(2011) 02 MAD CK 0187

Madras High Court

Case No: Writ Petition No. 873 and W.P.M.P. No. 965 of 2005

The Deputy General Manager Human Resources Development Division Hindustan Photo Films Manufacturing Company Ltd. — APPELLANT

Vs

The Regional Labour Commissioner (Central) and Others — RESPONDENT

Date of Decision: Feb. 1, 2011

Acts Referred:
Industrial Disputes Act, 1947 â€" Section 18(1)#Payment of Gratuity Act, 1972 â€" Section 14, 18(1), 2, 4(2), 7(7)

Citation: (2011) 02 MAD CK 0187

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: Rita Chandrasekaran, for Aiyar and Dolia, for the Appellant; M. Prabhakar, for R 1 and R 2 and N. Manokaran, for R 10, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.
This writ petition came to be posted on being specially ordered by the order of the Hon''ble Chief Justice dated

28.01.2011.

2. The writ petition is filed by M/s. Hindustan Photo Films, the wholly owned company by the Central Government represented by the Deputy

General Manager. The challenge made in this writ petition is to the common order passed by the first Respondent in Appeal Nos. 8 of 2004, 310

to 325 of 2004 dated 25.11.2004. The writ petition was admitted on 17.01.2005. Pending writ petition, this Court granted an interim stay. For

some contesting Respondents, notice is yet to be served. Some contesting Respondents have passed away and the Legal Representatives have

been brought on record. However, for R10, Mr. N. Manokaran appears.

3. Respondents 3 to 19 were employees of the Petitioner company and they moved the second Respondent -Controlling Authority under the

Gratuity Act claiming a difference in gratuity payable to them. Their claim was based upon the interim relief granted to them. Therefore, they moved

the applications before the second Respondent claiming the computation of the interim relief as part of the wage and for non-payment, they claimed

10% simple interest. The second Respondent - Controlling Authority directed the payment of gratuity inclusive of interim relief together with 10%

simple interest from the date of actual payment due till the date of payment. Against the order dated 30.01.2004 and 27.02.2004, passed by the

Controlling Authority, the Petitioner company filed Gratuity Appeal Nos. 8 of 2004 to 310 to 325 of 2004 u/s 7(7) of the Payment of Gratuity

Act, 1972.

4. The Appellate Authority concurred with the order passed by the second Respondent and dismissed the appeals filed by the Petitioner company.

The appellate authority held that the term wage found in Section 2(s) of the Payment of Gratuity Act, 1972 includes all payments which are earned

by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him

in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance. Therefore, on the basis of the all inclusive definition, the appellate authority held that the conclusion of the Controlling Authority is just in

lieu of wage revision. Therefore, the appeals filed by the Petitioner was rejected.

5. Challenging this order, the Petitioner company contended that the Petitioner company is having scheme and if any dispute relating to the

payment, only arbitration will lie. It is also contended that since the Petitioner company has become sick and referred to BIFR for framing scheme

and due to the intervention of Central Government''s announcement of ban on wage revision in terms of sick industries, the company entered into a

settlement u/s 18(1) of the Industrial Disputes Act for payment of interim relief at the rate of 5% of pay. Subsequently, despite revival package, the

company could not be revived. Therefore, the employees were given voluntary retirement in terms of Voluntary Retirement Scheme introduced

during 1999. At that time, the dues of the employees were paid including gratuity. Therefore, there cannot be any further claim in respect of the

payment of gratuity.

6. Since the claim of gratuity is based upon the provisions of the Payment of Gratuity Act, 1972 being a special enactment any claim for payment

has to be raised before the Authorities under the Act and not before any other forum. This position of law has been clarified by the Supreme Court

in State of Punjab Vs. Labour Court Jullunder and Others, . In paragraph No. 7, the Supreme Court observed that the Payment of Gratuity Act

enacts a complete code containing detailed provisions covering all the essential features of a scheme for payment of gratuity. It creates the right of

payment of gratuity, indicates when the right will accrue, and lays down the principles for quantification of the gratuity. It provides further for

recovery of the amount, and contains an especial provision that compound interest at nine per cent per annum will be payable on delayed payment.

For the enforcement of its provisions, the Act provides for the appointment of a controlling authority, who is entrusted with the task of administering the Act. The fulfilment of the rights and obligations of the parties are made his responsibility, and he has been invested with an

amplitude of power for the full discharge of that responsibility. Any error committed by the Controlling Authority can also be corrected in appeal

by the appropriate government or an appellate authority particularly constituted under the Act. Therefore, it is held that the inescapable conclusion

was that the preliminary independent proceedings due under the Act must be taken only under the Act and not in any other forum. Therefore, the

first objection that the party must go before the Arbitrator fails.

7. The second objection of the Petitioner company is that the employees were sent out in Voluntary Retirement Scheme and that gratuity due to

them was paid and therefore, no further claim can be made. It must be noted that u/s 14 the provisions of the Gratuity Act or any rule will override

anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any

enactment other than this Act. Therefore, inasmuch as gratuity due not paid to the employees, they are eligible to dues of gratuity.

8. The last objection that the interim relief paid pursuant to the settlement u/s 18(1) cannot be termed as wage and only it is interim relief. It cannot

be accepted that the employees working in the sick industry having prevented by the Government of India, no further wage negotiation can be

made and the management in order to have better industrial relations have provided certain amount as interim relief. Pending consideration of any

final payment must also be taken as a wage as the term wage has been defined u/s 2(s) of the payment of Gratuity Act and such a definition will

receive liberal interpretation. The term wage includes not only what was paid but also what was payable. The term ""last drawn wages"" found in

Section 4(2) came to be considered by a Division Bench of this Court headed by Shri. A.P. Shah, the Chief Justice then was vide its judgment in

P. Selvaraj Vs. The Management of Shardlow India Limited, The Joint Commissioner of Labour and The Assistant Commissioner of Labour, . In that judgment, the Division Bench after referring to several other decisions of the Supreme Court, in paragraph 35 of its judgment, held that the

Gratuity Act is a beneficial piece of legislation and it should receive an interpretation consistent with the principles of equity and fair play. Therefore,

the term ""last drawn wage"" found in Section 4(2) of the Gratuity Act should receive its full meaning and it cannot give any fractured interpretation.

It is also pointed out that the Management cannot adopt an artifical interpretation with reference to the term ""wages"" which is defined under the

Gratuity Act, must include not only what is paid but also what is payable to a workman.

9. It is seen in the light of the above principles, wage will include interim relief granted to the workmen and the same will also form part of the

wages and the same wage does not come within the meaning of exclusions found in the definitions.

10. Under the above said circumstances, the writ petition is misconceived and bereft of legal reasons. Accordingly, the writ petition stands

dismissed. No costs. Consequently, connected WPMP is closed. In the light of the dismissal of the writ petition, the contesting Respondents or

their legal heirs are entitled to withdraw the amount lying with the second Respondent.