

Management of Goodyear India Limited

Vs

K. G. Devessar

Civil Appeal No. 854 of 1978

(D. Chinnappa Reddy, V. Khalid JJ)

28.08.1985

JUDGMENT

CHINNAPPA REDDY, J. -

1. The management of Goodyear India Limited are the appellants in this appeal by special leave of this Court under Article 136 of the Constitution. The question relates to the gratuity payable to the respondent in relation to the period of his service from January 24, 1961 to December 31, 1974. With effect from September 1, 1972, he was drawing wages of more than Rs. 1000 per month. The Payment of Gratuity Act, 1972 came into force on September 16, 1972. By Section 4 of the Act, it was prescribed that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years - (a) on his superannuation or (b) on his retirement or resignation or (c) on his death or disablement due to accident or disease. An employee is defined by Section 2(e) of the Act as meaning a person employed on wages not exceeding one thousand rupees per mensem in any establishment etc. The figure Rs. 1000 was later substituted by the figure Rs. 1600 but during the relevant period, it was Rs. 1000 only. The submission on behalf of the management was that both on the date when the Act came into force and on the date when the respondent retired from the service, he was drawing wages exceeding Rs. 1000 and therefore, he was not entitled to payment of any gratuity. The submission of the learned counsel was that if the definition of employee was read into Section 4 of the Payment of Gratuity Act, it would show that only those persons who are drawing wages of less than Rs. 1000 on the date of superannuation, retirement, etc. would be entitled to payment of gratuity provided that such retirement, superannuation, etc. was after the date of coming into force of the Act. We do not agree with the submission. The date of coming into force of the Act has relevance to the date on which gratuity becomes payable. Gratuity becomes payable on the termination of employment and therefore, in order to be eligible to payment of gratuity, the termination of employment whether it be due to superannuation or retirement or resignation or death or disablement, has to be after the date of coming into force of the Act. Once that condition is satisfied, the further question would be regarding the amount of gratuity payable. Gratuity will have to be paid to all those persons whose employment came to an end after the coming into force of the Act for that period during which he came within the definition of an employee within the meaning of Section 2(e) of the Payment of Gratuity Act. To hold otherwise may render a whole class of persons who all their lives got wages of less than Rs. 1000 per month, but on the eve of their retirement started getting wages of Rs. 1000 per month. Surely that could not have been the intention of Parliament. We think the only reasonable way of construing Section 4 in the light of the definition of employee in Section 2(e) is to hold that a person whose services are terminated for any of the reasons mentioned in Section 4(1), after the coming into force of the Act is entitled to the payment of gratuity, if he has rendered continuous service for not less than five years, for that period during which he satisfied the

definition of employee under Section 2(e) of the Act. In that view, the appeal has to be dismissed and it is accordingly dismissed with costs.

</html