



CWP-16870-2016

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(247)

CWP-16870-2016

Date of Decision : 17.11.2025

M/S Business Octane Solutions Pvt. Ltd.

...Petitioner

Versus

The Presiding Officer, Labour Court-I,
Gurgaon and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Sameer Vats, Advocate for
Mr. Abhimanyu Singh, Advocate
for the petitioner.

Mr. Sandeep Kotla, Advocate
for respondent No.3.

KULDEEP TIWARI, J.(ORAL)

1. Through the instant writ petition, cast under Article 226/227 of the Constitution of India, the petitioner/Management, has thrown a challenge to impugned order dated 30.06.2015 (Annexure P-3), passed by the respondent No.1, whereby, the claim petition filed by the respondent No.3, under Section 7 of the Payment of Gratuity Act, 1972 (hereinafter to be referred to as 'the Act'), has been allowed, and the petitioner/Management, was directed to pay the gratuity amount of Rs.39,000/-, to respondent No.3, within a period of 30 days, from the date of the order (supra), failing which, the said amount will be recovered along with interest @12% per annum, from the date of the order, till its actual payment.



2. The sole ground submitted before this Court, for throwing challenge to the order (supra), is that the respondent No.3, has only worked for 04 years 10 months and 15 days, and therefore, he does not qualify for the payment of gratuity, as he was required to complete 05 years in service. He further submitted that the authority concerned, has wrongly invoked the Section 2-A of the Act, for calculating the period of 240 days, in the preceding year. It is submitted that since it is a case of voluntarily retirement from the service, therefore, the respondent No.3, cannot be given the benefit of sub-clause (2) of Section 2-A of the Act.

3. While placing reliance upon the judgment passed by the Karnataka High Court, in ***Writ Petition No.48825 of 2016***, decided on 28.06.2022, titled '***M/s. Alvas Institute of Engineering and Technology versus The State of Karnataka and others***' learned counsel for the petitioner submits that interruption in service is not on account of reasons as enumerated under Section 2-A (1) of the Act, entitling the respondent No.3/workman, to claim that he is deemed to be in continuous service and claim the benefit of Section 2-A (2) of the Act.

4. On the other hand, learned counsel for the respondent No.3/workman, has submitted that the learned authority concerned, has rightly invoked the sub-clause (2) of Section 2-A of the Act, to grant the benefit to the respondent No.3/workman. He further submits that sub-clause (2) of Section 2-A of the Act, is to be invoked only when an employee is not in continuous service within the meaning of Clause (1) of Section 2-A of the Act.

5. This Court has considered the submissions as made by learned counsel for the parties concerned. Since the issue, as involved in the instant writ petition revolves around the interpretation of Section 2-A of the Act,



therefore, it is imperative to discuss the same.

6. Section 2-A defines continuous service for the purpose of determining the employee's eligibility for gratuity. As per the said provision, an employee, is in continuous service, if he has uninterrupted service, despite there being a gap in the service, on account of sickness, accident, leave, or lay off, do not break the continuity of work. Further, the absence from the duty is not considered a break if it was on account of the employee's fault, which is duly prescribed. As per sub-Section (2), if actual uninterrupted service is not available, meaning thereby, if an employee has not worked continuously, his service shall still be deemed to be continuous, if he has actually worked for a minimum number of days in the preceding year, as prescribed therein.

7. Perusal of sub-Clause (1) and (2) above, makes it vividly clear that both are operated in different spheres, therefore, it is not necessary that when the conditions prescribed in sub-clause (1) of Section 2-A, sub-clause (2) of the Act, can be invoked. The key object of above Section 2-A, is to ensure that absence from the duty on account of genuine reasons, does not break the service and an employee, who has worked substantially does not deny the benefit of gratuity, merely, due to short intervals.

8. This Court finds vigor from the judgment of Kerala High Court, titled '**Sreeja B. versus Regional Joint Labour Commissioner and others**' decided on 05.03.2015. The relevant is extracted hereinafter :-

2. By sub-section (1) continuous service means uninterrupted service including interruption, on account of sickness, accident, leave, absence from duty without leave etc., as long as the absence is not treated as a break in service, by a specific order. Sub-section (2) specifically deems continuous service within any period of one year, not coming within the meaning of Clause (1), to be



continuous service, if in the preceding period of twelve calendar months, the workman has worked for 240 days. Hence by a deeming provision, the Statute provides for the service in any twelve months of a five year period to be treated as continuous service, if the employee has more than 240 days of service.

3. Section 25B(2) of the I.D. Act provides in pari materia deeming provision, wherein a workman who is not in continuous service for a period of one year or six months is deemed to be in continuous service, if he has, during the period of twelve calendar months preceding the date of calculation, 240 days service. The Hon'ble Supreme Court, considering the same in Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another, AIR 1981 SC 422 (1980) LabIC 1292: (1981) 1 LLJ 386: (1980) 4 SCC 443: (1981) 1 SCR 789: (1981) 1 SLJ 107 held so:

“The provision appears to be plain enough. Section 25F requires that a workman should be in continuous service for not less than one year under an employer before that provision applies. While so, present Section 25B(2) steps in and says that even if a workman has not been in continuous service under an employer for a period of one year, he shall be deemed to have been in such continuous service for a period of one year, if he has actually worked under the employer for 240 days in the preceding period of twelve months. There is no stipulation that he should have been in employment or service under the employer for a whole period of twelve months. In fact, the thrust of the provision is that he need not be. That; appears to be the plain meaning without gloss from any source.”

9. Further, the Madras High Court in the judgment titled '**Mettur Beardsell Ltd. versus Regional Labour Commissioner**' decided on



*“5 Section 2A defines continuous service. According to this section, If an employee renders continuous service for a period of 240 days in a year he will be deemed to have continued in service for one year. This deeming provision contained in Section 2A must be applied in interpret' the period of five years mentioned in Section 4(1). Section 2(b) also supports this interpretation because as per the said section completed year of service means continuous service for one year. Therefore, these provisions are emphatic in stating that if an employee serves continuously for a period of 240 days in a year, he must be deemed to have continuously served for one year. In this case admittedly the third respondent has served for 4 years, 10 months and 18 days. 10 months and 18 days service is definitely more than 240 days. Therefore when the third respondent was relieved from service he has thus completed five years of service. In the decision reported in **Sundra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi, and another, [1980 (2) L.L.N. 456]**, their Lordships have observed as follows, in Para. 13, at page 462:*

“It is sufficient for the purpose of Section 25B(2)(a)(ii) that he has actually worked for not less than 240 days. It is no longer necessary for a workman to show that he has been in employment during a preceding period of twelve calendar months in order to qualify within the terms of Section 25B”.

10. In view of the above, this Court, respectfully, disagree with the ratio laid down by the Karnataka High Court in the judgment, titled **‘M/s. Alvas Institute of Engineering and Technology versus The State of Karnataka and others’**. Consequently, the instant writ petition is **dismissed**.

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11. Before parting with this order, this Court finds that since the petitioner/Management, has dragged the respondent No.3/workman, before this Court, for a meagre amount of Rs.39,000/-, therefore, the petitioner/Management, is burdened with a cost of Rs.10,000/-, which shall be payable to the respondent No.3/workman, and the same shall be deposited under the Payment of Gratuity Act, 1972, within a period of six weeks, from the date of receipt of certified copy of this order, and the respondent No.3/workman, would be entitled to withdraw the said amount, by moving apt application under the *ibid* Act.

(KULDEEP TIWARI)
JUDGE

November 17, 2025
Manpreet

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No