1998 LLR 1072

MADRAS HIGH COURT

Hon'ble Mr. S.M. Abdul Wahab, J.

W.P. No. 2135 of 1987

Decided on 12.6.1996

Mettur Beardsell Ltd. (represented by Its Personnel Manager), Madras

vs.

Regional Labour Commissioner (Central) (Authority under Payment of Gratuity Act), Madras & Others

A. PAYMENT OF GRATUITY ACT, 1972 - Sections 2(a), 2(b), 2(c), 2(e) and 2A - 'Continuous service' - Qualifying period of service by an employee - Entitlement of Gratuity - An employee rendering continuous service for a period of 240 days in a year will be deemed to have continued in service for one year as stipulated by section 2A of the Act - Thus an employee who has put in service for 10 months and 18 days for the fifth year subsequent to first 4 years should be deemed to have completed continuous service of five years - His claim for gratuity is tenable.

Para 5

B. PAYMENT OF GRATUITY ACT, 1972 - Claim by an employee from the new partnership firm for the service rendered with previous firm - Whether his claim for gratuity sustainable? Yes.

HELD

An employee will be entitled to get gratuity for the services rendered with previous partnership firm because at the time of entering into new partnership firm the petitioner has not taken any undertaking from the employees that they will become employees of new partnership firm. Para 5

CASES REFERRED

1. *P. Raghavulu and Sons* v. *Additional Labour Court*, 1985-I LLN 612.
2. *Surendra Kumar Verma* v. *Central Government Industrial Tribunal-cum-labour Court, New Delhi & Anr*, 1980-II LLN 456.

For Petitioner : Sh S. Ravindran, Advocate.

For Respondents : Smt. Meera Gupta, Ms. R. Vaigai and Sh. Anna Mathew, Advocates.

JUDGMENT

This writ petition is for a writ of *certiorari to* quash the order, dated 31 December 1986, in P.G. Appeal No. 58 of 1986 on the file of the first respondent. The case of the petitioner is that on 23 December 1977 the third respondent was appointed as salesman and he was assigned to the thread division. From 1 January 1983, Mettur Textiles (Private), Ltd., came to be known as Mettur Textiles. Thus the third respondent became an employee of the Mettur Textiles from 1 January 1983. According to the petitioner, he ceased to be an employee of Mettur Textiles, Ltd., with effect from 31 December 1982. On 31 January 1983 the third respondent resigned from the services and relieved on the said date. He was getting Rs. 1,335 as monthly salary. Since, according to the third respondent, his basic salary crossed Rs. 1,000 with effect from 10 November 1982, he made a claim on 3 March 1983 for gratuity from Mettur Textiles. Having failed in his attempt to get gratuity from Mettur Textiles, he preferred a claim on 14 February 1985 against Mettur Beardsell, the petitioner herein. The claim was after a delay of two years and one month. The claim was resisted by the petitioner on the ground that he ceased to be an employee with them from 31 December 1982. Further, he was not employed for a period of five years on a wage not exceeding. Rs. 1,000. Hence, on these grounds the claim of the third respondent must be rejected. The claim was entertained by the second respondent in P.G. Application No. 49 of 1985 under S. 7(4) of the Payment of Gratuity Act. But it was dismissed on 15 April 1986 on the ground that he was not an employee for a period of not less than five years on wages not exceeding Rs. 1,000 within the meaning of explanation 2(*e*) of the Payment of Gratuity Act.

2. As against the said order, the third respondent preferred an appeal to the first respondent under S. 7(7) of the Payment of Gratuity Act in P.G. Appeal No. 58 of 1986. On 31 December 1986 the first respondent passed orders holding that the third respondent's wages crossed Rs. 1,000 only on 10 November 1982 and he had put in four years 10 months and 18 days service. Hence there was continuous service under S. 2A of the Payment of Gratuity Act. He must be deemed to have completed continuous service of five years. In the said view the first respondent allowed the appeal of the third respondent. Therefore, the petitioner has preferred this writ petition under Art. 226 of the Constitution of India.

3. The third respondent filed a counter. In the counter he has mainly stated that he has produced documentary evidence to show that from 23 November 1977 to 4 November 1982 he was paid less than Rs. 1,000 and the contention that five years calendar service is necessary is untenable. He also contended that the transfer of service from the petitioner to Mettur Textiles did not cut his length of service. Further his resignation was accepted only by the writ-petitioner, as is evidenced by Exhibit P-5.

4. Now I will examine the contentions raised by the learned counsel for the petitioner. Section 2(*e*) of the Payment of Gratuity Act was as follows, before the amendment:

> "'employee' means any person (other than an apprentice) employed on wages, not exceeding one thousand rupees *per mensem*, in any establishment, factory, mine, oil field, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are ex-

press or implied, but does not include any such person who is employed in a managerial or administrative capacity, or who holds a civil post under the Central Government or a State Government, or who is subject to the Air Force Act, 1950 the Army Act, 1950, or the Navy Act, 1957."

5. Section 2A defines continuous service. According to this section, if an employee renders continuous service for a period of 240 days in a year he will be deemed to have continued in service for one year. This deeming provision contained in S. 2A must be applied in interpreting the period of five years mentioned in S. 4(1). Section 2(*b*) also supports this interpretation because as per the said section completed year of service means continuous service for one year. Therefore, these provisions are emphatic in stating that if the employee serves continuously for a period of 240 days in a year, he must be deemed to have continuously served for one year. In this case admittedly the third respondent has served for 4 years, 10 months and 18 days. 10 months and 18 days service is definitely more than 240 days. Therefore when the third respondent was relieved from service he has thus completed five years of service. In the decision reported in *Surendra Kumar Verma* v. *Central Government Industrial Tribunal-cum-Labour Court, New Delhi, and Another* [1980(2) LLN 456], their Lordships have observed as follows, in Para. 13, at page 462:

> ... It is sufficient for the purpose of S. 25B(2)(*a*)(*ii*) that he has actually worked for not less than 240 days. It is no longer necessary for a workman to show that he has been in employment during a preceding period of twelve calendar months in order to qualify within the terms of S. 25B..."

The learned counsel for the petitioner relied upon a case reported in *P. Raghuvulu an Sons* v. *Additional Labour Court* [1985 (1) LLN 612]. A Single Judge of the Andhra Pradesh High Court has held the service rendered for 4 years and 11 months and 10 days will not enable an employee to avail gratuity. The said case arises under the Andhra Pradesh Shops and Establishments Act, 1966. The question was whether as per Cl. (*d*) of explanation to S. 40(1) of the Andhra Pradesh Shops and Establishments Act, 1966, providing for treating a fraction of a year exceeding six months as a year and a fraction of a year less than six months as not a year. The contention that was accepted by the learned Judge was that the aforesaid explanation applies only for calculating the period for which gratuity is payable and not applicable to the qualifying period of years. The learned judge has probably relied upon the words, "for which gratuity is to be given," in S. 40(1) of the Andhra Pradesh Shops and Establishments Act, 1966. But this decision is not applicable to our case because as stated above the definitions of "one year," "completed year," "continuous year," under Ss. 2(*a*), 2(*b*) and 2(*c*) go to show that whenever year is mentioned in the enactment, it must be taken as the year defined in the aforesaid provisions. Another contention raised by the learned counsel for the petitioner is that the petitioner-company ceased to exist after it was merged with Mettur Beardsell, Ltd., with effect from 1 January 1983. But this contention is untenable because at the time of entering into partnership the petitioner has not taken any undertaking from the employees that they will become employees of the new partnership firm Mettur Textiles, and cease to be employees of the Mettur Beardsell, Ltd. But, as found earlier, the third respondent was relived only by the petitioner. Therefore, I am not convinced with the contentions raised by the learned counsel for the petitioner. Hence the writ petition fails and it is dismissed. However, there will be no order as to costs.

1998 LLR 1074

GUJARAT HIGH COURT

Hon'ble Mr. R. A. Mehta, J.

Special Civil Application No. 11407 of 1994

Decided on 3.3.1998.

Divisional Controller, G.S.R.C.

vs.

C.J. Rana