

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 17098 OF 2024

B.B.Kitting Company Thr.

Partner Vinodchandra S. Bandagi

... **Petitioner**

Versus

Somnath Ramchandra Chormule

... **Respondent**

AND

WRIT PETITION NO. 17131 OF 2024

B.B.Kitting Company Thr.

Partner Vinodchandra S. Bandagi

... **Petitioner**

Versus

Habib Mehmood Shaikh

... **Respondent**

Mr. Raghvendra B. Kulkarni *for the Petitioner.*

CORAM : SANDEEP V. MARNE, J.

DATE : 27 NOVEMBER 2024.

P.C. :

1) The Petitions challenge Orders dated 16 July 2024 passed by the Appellate Authority under the Payment of Gratuity Act and Member, Industrial Court, Solapur rejecting the Appeals preferred by the Petitioner and confirming the Orders dated 8 September 2024 passed by the Controlling Authority.

2) I have heard Mr. Kulkarni, the learned counsel appearing for the Petitioner. He would submit that the Respondents approached the Controlling Authority after inordinate delay by making out a false claim of completion of 240 days of service in each year. He would submit that the burden of proving completion of 240 days of service in each year rested on the shoulders of the Respondent-Workman. That they did not lead any evidence to prove their contention of completion of 240 days of service in each year. He would rely upon judgments of the Apex Court in **Range Forest Officer Vs. S. T. Hadimani¹**, **R. M. Yellatti Vs. Assistant Executive Engineer²** and **Rajasthan State Gangangar S. Mills Ltd. Vs. State of Rajasthan & Anr.³** in support of his contention that the burden of proof as to completion of 240 days of continues service in a year is on the workman concerned. He would accordingly pray for setting aside the orders passed by the Controlling Authority and the Appellate Authority as the Respondent-Workman failed to prove completion of 240 days of service in each of the years.

3) I have considered the submissions canvassed by Mr. Kulkarni. Petitioner is the employer of the Respondent-Workmen. Perusal of the written statements filed by the Petitioner would indicate that it did not deny employer-employee relationship. The Respondents have stepped into the witness box and have led evidence of completion of 240 days in each year of service. Petitioner chose not to lead any evidence in the Applications before the Controlling Authority. Except bare denial about completion of 240 days of service in each year, Petitioner did not produce any evidence to show that the Respondents

1 (2002) 2 SCC 25

2 (2006) 1 SCC 106

3 (2004) 8 SCC 161

rendered services of less than 240 days in any particular years. Despite availability of all the material such as attendance registers, salary registers etc. Petitioner chose to suppress the same from the Competent Authority. Thus, despite availability of opportunity of proving that the workmen did not complete 240 days of service in a year, the Petitioner failed to avail such opportunity. The judgments relied upon by Mr. Kulkarni in **Range Forest Officer** (supra), **R. M. Yellatti** (supra) **Rajasthan State Gangangar S. Mills Ltd.** (supra) relate to retrenchment/termination. The present case is concerned with the claim of the Respondents towards gratuity. Petitioner did not dispute the dates of appointment or dates of cessation of service. In the light of absence of any dispute about existence of employer-employee relationship, the natural inference which the Court would draw is continuous rendering of services till resignation by the Respondents. If on the other hand Petitioner possessed any material to show that continuous service was not rendered by the Respondents, or that there was any break in their service, it ought to have proved the same by leading evidence to that effect. Claim of Respondents towards gratuity could not have been rejected by the Controlling Authority by relying upon vague denial on the part of the Petitioner in the written statement, in absence of any evidence being produced about non-completion of service of 240 days in each year.

4) So far as the issue of delay in filing the applications sought to be raised by Mr. Kulkarni is concerned, it is duty of the employer to pay gratuity under the provisions of the Act immediately after cessation of service. In that view of the matter, the applications before

the Competent Authority could not have contested by the Petitioner on the ground of delay in filing such applications. Even otherwise, the Respondent in Writ Petition No. 17098 of 2024 resigned from service in December 2017 and since Petitioner failed to pay his statutory gratuity, he filed application before the Controlling Authority on 9 December 2021. Therefore, it cannot be stated that there is any inordinate delay in approaching the Controlling Authority.

5) I therefore do not find any valid reason to interfere in the orders passed by the Controlling Authority and the Appellate Authority. Writ Petitions are devoid of merits and are accordingly **dismissed** without any order as to costs.

[SANDEEP V. MARNE, J.]