

21.11.2024.
Court No. 13
Sl. No.4
Pk/Sudipta

FMA 882 of 2024

The Ganges Manufacturing Company Limited
Versus
State of West Bengal and others

Mr. S. K. Singh,
Mr. R. K. Dubey
... for the appellant.

Mr. Rajarshi Basu,
Mr. K. M. Hossain
... for the State.

Mr. Bikash Shaw
... for the respondent no. 4./workman.

1. The instant appeal is directed against the judgment and order dated 18th April 2024 passed by the Single Bench of this Court in WPA No. 22143 of 2023 (The Ganges Manufacturing Company Limited Vs. State of West Bengal & Ors.).
2. The facts of the case are as follows:
3. The order of the Controlling Authority stated that the workman/respondent no. 4 had worked uninterruptedly for over 18 years between 16 November 2000 and 30th September 2019 and completed 240 days for 8 years during his tenure as a Badli worker and thereby had computed the gratuity for 27 years.
4. The workman preferred statutory appeal. The Appellate Authority added 4 years of service i.e. for

the years 1981, 1982, 1988 and 1993 to that length of service computed by the Controlling Authority on the ground that the workman was Badli worker during the said 4 years but was prevented from completing 240 days in each of such 4 years and the employer declared lock out.

5. The Single Bench in its order upheld the order of the Appellate Authority in adding the 4 years to the length of service to the workman being 1981, 1982, 1988 and 1993 on the ground that the workman must be deemed to be in continuous service for the 4 years above. Referring to Section 2A of the Payment of Gratuity Act, which specifies that a workman who shall be deemed to be in continuous service if he has been in uninterrupted service during the said years irrespective whether the same is uninterrupted by sickness, accidental absence from duty without leave or where the establishment has laid off the workman or whether due to strike or lock out or sessions of work, *due to no fault of employee*.
6. Section 2A (2) defines situations where the employee shall not be deemed on continuous service i.e. unless he/she has completed 240 days in terms of Sub-Section 2 of Section 2A.
7. The Single Bench and the Appellate Authority were of the view that in terms of Section 2A and the

definition of continuous service under Sub-Section 1 thereof for the 4 years mentioned hereinabove. The appellant employer is aggrieved by such finding.

8. The status of a Badli workman appears to have been completely ignored by the Appellate Authority as well as the Single Bench. In the case of ***Lalappa Lingappa & Ors. Vs. Laxmi Vishnu Textile Mills Ltd.*** reported in **(1981) 2 SCC 238**, the position of a Badli workman specially has been discussed in Paragraphs 16 and 18, which is set out hereinbelow.

16. As regards *badli* employees, there can be no doubt that they are not in uninterrupted service and, therefore, they do not fall within the substantive part of the definition “continuous service” in Section 2(c), but are covered by Explanation I. In *Delhi Cloth & General Mills Co. v. Workmen* [AIR 1970 SC 919 : (1969) 2 SCR 307, 338 : (1969) 2 LLJ 755] the court, while dealing with a gratuity scheme, repelled the contention urged on behalf of the *badli* employees that since they had to register themselves with the management of the textile mills and were required every day to attend the mills for ascertaining whether work would be provided to them or not, the condition requiring that they should have worked for not less than 240 days in a year to qualify for gratuity was unjust and observed:

“If gratuity is to be paid for service rendered, it is difficult to appreciate the grounds on which it can be said that because for maintaining his name on the record of the *badli* workmen, a workman is required to attend the mills he may be deemed to have rendered service and would on that account be entitled also to claim gratuity.”

18. The Report of the Badli Labour Enquiry Committee, Cotton Textile Industry, 1967, no doubt shows that the *badli* employees are an integral part of the textile industry and that they enjoy most of the benefits of the permanent employees; but there may not be any continuity of service as observed by this Court in the *Delhi Cloth Mills case* [AIR 1970 SC 919 : (1969) 2 SCR 307, 338 : (1969) 2 LLJ 755] .

The *badli* employees are nothing but substitutes. They are like “spare men” who are not “employed” while waiting for a job: *Conlon v. Glasgow* [36 Scottish LR 652] . *Vallabadas Kanji (P) Ltd. v. Esmail Koya* [1978 Lab IC 809 : ILR (1978) 1 Ker 405 : 52 FJR 470] taking the view to the contrary, does not appear to lay down a good law. Accordingly, we uphold the view that the *badli* employees are not covered by the substantive part of the definition of “continuous service” in Section 2(c), but came within Explanation I and, therefore, are not entitled to payment of gratuity for the *badli* period i.e. in respect of the years in which there was no work allotted to them due to their failure to report to duty.

9. It is clear from the above that a Badli workman while remaining in the records of the employer, is required to report every morning of a working day for duty. In the event of a vacancy in a permanent post of workman, such workman is allotted to the Badli worker.
10. If, however, such Badli workman is allotted duties for continuously 240 days in year, it could be deemed that he was in continuous service within the meaning of Section 2A (1) and (2) read with Section 2(c) which defines “employee”, and would be entitled to gratuity provided he fulfills the criteria under Section 4. There is no dispute to the fact that the workman for the aforesaid 4 years did not render 240 days service in a year. Having said that, it is equally true that the Company was in lockout for the aforesaid 4 years.
11. Learned counsel for the workman would argue before this Court that:-

a. The workman was prevented from working for no fault of his since the Company was under lock out.

b. The Badli workman must be treated as an employee and even as a casual worker and when he is prevented from performing his duties due to lock out, he must be deemed to have rendered 240 days service in a year and consequently in continuous service under Section 2A (1) of the Act of 1972. Hence for such year he is entitled to gratuity.

12. This Court is unable to accept the argument of the learned counsel for the workman and the views of the Single Bench. The Single Bench appears to have applied ***Lalappa Lingappa case (supra)*** but appears to have completely missed out on the scope and intent as set out in paragraphs 16 and 18 thereof above.

13. Had a permanent workman been in the position of the respondent workman in the instant case, there is no doubt that he would have been entitled to gratuity for above 4 years of service.

14. A Badli workman like the respondent workman in the instant case stands on a completely different footing as explained in ***Lalappa Lingappa case (supra)***, he remains in the records of the Company as a Badli worker. He is like a spare workman. His

engagement depends on whether a permanent workman is absent on the particular day. It is then that the Badli workman is entrusted with the work due to the absence of the permanent workman.

15. Casual workmen do not normally remain on any payroll on record of a Company. It is only permanent workman who are on the muster roll of the Company. To make a Badli workman entitled to gratuity for the aforesaid 4 years where admittedly he has not been engaged for 240 days in a year whether it is the fault of the workman or otherwise, would be completely fallacious in view of the succinct explanation of the status of the Badli workman in the ***Lalappa Lingappa case (supra)***.
16. The change in the definition of the Section 2A effected in the year 1984 has absolutely no bearing on the ratio laid down in the ***Lalappa Lingappa case*** insofar as the Badli workman is concerned.
17. Insofar as the decision of ***Netram Sahu Vs. State of Chhattisgarh and Anr.*** reported in ***(2018) 5 SCC 430***, it appears that the casual worker was in continuous service as a daily worker for 22 years and he was thereafter made a permanent employee whereafter he served for 3 years and 3 months thereafter. A casual worker, more often or not is engaged depending on his sincerity either continuously by the establishment

or based on a job related work or even a seasonal work.

18. This is distinct and different from that of a Badli workman. The Supreme Court directing the entire period of 22 years rendered by the workman as non-permanent casual labour, and computing the length of gratuity adding the aforesaid 22 years to the 3 years and 3 months of permanent service cannot be applied to the instant case.
19. The aforesaid **Netram Sahu decision** is, therefore, inapplicable to the facts and circumstances of the instant case.
20. In the aforesaid circumstances, this Court is of the view that both the Appellate Authority and the Single Bench have committed error in holding that for the period of the aforesaid 4 years i.e. 1981, 1982, 1988 and 1993 where the workman admittedly did not work for 240 days continuously or otherwise as a Badli worker, could not have been reckoned for the purpose of payment of gratuity.
21. The workman has admittedly been paid gratuity for a period of 8 years of the Badli period when he actually rendered service of 240 days for the entire period in which he was made permanent employee. Gratuity cannot be computed for the aforesaid 4 years i.e. 1981, 1982, 1988 and 1993.

22. For the reasons stated hereinabove, the impugned judgment dated 18th April 2024 and the order of the Appellate Authority dated 28.07.2023 shall stand set aside.
23. The appeal being FMA 882 of 2024 succeeds and is allowed.
24. In view of disposal of the appeal, connected applications, if any, are also disposed of.
25. There shall be no order as to costs.
26. Parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)