Management of Tractors and Farm Equipment Ltd. Vs Joint Commissioner of Labour and Others

Writ Appeal No. 1560 of 2011 and M.P. No. 1 of 2011

Court: Madras High Court

Date of Decision: March 26, 2015

Acts Referred:
Constitution of India, 1950 - Article 226#Payment of Gratuity Act, 1972 - Section 2(b), 2A, 4(1), 4(2)

Citation: (2015) LabIC 3031

Hon'ble Judges: P.R. Shivakumar, J.; V. Ramasubramanian, J.

Bench: Division Bench

Advocate: Sanjay Mohan for S. Ramasubramaniam and Associates, for the Appellant

Final Decision: Dismissed

Judgement

V. Ramasubramanian, J.
This writ appeal arises out of the dismissal of a writ petition filed by the Management of a company challenging an

order of the Appellate Authority under the Payment of Gratuity Act.

2. We have heard Mr. Sanjay Mohan, learned counsel the appellant and Mr.I.Charles, the second respondent appearing in person.

3. The second respondent was engaged by the appellant Management from 10.9.1964. Pursuant to the disciplinary proceedings initiated against

him, he was dismissed from service by an order dated 16.3.1981.

4. The second respondent raised an Industrial Dispute in I.D. No.73 of 1982 on the file of the I Additional Labour Court, Chennai. The Labour

Court dismissed the claim by an award dated 7.11.1984.

5. Challenging the award of the Labour Court, the second respondent filed a writ petition in W.P. No.9342 of 1987 on the file of this Court. The

writ petition was allowed by a learned Judge by an order dated 8.6.1993 directing the reinstatement of the second respondent with back-wages.

6. However, an appeal filed by the Management in W.A. No.711 of 1993 was allowed by the Division Bench, by an order dated 24.7.1997,

setting aside the order of the learned Judge and modifying the award of the Labour Court into one of lump sum compensation in a sum of

Rs.75,000/-. This order attained finality and the Management also paid the amount.

7. However, pursuant to the order of the Division Bench, the second respondent became entitled to gratuity. Therefore, when the second

respondent made a claim, the appellant calculated gratuity for the period of his service from 1964 to 1981 and paid a sum of Rs.7,084/-.

Challenging the calculation so made, the second respondent filed a petition in P.G. No.29 of 2005 before the Controlling Authority under the

Payment of Gratuity Act. The claim made by the second respondent was that he was entitled to seek gratuity from the date of appointment namely

10.9.1964 up to the date of his normal age of superannuation namely 22.8.1999.

8. However, the Controlling Authority rejected the claim holding that the second respondent was not entitled to gratuity beyond the period of the

date of dismissal namely 16.3.1981. However, the second respondent filed a statutory appeal before the Appellate Authority under the Payment of

Gratuity Act. The appeal in P.G. No.28 of 2006 was allowed by the Appellate Authority by an order dated 22.3.2007 directing the Management

to pay gratuity in a sum of Rs.84,808/- by taking the normal date of superannuation as the cut off date.

9. Challenging the said order of the Appellate Authority, the Management filed a writ petition in W.P. No.19781 of 2007. The writ petition was

dismissed by a learned Judge by an order dated 8.10.2010. Aggrieved by the said order, the Management is on appeal before us.

10. The only question that arises for consideration before us is as to whether a person in whose favour an award of payment of lump sum

compensation is made in lieu of reinstatement, is entitled to claim gratuity up to the period of his normal superannuation or upto the date of

termination of employment.

11. The right of a workman to receive gratuity is derived from Section 4(1) of the Payment of Gratuity Act, 1972. The quantum of gratuity payable

to a workman is indicated by Section 4(2) which stipulates that the employee is entitled to gratuity for every completed year of service or part

thereof in excess of six months.

12. The expression ""completed year of service"" is defined in Section 2(b) of the Act to mean continuous service for one year. The expression

continuous service"" is defined in Section 2A as follows:-

[2A. Continuous Service.- (1) For the purpose of this Act-

(1) An employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service

which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order

treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of

the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or

interrupted service was rendered before or after the commencement of this Act;

(2) Where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1),

for any period of one year or six months, he shall be deemed to be in continuous service under the employer-

(a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which

calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than

six days in a week; and

(ii) two hundred and forty days, in any other case:

(b) for the said period of six months if the employee during the period of six calendar months preceding the date with reference to which the

calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a

week; and

(ii) one hundred and twenty days, in any other case;

Explanation.- For the purpose of clause (2), the number of days on which an employee has actually worked under an employer shall include the

days on which-

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act,

1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve

weeks].

(3) Where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one

year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than

seventy-five per cent of the number of days on which the establishment was in operation during such period.]

13. Therefore, it is clear that gratuity is payable for every completed year of service, with reference to the expression ""continuous service"". Even if

service is interrupted, on account of sickness, accident, leave or absence from duty, the period of such interruption is taken to be part of

continuous service, if the parameters indicated therein are satisfied. However, any absence from duty in respect of which an order treating it as

break in service is passed lawfully, is not included within the definition of the expression ""continuous service"". But, a period of layout, strike or

lockout or cessation of work not due to any fault of the employee is also included within the period of ""continuous service"".

14. In the case on hand there has been a cessation of work due to the fault of the employee that lead to disciplinary proceedings eventually

culminating in a penalty of dismissal from service. Though the order of dismissal was upheld by the Labour Court, the same was set aside by a

single Judge with a direction for reinstatement with back-wages. However, the order of the learned Judge was modified into one of lump sum

compensation in lieu of reinstatement.

15. Once compensation is awarded in lieu of reinstatement, the same would tantamount to a cessation of employment. The relationship of Master

and Servant terminates, on the date of dismissal. Just as an award of reinstatement normally relates back to the date of dismissal (whether with or

without backwages), an award for compensation in lieu of reinstatement would also relate back to the date of dismissal. Even in cases where the

order of dismissal is set aside, the relationship of master and servant does not continue if compensation alone is awarded in lieu of reinstatement.

Therefore, the order for payment of compensation in lieu of reinstatement should be taken to have had the effect of severance of the relationship of

Master and Servant as on the date of the order of dismissal. Once this is accepted, the question of counting the period up to the date of age of

superannuation as qualifying service for payment of gratuity would not arise.

16. But, the learned Judge proceeded on the basis that the Management paid salary to the second respondent during the pendency of the writ

appeal questioning the correctness of the order for reinstatement with back-wages passed by the learned single Judge in a writ petition. While

allowing the writ appeal in lieu of reinstatement, the Division Bench took note of the payment of wages of Rs.4,200/- per month, during the period

of pendency of writ appeal. The learned Judge also took note of the fact that the second respondent was left with only 26 months of service, when

the Division Bench gave its decision. Therefore, the learned Judge concluded that inasmuch as the Division Bench took note of the salary that was

drawn at the time of the judgment dated 24.7.1997, the second respondent was entitled to calculate the period up to the date of superannuation

for the purpose of calculation of gratuity.

17. Though on a fundamental principle of law, we are clearly of the view that if an award is only for payment of compensation in lieu of

reinstatement, the same would tantamount to cessation of employment with reference to the date of termination, we cannot totally reject the view

taken by the learned Judge in the facts and circumstances of the case, as impossible of being held. The jurisdiction under Article 226, which the

learned Judge exercised, is very peculiar. It is a discretionary remedy and the Court is entitled even to refuse to grant a relief, despite holding in

favour of the writ petitioner. In the case on hand, the view taken by the Appellate Authority, which is a statutory authority under the Payment of

Gratuity Act, 1971, was under challenge before the learned Judge. Therefore, the learned Judge took note of certain facts and refused to set aside

the order of the Appellate Authority, especially since what the learned Judge was concerned with was a labour welfare legislation. Since the view

taken by the learned Judge on the facts and circumstances of the case cannot be held to be totally erroneous, we would prefer not to interfere with

the said order, despite holding the point of law in favour of the management. Accordingly, the writ appeal is dismissed. No costs. Consequently,

M.P. No.1 of 2011 is also dismissed.