Supreme Court of India
Aspinwall & Co., Kulshekar, ... vs Lalitha Padugady & Ors. Etc on 26 July, 1995
Equivalent citations: 1996 AIR 580, 1995 SCC (5) 642
Author: M Punchhi
Bench: Punchhi, M.M.

PETITIONER:
ASPINWALL & CO., KULSHEKAR, MANGALORE

Vs.

RESPONDENT:
LALITHA PADUGADY & ORS. ETC.

DATE OF JUDGMENT26/07/1995

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
MANOHAR SUJATA V. (J)

CITATION:
1996 AIR 580 1995 SCC (5) 642
1995 SCALE (4)834

ACT:

HEADNOTE:

JUDGMENT:

O R D E R These five civil appeals bearing numbers 4086 to 4090 of 1986 would be disposed of by a common order since the question of law raised in these in common.

In each case, there is a workman arrayed as respondent. Undisputably that workman was employed in a seasonal establishment of the employer-appellant. The activity of the establishment is curing coffee. The industry involved has been declared seasonal under section 25-A(2) of the Industrial Disputes Act, 1947. In each calender year the factory remains closed from the month of June to the month of September. The establishment as a consequence is in operation from September onward till June in the year following. The claim of each workman before the Controlling Authority under the Payment of Gratuity Act, 1972 was that he had a right to have his gratuity computed at the rate of 7 day's wages for two seasons in each calender year on the basis that the calender year is a unit and the period of work stood split into two seasons. Support for the claim was sought from the fact that the establishment maintained its accounting year from January 1 to December 31 and so, it was

claimed, computation of gratuity has to fall in line with the accounting year.

The claims of the workmen were disputed by the establishment on the ground that there was only one continuous season starting from September till June of the following calender year; the nature of the work demanding closure of the establishment during the monsoon season. It was contended that the workmen were entitled to 7 days' wages as gratuity for such season, the period necessarily not terminating by the end of the calender year and starting anew in the next calender year. The Controlling Authority by a reasoned order dated July 8, 1983, accepting the claim of the workmen, granted them gratuity for two seasons at the rate of 7 days' wages per season in each calender year. Challenge thereto made by the appellant-establishment before a learned Single Judge of the High Court of Karnataka failed. Writ appeals of the appellants-establishment were dismissed by a Division Bench of that High Court giving rise to these appeals.

At the outset we need to record prominently that we are concerned with the state of Law as existing prior to the year 1984, as thereafter substantial amendments found way into the Act. It has to be seen whether in the law then applicable, was the concept of the calender year well ingrained bearing any relevance, for it is on that concept that the High Court as also the departmental authorities have based their decision. It would be worthwhile at this stage to take stock of the provision in so far relevant:

Section 4 provides for payment of gratuity. The relevant provisions are:

> "PAYMENT OF GRATUITY- (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,
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> (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: XXXX (2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned: PROVIDED XXXXXX PROVIDED further that in the case of an employee employed in a seasonal establishment, the employer shall pay the gratuity at the rate of seven

days' wages for each season."

Two expressions defined in Section 2 would have to be taken note of as they are relevant:

> 2.DEFINITIONS- In this Act unless the context otherwise requires-
>
> (a) xxxxx
>
> (b) "completed year of service" means continous service for one year;
>
> (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 - XXXXX 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;"

Section 4 postulates determination of the `completed year of service' meaning thereby one year's period of continuous service, rendered by an employee for the purposes of computation of gratuity and therein is a method provided for determining a completed year of service. The starting point of the said period is from the date an employee gets employment, which in the nature of things would vary from employee to employee. It is no where envisaged in the scheme from the above provisions that the continuous service of the employee would he computed in a chain from calender year to calender year. Completed year of service would plainly mean continous service for one year reckonable from the date of joining employment. It cannot be confused with that of a calender year. The understanding of the year as a calender year, as available in the General Clauses Act is not importable to shadow for our purposes the concept of `completed year of service'. To illustrate the point if an employee joins service in the first week of July in a particular year, it cannot be said that for the purposes of the provisions of the Act, he would be deemed to have worked for half an year to begin with, and thereafter to have worked for each calender year till the date of the last one, and then till the year of his termination. On the contrary, the Act envisages that the day an employee enters into service, his continuous service from year to year would be computed from the date of his joining. In the nature of things regimenting or streamlining the whole concept into calender year apportionments is totally ill-filled in the scheme of the Act.

Explanation II to Section 2(c) plainly 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 seventy five percent of the number of days on which the establishment was in operation during the year. Now what is that year. It obviously is the completed year of service of an employee, meaning thereby continuous service for one year. The provisions of Section 4 clearly reveal that before an employee can claim gratuity, he must have rendered continuous service for not less than five years. Further, for every completed year of service or part thereof in excess of six months, the employer is required to pay

him gratuity at the rate of fifteen days' wages based on the rate of last drawn wages by the employee concerned. The first proviso relates to the right conferred under sub- section (2) to employees other than those employed in a seasonal establishment. The second proviso being so related prominently says that in case of an employee employed in a seasonal establishment, the employer shall pay gratuity at the rate of seven days' wages for each season. Now the word `season' herein pre-supposes that the employee has not been employed in annual or regularly durated work during the days in which the establishment was in operation during the year. Were it be so, then the employment would not be seasonal. Here the unit of reckoning is by means of the afore- understood continuous service of one year containing a season or seasons. And being seasonal, the span of the period of such season can by the very nature of things be short or large for various reasons but referable yet to continuous service within the meaning of Section 2(c). Tying all these ends together, the conclusion is thus inescapable that when gratuity at the rate of seven days' wages for each season requires to be worked out, then one has to see the number of seasons in each completed year of service of the workman, i.e. his continuous year of service, not regulated by the calender year. The second proviso would have to be read in a purposive way, i.e. in the nature of an explanation tied and woven in Section 4. In working for each season thus the employee becomes entitled to gratuity at the rate of seven days' wages per season. Instantly no disputes had individually been raised in such manner with regard to identification of seasons on the basis of the count of the number of working days in each completed year of service pertaining to each workman.

For these reasons, we are of the considered view that the Controlling Authority as also both the Benches of the High Court in ignoring the concept of `continuous service for one year', which has reference to an individual workman and not universally relatable to the calender year, had wrongly conferred the benefit of two seasons to the workmen holding them entitled to fourteen days' wages as gratuity. We,therefore, upset these orders and direct that the appellant-employer shall pay to the respondents gratuity at the rate of seven days wages for each season, continous as it is from september of a particular year till June of the following calender year. The appeals are thus allowed. Since there is no representation on the other side, there shall be no order as to costs.