafter only on February 20, 1985 he made the claim in Form No.1 on February 15, 1985 and the said claim was rejected on February 18, 1985. Sub-sec. (2) of Sec. 7 of the Payment of Gratuity Act, 1972 is as follows :

"As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-sec. (1) has been made or not, determine the amount of gratuity and give.

"As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-sec. (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

This is not a case of refusal to pay gratuity, but a case of a dispute as to the amount payable to the employee under the Act. Such a dispute is governed by sub-sec. 4(a) of Sec. 7 of the Act. It is necessary here to note some of the provisions of Sec. 7.

10. Determination of the amount of gratuity :

"(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may he prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-sec. (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

3(A) If the amount of gratuity payable under sub-sec. (3) is not paid by the employer within the period specified in sub-sec (3), the employer shall pay, from

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the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify :

(4)(a) If there is any dispute as to the amount of gratuity payable to an employee under this act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in clause (a) the employer or employee or another person raising the dispute may make an application to the controlling authority for deciding the dispute.

A reading of the abovesaid provisions clearly indicate that the dispute in this case can be treated only as contemplated by sub-sec. (4) of Sec. 7. But the petitioner did not raise any dispute when he received the amount on June 22, 1977. There is no indication that he received the amount under protest. Even assuming that the amount was received under protest he has kept quiet for about 8 years. The presumption therefore is that he has received the amount of gratuity not only without protest but also in full satisfaction. When there is no time-limit prescribed for raising a dispute, that does not mean that the dispute can be raised at any time or after any length of time. If we presume so, it will result in anomalous situation. Therefore, the courts will have to presume that in the absence of any time-limit for raising a dispute, if a dispute is to be raised, it must be raised within a reasonable time and the Court can also presume that if the dispute is not raised within such a reasonable time, there is no dispute at all, and the matter must be presumed to have been final and conclusive, after the expiry of the reasonable time. The dispute in this case falls under sub-rule (4)(a) of Rule 7, and there is no time-limit prescribed to make an application to the controlling authority with reference to the said dispute. Applying the aforesaid principle we have to come to the conclusion that the matter has become final, conclusive and binding and cannot be reopened according to the whims and fancies of the petitioner, especially after the expiry of the reasonable period.

11. Since the Controlling Authority as well as the appellate authority have misconceived the scope and effect of the provisions contained in Rules 7, 10 of the Tamil Nadu Payment of gratuity Rules, 1973, and held that there was no delay at all, the view of the Controlling Authority as well as the Appellate Authority are unsustainable and hence I have no hesitation to set aside the order of the controlling authority as confirmed by the appellate authority.

12. In this view of the matter, I am not inclined to deal with the other question which is ''common to the other six writ petitions. However, it is sufficient to state that the reasoning given for agreeing with the appellate authority and the controlling authority in those cases on other questions holds good in this case

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also. In the abovesaid circumstances, W.P. No. 1627 of 1987 has to be allowed.

13. In the result, W.P. Nos. 1446, 1605, 1606, 1971 to 1973 of 1987 are dismissed and W.P. No. 1627 of 1987 is allowed. However, there will be no order as to costs.

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