Lalappa Lingappa & Ors vs Laxmi Vishnu Textile Mills Ltd., ... on 11 February, 1981

Equivalent citations: 1981 AIR 852, 1981 SCR (2) 796, AIR 1981 SUPREME COURT 852, 1981 LAB. I. C. 307, (1982) 95 MAD LW 6, 42 FACLR 258, 1981 (13) LAWYER 45, 1981 APS LAB CAS 31 (SC), 1981 SCC (L&S) 316

Author: A.P. Sen

Bench: A.P. Sen, E.S. Venkataramiah

PETITIONER:
LALAPPA LINGAPPA & ORS.

Vs.

RESPONDENT:
LAXMI VISHNU TEXTILE MILLS LTD., SHOLAPUR

DATE OF JUDGMENT11/02/1981

BENCH:
SEN, A.P. (J)
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SEN, A.P. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1981 AIR 852 1981 SCR (2) 796
1981 SCC (2) 238 1981 SCALE (1)268
CITATOR INFO :
E 1984 SC1842 (16)
D 1986 SC 458 (3,6)

ACT:
Payment of Gratuity Act 1972-Section 4(1)-Scope of-Permanent workers on unauthorised leave-On termination of services whether entitled to gratuity under section 4(1)-Badli workers-If entitled to gratuity for badli period on being made permanent.
Words and phrases-"Continuous service"-"Actually employed" and "actually worked" meaning of.
Interpretation of statutes-Social welfare legislation-Principles of interpretation.

HEADNOTE:

Gratuity is payable to an employee on the termination of his employment after he has rendered continuous service under the conditions mentioned in section 4(1) of the Payment of Gratuity Act 1972. The term "continuous service" has been defined in section 2(c) to mean uninterrupted service and includes service which is interrupted, among others, by leave or cessation of work not due to any fault of the employee concerned. Explanation I to this section provides that an employee, who is not in uninterrupted service for one year, shall be deemed to be in continuous service, if he has been actually employed by an employer during the twelve months immediately preceding the year for not less than 240 days except when he is employed in a seasonal establishment. Explanation II provides that an employee of a seasonal establishment shall be deemed to be in continuous service, if he has actually worked for not less than 75% of the number of days on which the establishment was in operation during that year.

Certain permanent employees of the respondent, on termination of their employment, made a claim for payment of gratuity in respect of every year during which they were in permanent employment irrespective of whether they had actually worked for 240 days or not.

On being made permanent the badli workers claimed gratuity in respect of the period prior to their being made permanent irrespective of whether in those years they had been actually employed for 240 days or not.

The respondent, however, paid gratuity calculating the number of years in which they were actually employed for 240 days.

As regards the permanent employees, the Labour Court held that they were governed by the substantive part of the definition of continuous service in section 2(c) upon the basis that there was no break in service; and as regards the badly employees, it held that they were not entitled to gratuity in respect of the years in which they were not actually employed for 240 days since they fell within Explanation I of section 2(c) of the Act.

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The Appellate Authority upheld the view of the Labour Court.

On appeal, as regards the permanent employees the High Court held that unauthorised absence from work resulted in a break of service and, therefore, the employees were not in uninterrupted service and fell outside the substantive part of section 2(c) but came within Explanation I. As regards badli workers it upheld the view of the authorities.

In appeal it was contended that the permanent employees, even if they were absent without leave for a number of days in a year and had actually worked for less than 240 days due to absence without leave, were entitled to gratuity under section 4(1) since the jural relationship of employer and employee continued during that period. The

badli employees on being made permanent became entitled to gratuity for the badli period because of the fact that they were required to report for work at the factory irrespective of whether they were provided with employment or not on any day.

Dismissing the appeal.

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HELD : 1. The High Court was right in holding that the permanent employees were not entitled to payment of gratuity under section 4(1) for the years in which they remained absent without leave and had actually worked for less than 240 days in a year. [806A]

The expression "actually employed" used in Explanation I and "actually worked" used in Explanation II, having regard to the context and purpose with which they were enacted, are synonymous. An employee, who is not in uninterrupted service for one year is deemed to be in continuous service, even though he falls outside the substantive part of the definition in section 2(c) provided he has been actually employed for 240 days in a year. In the case of seasonal establishments, however, it is difficult to predicate the number of days on which the establishment would be in operation in the year and an employee of such a seasonal establishment shall be deemed to be in continuous service, if he has actually worked for not less than 75% of the number of days on which the establishment was in operation. [802 F-H]

The badli workers do not fall within the substantive part of the definition of "continuous service", but are covered by Explanation I. They are, therefore, not entitled to payment of gratuity for the badli period i.e. in respect of the years in which no work was allotted to them due to their failure to report to duty. Simply because a worker is required everyday to attend the mills for ascertaining whether work would be provided to him or not, he cannot be deemed to have rendered service and would not, on that account, be entitled to claim gratuity. Gratuity is paid for services rendered. [807 C; 806D]

Delhi Cloth and General Mills Co. v. Its Workmen, [1969] 2 SCR 307 at 338, followed.

In construing a social welfare legislation, the Court should adopt a beneficent rule of construction. If a section is capable of two constructions, that construction should be preferred which fulfils the policy of the Act, and is more beneficial to the persons in whose interest the Act has been passed. Where the language is plain and unambiguous the Court must give effect to it whatever may

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be the consequences. In that case the words of the statute speak the intention of the legislature. The argument of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are two methods of construction. In

their anxiety to advance beneficent purpose of legislation, the Courts must not yield to the temptation of seeking ambiguity when there is none. [804G-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 436 of 1980.

Appeal by special leave from the Judgment and Order dated 1-9-1978 of the Bombay High Court in Special Civil Application No. 200/78.

AND Civil Appeal No. 930 of 1980.

Appeal by special leave from the Judgment and Order of the President, Industrial-Court, Bombay (Appellate Authority appointed under Payment of Gratuity Act, 1972), in Appeal PGA Nos. 34/78 and 36 to 119/79.

R. S. Kulkarni, Mrs. Veena Devi Khanna and V. N. Ganpule for the Appellants and intervener.

F. S. Nariman, B. N. Srikrishna, R. P. Kapur, H. S. Parihar and Shardul S. Shroff for the Respondents..

The Judgment of the Court was delivered by SEN, J.-The controversy in these two appeals by special leave against a judgment of the Bombay High Court and an order of the President, Industrial Court, Bombay, turns on the construction of the expression `continuous service' as defined in s.2(c) of the Payment of Gratuity Act, 1972.

The facts giving rise to these appeals are these :

Eighty-five permanent employees of the respondent who were on the regular muster roll, on termination of their employment, made a claim for payment of gratuity for the entire period of their service, i.e., in respect of every year during which they were in permanent employment, irrespective of the fact, whether they had actually worked for 240 days in a year or not. Twenty-five badli employees of the respondent, who were on the badli register, upon being made permanent, made a similar claim for payment of gratuity for the badli period, i.e. in respect of the period prior to their being made permanent, irrespective of the fact whether in those years they had been actually employed for 240 days or not. The respondent, however, calculated the number of years in which these employees were actually employed for at least 240 days in a year and paid gratuity accordingly. The Labour Court, which is the Controlling Authority, held in relation to the permanent employees that they were governed by the substantive part of the definition of `continuous service' in s. 2(c) of the Act, upon the basis that there was no break in service, i.e., there was no question

of their actual employment or actual working for 240 days or more, but as regards the badli employees, it held that they were not entitled to gratuity in respect of those years in which they were not actually employed for 240 days since they fell within Explanation I to s. 2(c) of the Act. That view of the Controlling Authority was affirmed in appeal by the President of the Industrial Court, who is the Appellate Authority. The High Court while upholding the view of these authorities in respect of the badlis, has, however, reversed their decision with regard to the permanent employees on the ground that unauthorised absence from work results in a break of service and, therefore, they were not in uninterrupted service and fell outside the substantive part of s. 2(c) but came within Explanation I. In support of these appeals, it was urged that the High Court was in error in equating the phrase `actually employed' with `actually worked'. It was submitted that though the word `service' has not been defined in the Act, the emphasis is on the subsistence of the contract of employment. It is urged that the word `employed' connotes a contract of employment and both the permanent employees and badli employees, therefore, fall within the substantive part of the definition of `continuous service' in s. 2(c). In substance, the contention is that Explanation I to s. 2(c) covered only those cases where there was a break in continuity of service, by reason of discharge from service and re-employment. In regard to the permanent employees, it is urged that they would be deemed to be in continuous service for purposes of sub-s. (1) of s. 4 of the Act so long as their names are borne on the permanent muster roll.

In other words, the submission was that the jural relationship of employer and employee continues irrespective of whether they had actually worked for 240 days or not. With regard to the badli employees, it is urged that once a person is given a badli card it matters little whether he actually works for 240 days or not, since he had to report for work and his employment is at the volition of the employer. Thus, the absence of the badli employees on the days on which they were not provided with work, although they reported for duty and there was an endorsement made to that effect in the badli card, could not be treated as interruption of service. It was pointed out that the badli employees had been put at par with the permanent employees and enjoyed all such benefits such as bonus, retrenchment compensation, lay-off compensation, provident fund benefits, benefits under the Employees' State Insurance Act and the Workmen's Compensation Act, leave under the Factories Act, etc., and there was no reason why they should be deprived of the benefit of gratuity for those years in which they had worked for less than 240 days because of their absence without leave. We are afraid, this line of reasoning cannot be accepted being against the scheme of the Act.

Two questions arise in these appeals. The first is as to whether permanent employees are entitled to payment of gratuity under sub s. (1) of s. 4 of the Act for the years in which they remained absent without leave for a number of days in a year and had actually worked for less than 240 days, due to absence without leave. The second is as to whether the badli employees are entitled to such gratuity on becoming permanent employees, for the badli period in respect of the years in which there was no work allotted to them due to their failure to report to duty. These questions relate to the years in which these employees were not actually employed for 240 days in a year, due to their absence without leave.

The Payment of Gratuity Act, 1972 (hereinafter referred to as `the Act'), is enacted to introduce a scheme for payment of gratuity for certain industrial and commercial establishments, as a measure of social security. It has now been universally recognised that all persons in society need protection against loss of income due to unemployment arising out of incapacity to work due to invalidity, old age etc. For the wage earning population, security of income, when the worker becomes old or infirm, is of consequential importance. The provisions of social security measures retiral benefits like gratuity, provident fund and pension (known as the triple benefits) are of special importance. In bringing the Act on the statute book the intention of the legislature was not only to achieve uniformity and reasonable degree of certainty, but also to create and bring into force a self-contained, all-embracing, complete and comprehensive code relating to gratuity. The significance of this legislation lies in the acceptance of the principle of gratuity as a compulsory, statutory retiral benefit.

For a proper appreciation of the question involved, it is necessary to set out the relevant provisions of the Act. Sub-section (1) of s. 4 reads as follows :

> 4. (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease;

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement;

Provided further that in the case of death of the employee, gratuity, payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs.

Explanation.-For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

The expression 'continuous service' has been defined in s. 2(c) of the Act in these terms :

> 2. (c) "continuous service" means uninterrupted service and includes service which is interrupted by sickness, accident, leave, lay-off, strike or a lock-

out or cessation of work not due to any fault of the employee concerned, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.

Explanation I.-In the case of an employee who is not in uninterrupted service for one year, he shall be deemed to be in continuous service if he has been actually employed by an employer during the twelve months immediately preceding the year for not less than-

(i) 190 days, if employed below the ground in a mine, or

(ii) 240 days, in any other case, except when he is employed in a seasonal establishment. Explanation II.-An employee of a seasonal establishment shall be deemed to be in continuous service if he has actually worked for not less than seventy-five per cent of the number of days on which the establishment was in operation during the year. The Act is a piece of social welfare legislation and deals with matters relating to payment of gratuity which, like pension, provident fund etc., is a retiral benefit. Interrupted service by reason of sickness, leave, lay-off, strike, lock-out or cessation of work not due to any fault of the employee concerned should not be regarded as a break in continuity of his service. The inclusive part of the definition of 'continuous service' in s. 2(c) is to amplify the meaning of the expression by including interrupted service under certain contingencies which, but for such inclusion, would not fall within the ambit of the expression 'continuous service'. There were compelling reasons why the legislature gave an enlarged meaning to the expression 'continuous service' in s. 2(c) of the Act, so that the workers who have rendered long and meritorious service are not deprived of their right to gratuity by reason of absence from duty due to circumstances beyond their control.

The two Explanations have been inserted by the legislature to define the words 'one completed year of service' to benefit a class of employees who are not in uninterrupted service for one year. These Explanations employ a fiction which converts service of (a) 190 days, if employed below the ground in a mine, (b) 240 days, in any other case except when employed in a seasonal establishment, in a period of 12 calendar months, or (c) 75 per cent of the number of days which the seasonal establishment was in operation, to be one complete year.

The main point in controversy in these appeals is as to whether the expression 'actually employed' in Explanation I to s. 2(c) must, in the context in which it appears, mean 'actually worked'. The legislature has, no doubt, used two different expressions, namely, 'actually employed', in Explanation I and 'actually worked' in Explanation II. But, they are, in our view, having regard to the context and purpose with which they have been enacted, synonymous. Explanation I deals with the case of an employee who is not in uninterrupted service for one year. Such an employee shall be deemed to be in continuous service even though he falls outside the substantive part of the definition in s. 2(c) provided he has been actually employed for 240 days in a year. The expression 'actually employed' in Explanation I must, therefore, mean 'actually worked'. There is a reason why a different expression is used in Explanation II. In the case of a seasonal establishment it is difficult to predicate the number of days on which the establishment would be in operation in the year and an employee of such a seasonal establishment shall, therefore, be deemed to be in continuous service if he has actually worked for not less than 75% of the number of days on which the establishment was in operation.

The history of the legislation is set out in the Statement of Objects and Reasons accompanying the Bill.(1) The Bill adopted by s. 2(c) the definition of the expression 'continuos service' as defined in s. 2(b) of the Kerala Industrial Employees' Payment of Gratuity Act, 1970 and s. 2(c) of the West Bengal Employees' Payment of Compulsory Gratuity Act, 1971, which reads :

> 2. In this Act unless the context otherwise requires,-
>
> (c) "continuous service" means uninterrupted service and includes service which is interrupted by sickness, accident, leave, strike which is not illegal or a lock-out or cessation of work not due to any default of the employee concerned.

The Bill was referred to a Select Committee, and the Select Committee by its Report presented to the Lok Sabha on May 2, 1972 proposed three vital changes in the definition of the expression 'continuous service' in s. 2(c), namely, (1) for the purpose of computation of the period of continuous service, the entire period whether interrupted or uninterrupted, before or after the commencement of the Act, had to be taken into account, (2) the period of strikes or lay-offs were to be considered as part of 'continuous service', and (3) the benefit of sub-s. (1) of s. 4 was to be extended by alegal fiction in the care of an employee who was not in uninterrupted service for one year. subject to the fulfillment of the conditions laid down in Explanations I and II.

The legislative intent is brought out in the Report of the Select Committee. The Note of the Committee with regard to the two Explanations bears out that the expression 'actually employed' in Explanation I and the expression 'actually worked' in Explanation II were used in the same sense. The Note reads : (2) The Committee also feel that an Explanation may be added to the definition of 'continuous service' to the effect that an employee who works-

(a) in a mine below the ground for 190 days, or

(b) in any other case, for 240 days. in a year, should be deemed to be in continuous service. The Committee also feel that in the case of persons employed in seasonal establishments, such persons, would be deemed to be in continuous service if they had been employed for 75 per cent of the days during which the establishment had been in operation during the season. that was the intention with which the two Explanations were added to the definition of 'continuous service' in s. 2(c) of the Act.

The expression 'continuous service' in the context of a gratuity scheme was interpreted by this Court in M/s Jeewanlal (1929) Ltd., Calcutta v. Its Workmen(1) as follows :

> "Continuous service" in the context of the scheme of gratuity framed by the tribunal in the earlier reference postulates the continuance of the relationship of master and servant between the employer and his employees. If the servant resigns his employment service automatically comes to an end. If the employer terminates the service of his employee that again brings the continuity of service to an end. If the service of an employee is brought to an end by the operation of any law that again is

another instance where the continuance is disrupted; but it is difficult to hold that merely because an employee is absent without obtaining leave that itself would bring to an end the continuity of his service. Similarly, participation in an illegal strike which may incur the punishment of dismissal may not by itself bring to an end the relationship of master and servant. It may be a good cause for the termination of service provided of course the relevant provisions in the standing orders in that behalf are complied with; but mere participation in an illegal strike cannot be said to cause breach in continuity for the purposes of gratuity.

(emphasis added) The legislature has departed from the meaning given by this Court in the above case to the expression 'continuous service' by incorporating the words 'not due to any fault on the part of the employee concerned', to give to that expression a restricted legal connotation.

In construing a social welfare legislation, the court should adopt a beneficient rule of construction; if a Section is capable of two constructions, that construction should be preferred which fulfils the policy of the Act, and is more beneficial to the persons in whose interest the Act has been passed. When, however, the language is plain and unambiguous, as here, we must give effect to it whatever may be the consequences, for, in that case, the words of the statute speak the intention of the legislature. When the language is explicit, its consequences are for the legislature and not for the courts to consider. The argument of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are two methods of construction. In their anxiety to advance beneficient purpose of legislation, the courts must not yield to the temptation of seeking ambiguity when there is none.

In dealing with interpretation of sub-s. (1) of s.4, we must keep in view the scheme of the Act. Sub-s. (1) of s.4 of the Act incorporates the concept of gratuity being a reward for long, continuous and meritorious service. The emphasis therein is not on 'continuity of employment', but on rendering of 'continuous service'. The legislature inserted the two Explanations in the definition to extend the benefit to employees who are not in uninterrupted service for one year subject to the fulfillment of the conditions laid down therein. By the use of a legal fiction in these Explanations, an employee is deemed to be in 'continuous service' for purposes of sub-sec. (1) of s.4 of the Act. The legislature never intended that the expression 'actually employed' in Explanation I and the expression 'actually worked' in Explanation II should have two different meanings because it wanted to extend the benefit to an employee who 'works' for a particular number of days in a year in either case. In a case falling under Explanation I, an employee is deemed to be in continuous service if he has been actually employed for not less than 190 days if employed below the ground in a mine, or 240 days in any other case, except when he is employed in a seasonal establishment. In a case falling under Explanation II, an employee of a seasonal establishment, is deemed to be in continuous service if he has actually worked for not

less than 75 per cent of the number of days on which the establishment was in operation during the year.

In our judgment, the High Court rightly observed : "It is important to bear in mind that in Explanation I the legislature has used the words 'actually employed'. If it was contemplated by Explanation I that it was sufficient that there should be a subsisting contract of employment, then it was not necessary for the legislature to use the words 'actually employed'." It is not permissible to attribute redundancy to the legislature to defeat the purpose of enacting the Explanation. The expression 'actually employed' in Explanation I to s.2 (c) of the Act must, in the context in which it appears, mean 'actually worked'. It must accordingly be held that the High Court was right in holding that the permanent employees were not entitled to payment of gratuity under sub-s. (1) of s.4 of the Act for the years in which they remained absent without leave and had 'actually worked for less than 240 days in a year.

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 s.2(c), but are covered by Explanation I. In Delhi Cloth and General Mills Co. v. Its Workmen(1) 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.

Standing Order No. 3 as settled by the Industrial Court under s.36(3) of the Bombay Industrial Relations Act, 1946 for Operatives in Cotton Textile Mills, in so far as material, provides.

(3) Operatives shall be classed as (1) Permanent; (2) Probationer; (3) Badlis; (4) Temporary Operatives;

and (5) Apprentices.

xx xx A "badli" is one who is employed on the post of a permanent operative or probationer who is temporarily absent.

xx xx It is not denied that the Management has got a separate register for the badli employees and that those who need work and when they call at the gate of the mills for work, such number of them

are employed by the mills to fill up the vacancies of permanent operatives or probationers who are absent on a particular day either on account of illness or for any other cause.

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 (supra). The badli employees are nothing but substitutes. They are like 'spare men' who are not 'employed' while waiting for a job : Conlon v. Glasgow. Vallabhdas Kanji (P) Ltd. v. Esmail Koya & Ors. 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 s.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.

The result, therefore, is that the appeals must fail and are accordingly dismissed. There shall be no order as to costs.

P.B.R. Appeals dismissed.