

18. 04. 2024

BP
Sl. 29
Court No. 23

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 22143 of 2023

The Ganges Manufacturing Company Ltd.
Vs.
The State of West Bengal & Ors.

Mr. S.K. Singh
Mr. Ravi Kumar Dubey
..for the petitioner

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

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

The employer has challenged the order of the Appellate Authority dated 28th July, 2023 under the Payment of Gratuity Act, 1972 (hereinafter referred to as 1972 Act) by filing the instant writ petition. It is the case of the writ petitioner that the Controlling Authority had correctly held that the respondent no. 4 had worked uninterruptedly for over eighteen years between 16th November, 2000 and 30th September, 2019 and completed 240 days for 8 years during his tenure as a Badli worker and thereby and had computed the gratuity amount for about 27 years. The employer has accepted the same order and has paid the gratuity amount on the basis thereof to the workman

(respondent no.4). The respondent no.4, however, preferred an appeal in which the Appellate Authority had added four years of service i.e., for the years 1981, 1982, 1988 and 1993 to that computed by the Controlling Authority on the ground that though the petitioner was Badli worker during the said four years but was prevented from completing 240 days in each of such years as the employer declared Lock out.

The writ petitioner says that this finding of the Appellate Authority is not in accordance with the provisions of 1972 Act or in terms of the settled legal position. The petitioner says that the period of 'lock out' cannot be included to construe continuous service in case of a Badli worker as provisions of Section 2A(2) of 1972 Act is applicable in the case of Badli workers and not provisions of Section 2A(1) of the said Act. It is submitted that the service of a Badli worker by its nomenclature it will mean substitution when the regular workman is absent. The service of a Badli worker is interrupted the moment the regular/permanent worker against whom he was working as a Badli is available. Unless the service is uninterrupted a worker does not come under the provisions of Section 2A(1) of the 1972 Act which eliminates lock out as a break of service.

The petitioner in support of its contention has

cited a judgement of a Single Bench of Gujarat High Court delivered on 25th June, 1996 in Special Civil Application No. 8380 of 1989 (***Mafatlal Fine Spg And Mfg Company Ltd. Vs. Ramachhar Benimadhav Mishra***).

Although, the writ court has a wide amplitude of authority to interfere into the orders passed by the Appellate authority under the 1972 Act but the same is done within the four corners of judicial review and not as an Appellate Court. In the instant case, the Controlling Authority as also the Appellate Authority considered the evidence laid before them and only thereafter the tenure of service rendered by the workman was ascertained. There is no dispute as to the period of permanent employment between 2000 and 2019 as the same was an uninterrupted service under the provisions of Section 2A (1) of the 1972 Act. So far as the tenure during Badli worker is concerned, the Controlling Authority has concluded 8 years to be the period for which the respondent no. 4 is entitled to gratuity. The Appellate Authority has concluded that the respondent no. 4 is entitled to further 4 years of gratuity, particularly when the petitioner was unable to show any break of service during this period except the lock out. During the Badli period from the affidavit-in-chief filed

by the writ petitioner it appears that the petitioner has given a chart in paragraph 15 thereof which appears at page 56 of the writ petition. In the said chart an extract has been provided for the years 1981, 1982, 1983, 1984, 1985, 1986, 1988, 1990, 1991, 1993, 1996 and 1998 when the respondent no.4 is said to have not completed 240 days in a year while working as a Badli worker. The particulars for the year 1987, 1989, 1994, 1995 and 1999 have not been provided. Unless the petitioner had worked more than 240 days for the year 1999 he would not have been made permanent in the year 2000. In absence of the particulars for the other five years it has to be presumed that the figures for those years were not disclosed as there was no dispute that the respondent no. 4 had worked for 240 days during these years or that the disclosure of details may go against the writ petitioner. On an analysis of this evidence, the Controlling Authority has given 8 years of service during the Badli period which is accepted by the writ petitioner. No flaw can also be found for such finding on the basis of the materials available before the Court. In an appeal from such order of the Controlling Authority, the Appellate Authority had allowed four years i.e. 1981, 1982, 1988 and 1993 to be the years in which the petitioner while working as a Badli worker had fulfilled

the requirement to be considered for computation of gratuity. The Appellate Authority seems to be of the view that the respondent no. 4 as a Badli worker did not have the opportunity of rendering 240 days service during these years for the lock out period.

Assuming without admitting that the provisions of Section 2A(2) of 1972 Act as contended by the petitioner is applicable to the respondent no.4 for the period prior to he made permanent then also the respondent no. 4 was denied of an opportunity to work during these years for the lock out and becomes entitled to gratuity for those four years. Section 2(c) of the 1972 Act does not make any difference between a permanent and Badli worker. However, the amended provision of Section 2A of the 1972 Act can be pressed into operation to curve out such difference in view of the wordings of Section 2A (1) and Section 2A(2) of the 1972 Act. Section 2A (1) while defining “Continuous Service” has used the expression “Uninterrupted Service” while in Section 2A (2) the expression used is “not in continuous service within the meaning of Clause (1)”. Relying on this difference the writ petitioner contends that the respondent no. 4 being a Badli worker cannot be said to be in uninterrupted service because it is now well-settled that the Badli worker is engaged temporarily when the

permanent worker is not available and such appointment is casual in nature. There is a difference between subsistence of a contract of employment and actually working in the employer's place. A Badli worker is empanelled with the employer and he has to attend the factory/works everyday to find out whether there is any work available to him in view of the applicable standing orders. Thus his contract of employment may subsist but unless he works he does not put in actual service. So his service may not be continuous as he is not actually working but his service cannot be said to be an interrupted one as contended by the employer/writ petitioner because his contract of employment subsists since he remains in the panel but being a badly worker he works only on the days he gets the opportunity to work in the absence of a regular worker. The service of a Badli worker, therefor, even though gets interrupted on the days when he does not actually work but will be reckoned to be continuous for the purpose of computing gratuity if he actually works for 240 days except in case of mining activity where a badly has to work for 190 days. Thus he has to actually work for 240 days to be entitled to gratuity as held in 1981 (2) SCC 238 **(Lalappa Lingappa & Ors. vs. Laxmi Vishnu Textile Mills Ltd)** the ratio laid down wherein still is followed as

will appear from the judgment reported in 2012 (1) SCC 285 (***H.S. Rajashekara v. State Bank of Mysore***), despite the amendment to the 1972 Act with the introduction of Section 2A and not for his service being interrupted being a Badli worker.

The only dispute raised was in respect of 4 years i.e. 1981, 1982, 1988 and 1993 when according to the writ petitioner (employer), the respondent no.4 did not work for 240 days as a Badli worker. In the year 1982 as per the examination-in-chief of the writ petitioner, the lock out days were 360 while that in 1988 was 267. Admittedly, these two figures are over 240 days. The respondent no.4, therefore, did not have the opportunity to actually work for 240 days in those two years for no fault of the respondent no.4. For the year 1993, the number of lock out days as per the writ petitioner is 125 days and the respondent no.4 worked for 160 days. The respondent no.4 was, therefore, being deprived from an opportunity to work for those 125 days. Had he got the opportunity he might have completed 240 days. Similarly, the lock-out days in the year 1981 is shown as 165. The respondent no.4 was deprived for working for 165 days in that year. As the respondent no. 4 does not fall in the category of workman under Section 2A(2) for the reasons as aforesaid the lock out period during

these four years cannot be said to be interruption in service as held in Sec. 2A(1) of the 1972 Act. The automatic question which will then arise is whether the respondent no. 4 as a badli worker got the opportunity to actually work for 240 days. The answer being in the negative for the lock out which was not the fault of the employee, the respondent no. 4 becomes entitled to gratuity for these four years.

In the aforesaid facts and circumstances, the Appellate Authority has rightly allowed those 4 years to be computed for gratuity in respect of respondent no.4.

I, therefore, do not find any infirmity in the order of the Appellate Authority dated 28th July, 2023. The judgment relied upon by the petitioner has no application in the facts of the instant case even if the amendment brought into Section 2 of the 1972 Act is taken into account by placing the same in the facts of the instant case.

The writ petition fails, and, is, accordingly dismissed.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Arindam Mukherjee, J.)

