

Food Corporation of India Vs. Dyanuba K. Nikam and ors.

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Court : Gujarat

Decided On : Sep-21-1984

Reported in : (1985)1GLR1; (1985)ILLJ489Guj

Judge : P. Subramanian Poti, C.J. and; A.G. Qureshi, J.

Acts : [Payment of Gratuity Act, 1972](#) - Sections 2, 4 and 4(1)

Appeal No. : Spl. Civil Applications 3903, 3939, 3940, 3941, 3942 and 3943 of 1984

Appellant : Food Corporation of India

Respondent : Dyanuba K. Nikam and ors.

Judgement :

P.S. Poti, C.J.

1. Same question arises in all these petitions. The Food Corporation of India who is the employer challenges orders passed by the Controlling Authority under the [Payment of Gratuity Act, 1972](#) as confirmed by the Appellate Authority under the said Act. The dispute relates to such payment to the employees who are members of the Transport and Dock Workers' Union. The controversy is quite simple. There may be employees who start their career on a salary below Rs. 1,000/- and in the course of their career get enhanced salaries. When such salary exceeds Rs. 1,000/- per mensem (Rs. 1,600/- per mensem after the amendment under Act 25 of 1984). Such persons are no longer entitled to claim that they are employees entitled to gratuity under the [Payment of Gratuity Act, 1972](#). The definition of 'employee' without the Explanation thereto would operate to exclude any person employed on wages exceeding Rs. 1,000/- per mensem as it stood prior to amendment by Act 25 of 1984 and Rs. 1,600/- per mensem after such amendment. Under S. 4 of the abovesaid payment of Gratuity Act, gratuity is payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years. Such payment is on (a) superannuation, or (b) retirement to resignation, or (c) death or disablement due to accident or disease. Entitlement to gratuity under S. 4 being limited to 'employee' if the definition stood without the Explanation a person who is receiving more than Rs. 1,000/- on the date of his retirement prior to Act 25 of 1984 would not be entitled to gratuity at all. It would be so even if a part of his service was on a salary not exceeding Rs. 1,000/-. It is meet this situation that the Explanation is enacted. He would have earned gratuity had he been in receipt of salary not exceeding Rs. 1000/- per mensem. Such service he did have and if the period of such service exceeds 5 years he would naturally be entitled to gratuity. Such gratuity is payable on happening of one or other of the several incidents mentioned in S. 4(1). The case here is one of retirement. So it would be payable on retirement. But even on retirement S.

4(1) will not apply to him unless it is read with the Explanation to the definition of the term 'employee' under S. 2(c). That Explanation reads :

'Explanation :- In the case of an employee, who having been employed for a period of not less than five years on wages not exceeding one thousand rupees per mensem, is employed at any time thereafter on wages exceeding one thousand rupees per mensem, gratuity, in respect of the period during which such employee was employed on wages not exceeding the one thousand rupees per mensem, shall be determined on the basis of the wages received by him during that period.'

2. That Explanation enables an employee who is on wages exceeding Rs. 1,000/- on the date of retirement to claim gratuity nevertheless. But apparently on a prima facie reading of the Explanation it would appear that it provides for such gratuity in respect of the period during which such employee was employed on wages not exceeding Rs. 1,000/- per mensem. It further provides that the gratuity for such period shall be determined on the basis of wages received by him during that period. If the provision is in addition to gratuity otherwise available to the employee of course the Explanation need not be read as negating the availability of such gratuity otherwise. Plainly it speaks only of the entitlement of gratuity for the period during which the employee was on wages not exceeding Rs. 1,000/- per mensem. It is not as if there is any other provision in the Act which enables the employee to claim gratuity even for the service on wages exceeding Rs. 1,000/- per mensem. The entitlement to wages of a person who is on wages of more than Rs. 1,000/- per mensem on retirement has necessarily to be founded on the Explanation. If so since it speaks only of entitlement to gratuity for the period for which the employee was employed on wages not exceeding Rs. 1,000/- per mensem it must be limited to such period, and it has to be calculated on the basis of wages received during that period. The fact that he is not being paid such gratuity before he is raised to a salary exceeding Rs. 1,000/- and therefore he is losing interest for the period up to his retirement is irrelevant and does not arise from the very plain provision of the Act. To understand the background of this provision reference may be made to the objects and reasons of S. 2(e) :

'Objects and Reasons -

(ii) sub-clause (e) - Definition of 'employee' - In order to widen the coverage of the Bill the Committee recommended that the present limit of Rs. 750/- be raised to Rs. 1,000/- per mensem as provided in the Employees Provident Fund Scheme.

The Committee feel that it should be ensured that a person who was initially employed on wages not exceeding Rs. 1000/- per mensem and had been employed for a continuous period of 5 years on wages not exceeding Rs. 1,000/- per mensem may not become disentitled to receive gratuity when his wages exceed Rs. 1000/- per mensem. The Committee, therefore recommended that in the case of such an employee, gratuity should be paid in respect of the period during which the employee was employed on wages not exceeding Rs. 1,000/- per mensem on the basis of the wages received by him during that period.

The Committee further feel that the provisions of the Bill should not be confined to major ports only. They should also be made applicable to the workers of both major and minor ports.

Further the definitions of expressions 'factory', 'mine' and plantation major and minor ports, the expression 'port' has also been defined.'

have been inserted in Clause 2 instead of in Clause 1. In order to cover both.

3. It is quite evident from this that the recommendation to incorporate the Explanation was to see that what an employee would not otherwise get he gets. What he might be taken to have earned is not lost and that is protected. In other words, if an employee had such service as would have earned him gratuity and that is followed by service which would not earn him gratuity the fact that the latter follows the former need not disentitle him to the benefit of the former and that is secured by the Explanation. Of course the question whether since the amount is not paid forthwith, should not a provision for interest also be made does not arise at all, for, it is for the Legislature to decide what provision should be made in that behalf. By its very nature gratuity is a retirement benefit and is to be due to an employee on retirement and not earlier.

4. Despite the very plain nature of these provisions the Controlling Authority under the Payment of Gratuity Act as well as the Appellate Authority have fallen into the obvious error of assuming that the rate of wages applicable to the payment of gratuity under the Explanation should be the rate based on the date of retirement. In support of this what is said by both the authorities is that because of action for payment of gratuity arose only on the date of termination of employment the rate of wages payable on the date of termination of employment is alone to be taken. Evidently the plain and explicit language of the Explanation has not been noticed and where express provision was made in that behalf notions of what should have been the provision cannot be substituted. The approach is erroneous and obviously both the authorities have misled themselves. Hence the gratuity will be limited to that earned during the period the employee was on wages not exceeding Rs. 1,000/- and such gratuity will be calculated in accordance with the Explanation in S. 2(e), namely, on the basis of wages received by the employee during the period he was employed wages not exceeding Rs. 1,000/- per mensem. The order of the Controlling Authority under the Payment of Gratuity Act as confirmed by the Appellate Authority is modified as above. It is agreed that the amount as computed in accordance with the Explanation to S. 2(e) as explained here has already been paid to the respondents in these cases. Therefore, nothing more remains to be paid, the accounts having been settled. The petitions are allowed and the rules are made absolute with no order as to costs.