

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.08.2021

DATE OF DECISION : 14.09.2021

CORAM:

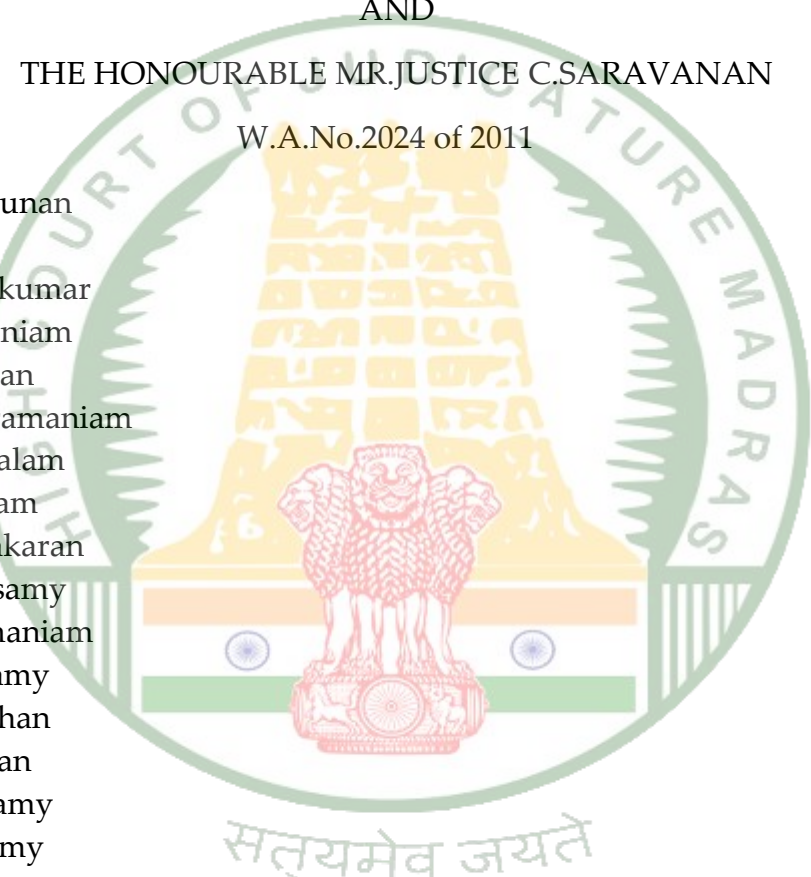
THE HON'BLE MR. JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.A.No.2024 of 2011

- 1.P.Malligarjunan
- 2.P.S.Mani
- 3.J.Albert Jaikumar
- 4.R.Subramaniam
- 5.M.Sivaraman
- 6.G.Balasubramaniam
- 7.P.Arunachalam
- 8.P.Arumugam
- 9.K.P.Prabhakaran
- 10.C.Kuppusamy
- 11.N.Subramaniam
- 12.G.Ramasamy
- 13.K.Jaganathan
- 14.K.Natarajan
- 15.R.Palanisamy
- 16.P.Lingasamy
- 17.A.Packiyanathan
- 18.P.Balusamy
- 19.K.Mani
- 20.R.Krishnamoorthy
- 21.P.Balasubramaniam
- 22.S.Anthonysamy
- 23.R.Balasubramaniam



WEB COPY

.. Appellants

Vs

1.The Joint Commissioner of Labour,
(Appellate Authority under the Payment of
Gratuity Act, 1972),
Coimbatore – 641 018.

2.The Assistant Commissioner of Labour
(Controlling Authority under the Payment of
Gratuity Act, 1972)
Coimbatore – 641 018.

3.The Management of Dhanalakshmi
Mills Limited,
130, B.S. Sundaram Road,
Thiruppur – 641 601.

.. Respondents

Prayer : Writ Appeal has been filed under Section 15 of Letter of Patent against the order dated 28.06.2011 passed in W.P.No.27494 of 2009 by the learned Single Judge of this Court.

For Appellant : Mr.K.M.Ramesh

For R1 & R2 : Mr.T.Arunkumar, GA

For R3 : Mr.S.Ravi for M/s.Gupta & Ravi

JUDGMENT

T.RAJA, J.

The appellants/workmen have filed this writ appeal challenging the impugned order passed by the learned Single Judge in W.P.No.27494 of 2009, dated 28.06.2011, by which, the order passed by the Appellate Authority/first respondent herein on 18.06.2009, holding that the workmen are entitled to claim

gratuity only in respect of the years in which they have put in service, however, they cannot get gratuity in respect of the periods in which they are not employed, has been confirmed.

2. Short facts leading to the filing of this writ appeal are stated below:-

The appellants were workmen of Dhanalakshmi Mills Limited, Tiruppur/third respondent herein. The said Mill consists of two units, namely, 'A' Mills, which is a spinning Unit and 'B' Mills, which is a weaving unit. Both units are situated at Tiruppur, within a radius of 500 metres. Since the working of 'B' Mills weaving unit became uneconomic due to various reasons and that has lead to loss from 1982 till 1992-93, the Management of the Mills reached at the bi-partite talks with workmen during 1991-92, by which, it was decided to provide alternative employment to 'B' Mills workmen in 'A' Mills. But, it was not accepted and therefore, the third respondent management applied for closure of 'B' Mills by application dated 27.07.1992 under Section 25-B of the Industrial Disputes Act (in short "ID Act") with effect from 24.10.1992. It is also stated that the production of 'B' Mills came to a grinding halt since August 1992 due to disconnection of power supply for non-payment of electricity charges and accumulation of stocks of exportable cloths which could not be exported due to

non-availability of export quota to the E.E.C. Countries. At the time of closure of 'B' Mills, there were 432 workers including staff and apprentices, and in 'A' Mills, there were 1143 workers including staff, apprentices, temporary workers, etc. But, the said application of the third respondent for closure of 'B' Mills was rejected by the Commissioner of Labour on 16.09.1992. However, the third respondent management preferred a review before the State Government, whereby, by G.O.Ms.No.250, Labour and Employment Department, dated 06.04.1993, the State Government referred the matter for adjudication of the issue stated below before the Special Industrial Tribunal, Tamil Nadu, Madras:

“Whether the demand of Management of Dhanalakshmi Mills Limited, Tiruppur, to close down their 'B' Mill including all machineries, accessories and other installations in the weaving preparatory section in the premises of the 'A' Mills at Tiruppur, is justified and to what relief, the Management and the workmen would be entitled to?” सत्यमेव जयते

3. After the reference was made, the Special Industrial Tribunal, in its award dated 28.11.1994 passed in I.D.No.4 of 1993, answering the reference in favour of the management and permitting closure of 'B' Mills, directed to re-

deploy all the workers of 'B' Mills in 'A' Mills, and also the workmen of preparatory section of 'A' Mills within four weeks, without prejudice to their service condition. This was challenged before this Court by filing W.P.No.21568 of 1994, whereby, learned Single Judge, by order dated 16.04.2001, dismissed the said writ petition and against which, when they preferred Writ Appeal No.1979 of 2001, learned Division Bench, by order dated 24.09.2008, dismissed the said writ appeal by confirming the order passed by the learned Single Judge.

4. When the matter was taken up to BIFR (Board for Industrial and Financial Reconstruction), it has passed adverse orders on 25.10.2004 against the management with a direction to consider a scheme of rehabilitation as proposed by the third respondent management. After all these developments, the management made a settlement under Section 18(1) of the ID Act on 09.12.1992 with all the major unions except the appellant union and it was agreed for redeployment of 'B' Mills weaving workers in 'A' Mills and subsequent to the said settlement, about 139 workmen got redeployment in 'A' Mills-spinning unit without any loss of wages or break in service. About 31 workers and staff of 'B' Mills left the services by way of retirement, resignation etc., leaving a balance 263 workmen of 'B' Mills-weaving unit, who refused to avail of the alternative

employment in 'A' Mills. Thereafter, unfortunately, the same problem cropped up in 'A' Mills and therefore, lay-off was imposed by the management on 04.03.1998 and finally, a notice dated 07.03.1999 was issued by the management declaring the suspension of operation of 'A' Mills and the Government of Tamil Nadu referred the dispute stated below for adjudication by the Tribunal:

“As to what relief the affected workmen are entitled to, due to non-functioning of Dhanalakshmi Mills by its Management from 04.03.1998 and due to non-entrusting of work by the Mills?”

5. The above said reference was taken on file by the Industrial Tribunal, Chennai, in I.D.No.326 of 1999, whereby the Tribunal, by its award dated 17.08.2004, held that settlement arrived at under Section 18(1) of the ID Act is also binding upon the contesting minority union. The said award was again put to challenge in W.P.No.39506 of 2004. Finally, when the matter came up to the writ court, the said writ petition was dismissed on 24.09.2008 confirming the award dated 17.08.2004 passed by the Tribunal holding that the settlement arrived at Section 18(1) of the ID Act is also binding on the aggrieved union as well.

6. Now, the issue raised in the present appeal is whether the members of the appellant union are entitled to get the gratuity as prayed for. The Controlling Authority/second respondent herein, vide order dated 21.10.2008 passed in G.A.Nos.121/06, 122/06, 94 to 111/07, 206 to 213/07 and 3/08, held that as per Section 7(3) of the Payment of Gratuity Act, 1972, the gratuity amount to the workmen ought to have been paid to them within 30 days from the date of their retirement, but, since it was not done so, the Controlling Authority directed the management to pay the gratuity amount to the workmen with interest at 10%. Thereafter, on appeal by the management, the appellate authority/first respondent herein by order dated 18.06.2009 held that the members of the appellant union are entitled for limited gratuity and therefore, for the period from 20.03.1998 to 28.06.2005, nearly for a period of seven years, they will not be eligible for gratuity. In respect of 'B' Mill workers, they will not be eligible for gratuity for the period from 20.07.1992 to 28.06.2005 i.e., for a period of 13 years. With regard to interest, it was directed that the workers will get interest only from the natural date of retirement till the date of their filing the claim before the Controlling Authority. The above said order of the Appellate Authority was confirmed by the learned Single Judge in the impugned order. Aggrieved by the same, the present appeal has been filed by the workmen.

7. Heard Mr.K.M.Ramesh, learned counsel for the appellants/workmen, Mr.S.Ravi, learned counsel for the third respondent and Mr.T.Arunkumar, learned Government Advocate appearing for the respondents 1 and 2, and perused the materials available before this Court.

8. The third respondent management moved an application dated 20.07.1992 for closure of 'B' Mills-weaving unit and also weaving preparatory section in 'A' Mills under Section 25-O of the ID Act, citing a reason that due to heavy loss they are unable to run 'B' Mills and there were 422 workers including staff and apprentices in 'B' Mills and there were 1143 workers in 'A' Mills. The Commissioner of Labour, by order dated 16.09.1992, rejected the application for closure. Thereafter, the management filed a review application before the Government. By G.O.(D) No.250, Labour and Employment Department, dated 06.04.1993, the Government reviewed the order of the Labour Commissioner and referred the issue for adjudication before the Special Industrial Tribunal, Chennai, as to whether the management's demand to close down the 'B' Mills in the premise of 'A' Mills was justified.

9. But, in the meanwhile, Memorandum of Understanding dated

19.12.1992 was signed by the management for deployment of workers of 'B' Mills in 'A' Mills, resultantly, 139 workers got redeployed in 'A' Mills-Spinning Mills. Therefore, when the issue was adjudicated before the Tribunal, the Tribunal vide its award dated 28.11.1994 passed in I.D.No.4 of 1993, upheld the closure of 'B' Mills and thereby directed the management to redeploy all the workers of 'B' mills in 'A' mills within four weeks. However, one of the unions did not accept the award and also refused to accept the alternative employment. Therefore, the said aggrieved union filed W.P.No.21568 of 1994 challenging the award of the Tribunal dated 28.11.1994 and this Court, by order dated 16.04.2001, dismissed the said writ petition, and against which, when Writ Appeal No.1979 of 2001 was filed, the same also dismissed by the learned Division Bench of this Court on 24.09.2008. After the dismissal of the application for closure by the Commissioner of Labour, individual workers of 'B' Mills filed batch of claim petitions before the Labour Court seeking wages for the period from 20.07.1992 to 30.06.1993. The Labour Court allowed the claim petitions on 31.03.1994. Aggrieved thereby, the management filed W.P.No.8225 of 1994 and batch cases and this Court allowed the said writ petitions on 16.04.2001 and set aside the order dated 31.03.1994 of the Labour Court.

10. Thus, from the aforesaid facts and circumstance of the case, when it is clear that 'B' Mills workers became employees of 'A' Mills and that the employment from 'B' Mills to 'A' Mills cannot be said to be continuous, learned Single Judge came to the conclusion that the workmen are entitled to claim gratuity only in respect of the years in which they have put in service and by stressing Section 2-A of the Payment of Gratuity Act, 1972, they cannot get gratuity in respect of the periods in which they are not employed. Likewise, in regard to workmen of 'A' Mills which was closed down from 20.03.1998 to 28.06.2005, learned Single Judge held that the order passed by the Controlling Authority on a wrong reading of Section 2-A of the Payment of Gratuity Act, 1972, holding that the workers are entitled to gratuity for the entire period of service, is not sustainable in law.

11. As stated above, admittedly, after the reference was made by the State Government, the Special Industrial Tribunal, vide its award dated 28.11.1994 passed in I.D.No.4 of 1993, permitted the closure of 'B' Mills-weaving unit as proposed by the third respondent management and thereafter, when appeal was preferred, the said award dated 28.11.1994 of the Tribunal was confirmed by the learned Single Judge in W.P.No.21568 of 1994, dated 16.04.2001, and on appeal, 10/16

again, the said award was confirmed by the learned Division Bench in W.A.No.1979 of 2001, dated 24.09.2008.

12. Likewise, with regard to 'A' Mills-spinning unit, after the lay-off imposed by the third respondent management, the matter was referred to the Industrial Tribunal, Chennai, whereby, the Presiding Officer, by award dated 17.08.2004 passed in I.D.No.326 of 1999, taking note of the settlement reached under Section 18(1) of the ID Act, held that the said settlement is also binding on the contesting minority union. Subsequently, when appeal was preferred, the said Award dated 17.08.2004 was confirmed by the learned Division Bench of this Court in W.P.No.39506 of 2004, etc., dated 24.09.2008. Thus, since the Tribunal had acknowledged the closure of third respondent Mills and that the said award also was not struck down by this Court, we are of the considered view that the closure of 'A' Mills-spinning unit and 'B' Mills-weaving unit has attained the finality. Hence, the workmen, having not worked minimum 240 days in a calendar year, have no *locus-standi* to seek for gratuity.

13. The major union(s) arrived at a settlement under Section 18(1) of the Industrial Disputes Act with the management on 9.12.1992 for re-deployment of

'B' Mills weaving workers in 'A' Mills, consequent upon which, about 139 workmen got re-deployment without any loss of wages or break-in-service; 31 workmen of 'B' Mills left the services and the balance 263 workmen of 'B' Mills weaving unit refused to avail of the alternative employment and subsequently, some of them have also accepted to join 'A' Mills. Moreover, to see whether the settlement reached under Section 18(1) of the Industrial Disputes Act is binding on all the parties, it is pertinent to extract the said provision as follows:-

“18. Persons on whom settlements and awards are binding.—(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) Subject to the provisions of sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A or an award of a Labour

Court, Tribunal or National Tribunal which has become enforceable shall be binding on—

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

14. A cursory reading of the above provision shows that if the settlement is arrived at by agreement between the employer and employee otherwise than in the course of conciliation, the same will be binding on the parties to the

agreement, by virtue of sub-section (1) of Section 18 of the Industrial Disputes Act. Moreover, Section 18(3) also makes it clear a different situation. But, in the present case, the Appellate Authority under the Payment of Gratuity Act has held that the settlement reached under Section 18 of the Industrial Disputes Act on 9.12.1992 is not on record and it is not clear whether the settlement has been arrived at under Section 18(1) of 18(3) of the Industrial Disputes Act, but the admitted position shows that the management sought for closure of 'B' Mill weaving unit under Section 25-O of the Industrial Disputes Act, that was rejected by the Commissioner of Labour and in view of the State Government's G.O.(D) No.250, Labour and Employment Department dated 6.4.1993, the earlier order of the Commissioner of Labour dated 16.9.1992 has been superseded and therefore it cannot be alleged that the closure was made in violation of Section 25-O of the Industrial Disputes Act.

15. It is trite law that gratuity cannot be gifted for no work done by the workman and the gratuity is a retiral benefit and it is being granted for the services earned by the workman. Thus, it is clear that unless and until the workman actually works for a minimum period of 240 days, he is not eligible to be considered for gratuity. Therefore, the claim of the workmen in the case on

14/16

hand to grant gratuity in respect of 'B' Mills workers commencing from 20.07.1992 to 28.06.2005 and in respect of 'A' Mills workers for the period commencing from 20.03.1998 to 28.06.2005 cannot be sustained as they have not admittedly rendered 240 days of service in a calendar year.

16. Thus, for the reasons stated above, we do not find any error or illegality in the order passed by the learned Single Judge warranting interference. Hence, the writ appeal stands dismissed. No Costs. Consequently, M.P.No.1 of 2011 is closed.

(T.R., J.) – (C.S.N., J.)
14.09.2021

rkm

Index:yes
speaking

To

1.The Joint Commissioner of Labour,
(Appellate Authority under the Payment of
Gratuity Act, 1972),
Coimbatore – 641 018.

2.The Assistant Commissioner of Labour
(Controlling Authority under the Payment of
Gratuity Act, 1972)
Coimbatore – 641 018.

15/16

W.A.No.2024 of 2011

T.RAJA, J.
and
C.SARAVANAN, J.

rkm



Pre-delivery Judgment in

W.A.No.2024 of 2011

WEB COPY

14.09.2021