

(2015) 01 BOM CK 0253

In the Bombay High Court

Case No : Writ Petition Nos. 6208 of 2012 and 3738 to 3742 of 2011

Western Coalfields Ltd.

APPELLANT

Vs

Babulal Athankar and Others

RESPONDENT

Date of Decision : 12-01-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(5)

Payment of Gratuity Act, 1972 — Section 2(e), 4, 4(2), 4(3), 4(5)

Citation : (2015) 5 ALLMR 591 : (2015) 145 FLR 1055 : (2015) 3 MhLj 354

Hon'ble Judges : Z.A. Haq, J

Bench : Single Bench

Advocate : S.C. Mehadia, for the Appellant; S. Khandekar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Z.A. Haq, J.—These petitions are disposed of by the common judgment as the same issue is involved in these writ petitions. Heard Shri Mehadia, the learned Advocate for the petitioner and Shri Khandekar, the learned Advocate for the respondent.

2. The Controlling Authority under the Payment of Gratuity Act, 1972 has directed the petitioner-employer to pay gratuity to the respondents-employees calculating the amount of gratuity receivable by the employees who have rendered service beyond 30 years on the basis of one month's wages for every completed year of service.

3. Shri Mehadia, the learned Advocate for the petitioner-employer has submitted that the claim of the respondent-employees is also not that they are entitled for the amount of gratuity by calculating on the basis of one month's wages for every completed year of service.

4. It is submitted that the Controlling Authority has committed an error in calculating the amount of gratuity payable to the employees on the basis that

they are entitled at the rate of monthly wages for each completed year and applying the multiplier of 30 days instead of 26 days. The petitioner has relied on Clause 13.3.0 of the National Coal Wages Agreement and submitted that the Management of the Coal Companies cannot resort to unilateral interpretations of the agreement in case of any doubt or difficulty in interpretation or implementation of any clause of the agreement and the same shall be referred to and settled by the Joint Bipartite Committee for the Coal Industries or Sub Committee constituted by the Joint Bipartite Committee for the Coal Industries. It is submitted that the Joint Bipartite Committee for the Coal Industries has issued instructions dated 26th April, 1984 for proper implementation of the National Coal Wages Agreement-in. Relying on the above mentioned instructions dated 26th April, 1984 it is submitted that the amount of gratuity is required to be calculated taking into consideration the wages as shown in these instructions.

Details of instructions of me Joint Bipartite Committee are as follows:--

"13.3.0 - The Management of the Coal Companies on their part will not resort to unilateral interpretations of the Agreement in case of any doubt or difficulty in interpretation or implementation of any clause of this Agreement, the same shall be referred to and settled by the JBCCI or a Sub-Committee constituted by the JBCCI for the purpose in the spirit of mutual goodwill".

5. Shri Mehadia, the learned Advocate has relied on the following judgments:--

(1) the judgment given by the Hon"ble Supreme Court in the case of Jeewanlal (1929) Ltd. Vs. Appellate Authority under the Payment of Gratuity Act and Others, AIR 1984 SC 1842 : (1985) 1 CompLJ 318 : (1984) 49 FLR 313 : (1984) 2 LLJ 464 : (1984) 2 SCALE 303 : (1984) 4 SCC 356 : (1985) 1 SCR 664 : (1985) 1 SLJ 38 : (1985) 17 UJ 106 ;

(2) the judgment given by this Court in the case of Hindustan Lever Limited Vs. Kasargod Devidas Rao and Others, (1990) 1 BomCR 612 : (1989) 91 BOMLR 389 ;

(3) the judgment given by the Hon"ble Supreme Court in the case of Guru Jambheshwar University through Registrar Vs. Dharam Pal, AIR 2007 SC 1040 : (2007) 2 JT 418 : (2007) 1 LLJ 1006 : (2007) 2 SCALE 340 : (2007) 2 SCC 265 : (2007) 1 SCC(L&S) 792 : (2007) 1 SCR 993 : (2007) 2 SLJ 482 : (2007) AIRSCW 6740 : (2007) AIRSCW 834 : (2007) 1 Supreme 440 : (2007) 8 Supreme 131 , and

(4) the judgment given by the Hon"ble Supreme Court in the case of G.M., Bharat Coking Coal Ltd., West Bengal Vs. Shib Kumar Dushad and Others, AIR 2001 SC 72 : (2001) 1 LLJ 532 : (2000) 7 SCALE 270 : (2000) 8 SCC 696 : (2000) 4 SCR 336 Supp : (2001) 1 UJ 66 : (2000) AIRSCW 3883 : (2000) 7 Supreme 380 ;

To fortify his submissions, the learned Advocate for the petitioner has relied on the explanation below section 4(2) of the Payment of Gratuity Act which lays

down that the "fifteen days" wages" shall be calculated by dividing monthly rate of wages last drawn by the employee by 26 and multiplying the quotient by 15. The learned Advocate for the petitioner has relied on the judgment given by the Hon"ble Supreme Court in the case of G.M., Bharat Coking Coal Ltd., West Bengal Vs. Shib Kumar Dushad and Others, AIR 2001 SC 72 : (2001) 1 LLJ 532 : (2000) 7 SCALE 270 : (2000) 8 SCC 696 : (2000) 4 SCR 336 Supp : (2001) 1 UJ 66 : (2000) AIRSCW 3883 : (2000) 7 Supreme 380 and has submitted that the implementation instructions issued on 26th April, 1984 could not have been overlooked by the authorities.

6. Shri Khandekar, the learned Advocate for the respondent-employee in Writ Petition No. 6208/2012 has submitted that the instructions issued by the communication dated 26th April, 1984 are not by the Joint Bipartite Committee for the Coal Industries but they are issued by the Chief of Personnel, Coal India Limited. It is submitted that the petitioner-employer has not placed any document on the record to show that the issue is considered either by the Joint Bipartite Committee for the Coal Industries or by the Sub-Committee constituted by the Committee. The learned Advocate has submitted that the National Coal Wage Agreement is a settlement as contemplated by section 2(5) of the Industrial Disputes Act and it has statutory force and it cannot be modified by the executive instructions. It is submitted that the issue which arises in the case is based on the provisions of the Clause 10.1.1 of the National Coal Wage Agreement and there is no ambiguity in the language of Clause which requires any interpretation.

7. Shri Khandekar, the learned Advocate has relied on the following judgments:--

(i) the judgment given by this Court in the case Lakshmi Vishnu Textile Mills Vs. P.S. Mavlankar, (1979) 38 FLR 378 : (1979) 1 LLJ 443 , and

(ii) the judgment given by Hon"ble Supreme Court in the case of Jeewanlal Ltd. etc. etc. vs. Appellate Authority under the Payment of Gratuity Act and others.

It is submitted that section 4(5) of the Payment of Gratuity Act provides that if there is an agreement between employer and employee providing for better condition in favour of the employee then the employee is entitled to receive gratuity as per better terms under any award or agreement or contract with the employer. It is submitted that the reliance placed by the petitioner-employer on the explanation below section 4(2) of the Payment of Gratuity Act is misdirected, in view of the provisions of Clause 10.1.1 of the National Coal Wage Agreement.

8. After hearing the learned Advocates for the respective parties and examining the legal propositions, I find that the impugned orders are proper and does not require any interference by this Court.

In the judgment given in the case of Jeewanlal Ltd. Etc. Etc. vs. Appellate Authority under the Payment of Gratuity Act and others (supra) in paragraph 14, the Hon"ble Supreme Court has recorded as follows:--

"The next question is : Whether a month cannot mean 26 working days for purposes of sub-section (2) of section 4 of the Act and 30 days for purposes of sub-section (3) thereof. It is said that if a month under subsection (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-section (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-sections (2) and (3) of section 4 of the Act are designed to achieve two separate and distinct objects and they operate at two different stages. While subsection (2) provides for the mode of calculation of the amount of gratuity sub-section (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 sub-section (2) of section 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-section (3) of section 4 of the Act".

Similarly, the Division Bench of this court in the judgment given in the case of Laxmi Vishnu Textile Mills Ltd., Solapur vs. P.S. Malvankar and others (supra) has dealt with the issue. It is recorded in paragraph Nos. 10, 11, 12 and 13, as follows:--

10. "Dr. Kulkarni also appears to be right in contending that the Act itself does not furnish any other context to justify any departure from what the word is ordinarily and literally assumed to mean. When section 4(2) fixes the rate of gratuity by reference to 15 days or 7 days wages, it only goes to indicate a measure for calculating the amount of gratuity. Having decided to arm a worker with a statutory right to claim gratuity proportionate to his period of service, the Legislature requires taking into account the wages of seven or fifteen days by way of measure, without indicating to any such period of such seven or fifteen days by reference to any custom or practice or any fiction, and without regard to whether the worker actually works or earns on these days. The same is true of the reference to "twenty months" wages" in section 4(3) intended to indicate the measure of maximum gratuity so receivable. In the context of fifteen and seven days in section 4(2), the words "twenty months" in section 4(3) would denote the number of days which a month ordinarily is supposed to consist. This should be all the more so when a days wage is made the basis for calculating the amount of gratuity. The words certainly can have no reference to the days during which an employee could or could not have actually worked or earned. In fact the concepts of "continuous service" and "completed years" service" incorporated in section 4(2) of the Act themselves are artificial, and are inclusive of the days on which the employee might not have worked at all. The rate of seven days" wages in the case of an employee, working in a seasonal establishment also further indicates that the contemplated measure has no reference to the days for which he actually works or earns. The concept of twenty months" wages by way

of ceiling on gratuity amount is indeed a measure of the same pattern necessitating its calculation by reference to the days a month is supposed to contain and not by reference to days on which he could have worked and earned. In other words, the context and setting of section 4(3) does justify reliance on the word "month" as understood in common parlance and not any departure therefrom.

11. This also demonstrates how the rate of 15 days' wages in section 4(2) could not have been construed to mean 13 days' wages, for calculation of the gratuity amount for all the completed years of service, as was sought to be urged by the petitioners before the controlling Authority. In the face of express and unambiguous mandate as to the method of calculation of gratuity, equating the same with half-month and further to assume 15 days' wages to mean 13 days' actual wages, is not possible without putting a far fetched and stretched construction on these words, and going through a process of involved reasoning. As the point is not pressed before us, it is unnecessary to pursue it beyond emphasising how untenable it is. If the rate of fifteen days' wages under section 4(2) cannot be reduced to thirteen working days' wages, wages of twenty months covering 600 days also cannot be reduced to 520 days wages. Approach underlying these two contentions is substantially the same and is untenable for the same reasons.

12. It is not disputed that the daily rated workmen are entitled to the gratuity in the same way as the monthly rated or weekly rated workmen. Under the definition of the word "employees" under section 2(e), daily rated workman is an employee in the same manner as any other employee drawing less than Rs. 1,000 monthly wages. An employee's being a daily rated workman in no way places him on any different basis from the other monthly rated permanent workmen, as to security of service or statutory benefits available under several labour based legislations. It is only, in the mode of payment of wages, that these workmen differ. There is, therefore, no reason or basis to construe the word "twenty months' wages" differently for them from how the same is construed for the monthly paid workmen. The basis of daily wages, the context, cannot justify treating a month to be of 26 days, when in case of others, it means of 30 days.

13. It was also suggested that a monthly rated workman is placed at some disadvantage by our above interpretation under which the quantum of his daily wages gets reduced and results in the reduction of his quantum of gratuity as against daily rated workmen's advantage in not only not being subjected to such reduction but being enabled to get his wageless days being included in the calculation of its quantum. A close scrutiny will expose how superficial and distorted such view can be. Firstly, daily or monthly basis of wages is merely a mode of payment depending on the term of the contract of service. Each such contract has its advantages and disadvantages. It is practically impossible to assume that, mere this mode can make any difference of substance in the overall quantum of daily wages for the same work in the same factory, of such

workers in view of the protection of labour laws and workers' Unions. Mere mode of payment cannot make the basis of wages to be discriminatory. In fact, no attempt was made to so demonstrate before us. Once any inequality or discrimination is ruled out from the basis of this mode of payment, no such discrimination can whatsoever be traced in the quantum of gratuity computed in terms of our interpretation of the words "fifteen days' wages" or "twenty months' wages". This will be still more clear if it is borne in mind that "daily wages" of a worker in the ultimate analysis turn out to be the basis of the quantum of gratuity. This interpretation rather eliminates the discrimination implicit in calculating a month to be of 26 days for one set of workmen and of 30 days for another set of workmen for no relevant reason".

The instructions referred by the Hon'ble Supreme Court in the case of G.M., Bharat Coking Coal Ltd. West Bengal vs. Shib Kumar Dushad and others dealt with the procedure for determination and verification of the employees. The implementation instructions dated 26th April, 1984 in the present case does not deal with the procedural aspects but deal with the substantive rights of the employees regarding the quantum of the gratuity for which they are entitled.

9. The submission made on behalf of the petitioner relying on the provisions of section 4(2) of the Payment of Gratuity Act cannot be considered inasmuch as the petitioner-employer and its employees are governed by the National Coal Wage Agreement. It is not disputed that Clause 10.1.1 of the National Coal Wage Agreement has statutory force and considering the mandate of section 4(5) of the Payment of Gratuity Act and the entitlement of the employees as per clause 10.1.1 of the National Coal Wage Agreement, I find that the orders passed by the subordinate authorities directing the petitioner-employer to pay the amount of gratuity calculating at the rate of one month wages is proper.

10. The judgment given by the Hon'ble Supreme Court in the case of Guru Jambheshwar University Through Registrar vs. Dharam Pal (supra) is based on the explanation below section 4(2) of the Payment of Gratuity Act. In the present case, there is no such explanation under the Clause 10.1.1 of the National Coal Wage Agreement and as per section 4(5) of the Payment of Gratuity Act the employees are entitled for the better terms as per Clause 10.1.1 of the National Coal Wage Agreement. In view of the above, I do not find any reason to interfere with the impugned orders. The writ petitions are dismissed. In the circumstances, the parties to bear their own costs.