

CALCUTTA HIGH COURT

Hukum Chand Jute Mills Ltd

Vs

State of West Bengal

(Banerjee , J.)

16.02.1976

JUDGEMENT

Banerjee , J.

(1.) THE subject-matter of challenge in this application is the order dated 4th April, 1975 passed by Appellate Authority constituted under the Payment of Gratuity Act, 1972 and West Bengal Gratuity Rules, 1973. The petitioner carries on business of manufacture and sale of jute and jute goods. For the aforesaid purpose the petitioner owns and operates a factory at Hazinagar in the district of 24-Parganas, West Bengal. It is the case of the petitioner that there was a tripartite settlement on the 7th of May, 1972, where under the wages and dearness allowances of the workmen in all jute mills in West Bengal including the workmen of the petitioners jute mill had been fixed on monthly basis. The petitioner further states that only a section of workmen were paid their wages monthly on the basis of wages per month described in the settlement and other workmen for their own convenience were paid wages every week on the earnings of a full week based on monthly wages prescribed in the settlement. The workmen were paid weekly accordingly to full week's earning either on time rated or piece-rated basis. In the premises, although a section of workmen in the petitioner's said mill were paid monthly and others were paid weekly, wages of workmen under the terms of settlement were fixed on the basis of monthly wages and where weekly wages were paid these were calculated on the basis of the wages prescribed for a month. Wages had been prescribed on the basis of 26 working days or work for 208 hours in a month. Section 4 of the Act deals with conditions and methods of payment of gratuity. The material portion of section 4 of payment of Gratuity Act, 1972 provides as follows: "4 (1) 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 : provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement : provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs. Explanation- For the purposes of

this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement. (2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days wages based on the rate of wages last drawn by the employee concerned : provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment and, for this purpose, the wages paid for any overtime work shall not be taken into account. Provided further that in the case of an employee employed in a seasonal establishment, the employer shall pay the gratuity at the rate of seven days' wages for each season. (3) The amount of gratuity payable to an employee shall not exceed twenty month's wages. (4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him, during that period and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced. (5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer. (6) Notwithstanding anything contained in sub-section (1). (a) the gratuity of an employee whose services have been terminated for any act, willful omission or; negligence causing any damage off loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused ; (b) the gratuity payable to an. employee shall be wholly forfeited, (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude provided that such offence is committed by him in the course of his employment. " Sub-section (s) of section 2 defines wages as follows: "wages means all emoluments 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 other allowance. " The term 'month', however, has not been defined. Under the General clauses Act, however, the month means 30 days.

(2.) IT is the case of the petitioner that in the case of monthly paid workmen the average month being of 30 days, 15 days, wages for each year of service should be equivalent to half a month's wages. In the case of piece-rated workmen, according to the petitioner, the proviso to sub-section (2)of section 4 enjoins total wages excluding overtime wages earned by the workman during a period of three calendar months immediately preceding the termination of his employment is to be divided by the number of days in that period of three months and multiplied by 15. According to the petitioner, in harmony with the above provision regarding computation of gratuity to piece-rated workmen, the gratuity to a time-rated weekly paid workman should also be calculated on the basis of what he had earned during the actual average period of 15 days. On that basis the petitioner had paid gratuities to the respondents No. 4, 5, 6 and 7 on superannuation after coming

into operation of the said Act. The said respondents were weekly paid time-rated workmen whose wages were fixed on the monthly basis and their weekly earnings were computed in the manner described before. These four respondents being aggrieved by the payments made complaints before the controlling Authority under the Act and the Controlling Authority directed by the order dated 21st December 1973 that the respondent No. 4 was entitled to a further sum of Rs. 984. 45 as gratuity and the respondent No. 5 was entitled to receive a further sum of Rs. 781. 37 and the respondent No. 6 was entitled to receive a further sum of Rs. 422. 95 and the respondent No. 7 was entitled to receive a further sum of Rs. 1036. 80 as gratuity. Being aggrieved by the aforesaid order, the petitioner preferred appeals before the appellate Authority and the Appellate authority has dismissed the said appeals and the petitioner has moved this court under Article 226 of the Constitution challenging the said order. The question is whether the view taken by the Appellate Authority amounts to an error of law which calls for interference in this application under Article 226 of the Constitution. Counsel for the petitioner contended that the Act had to be construed harmoniously and the legislature could not have intended to discriminate between weekly paid time rated workmen and monthly paid time rated workmen and piece-rated workmen. The maximum was a month and 15 days should be construed to mean half of a month. In my opinion in order to determine the 15 days' wages it was necessary to determine one day's wage and in order to do that the formula followed by the appellate Authority, in my opinion, is a possible one. It is not necessary in order to find out 15 days' wages to find out what one would have earned during 15 days or in course of 15 days. In the aforesaid view of the matter, I am of the opinion this view is a possible view and it cannot be said that such a view is perverse or it contains any error of law to be rectified in an application under Article 226. Furthermore, it is a beneficial piece of social legislation and should be construed, if possible, in favour of those for whose benefit it is intended. The argument that such a construction might not ensure such benefit equally to all those who would be affected is not relevant. In such a situation no question of discrimination against any one arises. The construction canvassed for by the petitioner would not have ensured any benefit to other workmen but would have deprived weekly paid time rated workmen of same benefit. The fact that the view taken might lead to certain discrimination between the two classes or categories of workmen is not decisive on the question. It was then contended that the appellate Authority was in error in being guided by the communication of the Ministry of Labour dated 12th march, 1974. All that he has observed, however, is that he was inclined to agree with the clarification issued by the Ministry of Labour. That document contained the following statements : "i am directed to say that the question of calculating gratuity payable under Section 4 (2) of the Payment of Gratuity Act, 1972, was raised inter-alia at the meeting of the Consultative Committee of Parliament for the Ministry of Labour held on the 25th January, 1974. It was mentioned that although section 4 (2) of the Act provides for payment of gratuity at the rate of 15 days' wages for every completed year of service, gratuity is not paid by some employers at this rate as they calculate the rate of wages for purposes of gratuity on the basis of 30 days in a month instead of 26 working days with the result that the workers lose 2 days salary as gratuity for every year of service. I am to clarify that gratuity should be paid at the rate of 15 days wages for each year of service as laid down in the Act. "

(3.) IN my opinion, in this case the deputy Secretary was not giving any instruction as to how 15 days wages for each year would have to be computed. What he was emphasising was that gratuity, should be paid at the rate of 15 days wage for each year of service. Furthermore, the Appellate Authority has not based its decision on that clarification. He has for the reasons mentioned in the order come to his own independent conclusion. He has only referred to the clarification in aid of his views. In the aforesaid view of the matter, I am unable to uphold the challenge to the order in this application under article 226. This application, therefore, fails and is accordingly dismissed. Rule Nisi is discharged. Interim order, if any, is vacated. There will be no order as to cost. Stay asked for is refused. Rule discharged. ;