

08.04.2024

BP
Sl.2
Court No. 23

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 8705 of 2024

M/s. Dalhousie Jute Company
Vs.
The State of West Bengal & Ors.

Mr. Balai Chandra Paul
Ms. Sumouli Dey
..for the petitioner

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

Mr. Susovan Sengupta
Mr. Manas Kumar Sadhu
..for the State

The writ petitioner is the employer. The respondent no.4 was an employee of the petitioner. It is the case of the petitioner that the respondent no.4 joined the services of the writ petitioner no.1 on 8th December, 1994 as Badli worker and as such had worked purely on casual basis. The petitioner says that the respondent no.4 apart from being a Badli worker also did not fulfil the requirement of continuous service to make him entitled to receive the gratuity. The petitioner before the Controlling Authority as also the Appellate Authority relied upon several documents including a register of

leave with wages to prove its contention. By showing the entries against the years 1994 to 2000 the petitioner says that the respondent no.4 did not acquire the qualifying service for gratuity. The respondent no.4 being a Badli worker was required to adduce evidence and discharge the prima facie onus that the respondent no.4 (employee) had worked for 240 days during five years at least to claim continuous service. The respondent no.4 has miserably failed to demonstrate that he was in continuous service and as such is entitled to gratuity.

The order of the Controlling Authority refusing payment and of gratuity was overturned by the Appellate Authority in the petitioner's appeal and has held after considering the materials on record, the petitioner is entitled to gratuity from 8th July, 1992 to 15th March, 1998.

The petitioner says that the Appellate Authority erred in concluding that the respondent no.4 is entitled to gratuity from 1992 to 1998 without considering the materials on record, evidence produced and its probative value.

The respondent no.4 says that after introduction of Section 2A of the Payment of Gratuity Act, 1972 (1972 Act) the requirement to work for 240

days in a calendar year for being entitled to claim gratuity is no more there once such continuous service has been rendered for five years.

The admitted position in this case is that the respondent no.4 met with an accident at the factory premises on 15th March, 1998 and could not work subsequent thereto till 2000 and ultimately became disabled for which necessary certificate has been issued. The register of leave with wages said to have been produced by the petitioner before the Controlling Authority is an incomplete document as it provides for the particulars only from 1994 when the petitioner alleges that he had been working since 1992. It also does not appear to be corroborated with other details to prove the correctness of the facts and figures recorded therein. Even assuming without admitting that the recording in the said register are correct then also such document is of no assistance to the petitioner in view of the following :

1. In terms of the provisions of Section 2A an employee is in continuous service for a period if he has, for that period been in uninterrupted service by eliminating the interruption on account of accident. The respondent no.4 admittedly met with an accident on 15th March, 1998 at the factory

premises of the petitioner which is not in dispute. So non-rendering of uninterrupted service due to such accident for that year or for a subsequent period will not amount to a break of service, if the workman is unable to attend the work due to such accident.

2. Under Section 4(1) of the 1972 Act it is clearly held that gratuity shall be payable to an employee on termination of the employment after he has rendered continuous service for not less than five years is qualified by the first proviso thereto which says that completion of continuous service of five years shall not be necessary where the termination of the employment is due to death or disablement.
3. In the instant case the termination took place on the petitioner having met with an accident which culminated to his disablement.
4. The Controlling Authority and the Appellate Authority are the fact finding Courts. In judicial review analysis of evidence is only to find out perversity in the order impugned, if any. Detailed analysis invited by the petitioner is impermissible.

On a conjoint reading of Section 2A and 4(1) with the first proviso thereto along with the materials on record, I do not find any infirmity in the order of the

Appellate Authority by which the respondent no.4 is held to be entitled to gratuity from 8th July, 1992 to 15th March, 1998 or that the same is arbitrary or perverse..

In the aforesaid facts and circumstances, the writ petition is without any merit and is accordingly dismissed.

The petitioner shall pay the gratuity amount to the respondent no.4 as computed by the Appellate Authority within a period of 45 days from the date of service of a server copy of this order without insisting upon production of a certified copy thereof.

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

(Arindam Mukherjee, J.)