Supreme Court of India
Jeewanlal (1929) Ltd., Calcutta vs Its Workmen on 3 April, 1961
Equivalent citations: AIR 1961 SC 1567, 1961 (2) FLR 537, (1961) ILLJ 517 SC, 1962 1 SCR 717
Author: Gajendragadkar
Bench: K Wanchoo, P Gajendragadkar
JUDGMENT Gajendragadkar, J.

1. This appeal by special leave is directed against the award passed by the industrial tribunal in a matter which was referred to it under s. 36A(2) of the Industrial Disputes Act, 1947, for interpretation of certain terms of the award made by the said tribunal on April 28, 1951, in Reference No. 168 of 1950. It appears that a dispute had arisen between the appellant M/s. Jeewanlal (1929) Ltd. and its workmen in regard to certain demands made by the respondents against the appellant in 1950. The said dispute was referred for adjudication as a result of which an award was passed which, inter alia, provided for a gratuity scheme. Some provisions of this award have been referred for interpretation in the present reference.

2. On August 31, 1957, resignation submitted by the appellant's employee Bhanu Bala was accepted by the appellant. The said employee had joined the appellant's service in 1929 but there was a break in the continuity of his service for nearly 8 1/2 months because he had remained absent from duty without permission or leave from February 14, 1945 to the end of October, 1945. According to the appellant the said employee was not entitled to any gratuity under the scheme framed by the award. Even so the appellant offered him Rs. 1,165 and odd on compassionate grounds. The employee was not willing to accept that amount because he claimed that he was entitled to Rs. 2,282.50 nP. by way of gratuity. The demand thus made by the employee led to an industrial dispute which was taken by the employee before the First Labour Court at Bombay under s. 33C of the Act. The Labour Court entertained the application, decided the point in dispute in favour of the employee and directed the appellant to pay him Rs. 1,781.80 nP. as gratuity. The appellant then moved the Bombay High Court for a writ under Arts. 226 and 227 on the ground that the Labour Court had no jurisdiction to entertain the application made before it by the employee. This writ petition was allowed and the order passed by the Labour Court was quashed. It was at this stage that the Government of Bombay referred the question of interpretation of the term "continuous service" contained in the award of 1951 to the Industrial Court under s. 36A(1) of the Act. That is how the Industrial Court was possessed of the matter. It has held that the words "continuous service" as used by the tribunal when it framed the award in question mean service not broken or interrupted by the termination of the contract of employment by either the employer or the employee or by operation of law. It is this interpretation the correctness of which is challenged by the appellant in its present appeal.

3. The relevant part of the gratuity scheme which was framed by the tribunal in the earlier reference reads thus :

(i) On the death of an employee while in the service of the company or on an employee becoming physically or mentally disabled to continue further in service half a month's wages for each year of service subject to a maximum of ten months' wages to be paid to him or to his heirs, executors, assigns or nominees as the case may be.

(ii) On the termination of his service by company after five years' continuous service - Gratuity at the same rate as above.

(iii) On voluntary retirement or resignation of an employee after 15 years' continuous service - Gratuity at the same rate as above.

4. As we have already seen the employee Bhanu Bala resigned and his resignation was accepted in August, 1957. He claimed the benefit of clause (iii) whereas the appellant contended that the said employee had not been employed in continuous service for the requisite period because there was a break in his service between February 14, 1945, to the end of October, 1945, and that affected the continuity of his employment which made his claim incompetent under clause (iii). This contention has been rejected by the tribunal.

5. Mr. S. T. Desai contends that in interpreting the words "continuous service" in clause (iii) we should compare the provisions of s. 49B(1) along with the explanation in the Indian Factories Act, 1934 (XXV of 1934) as well as s. 79(1) along with explanation (1) in the Indian Factories Act, 1948 (63 of 1948) prior to its amendment in 1954; and he argues that unauthorised absence from work should normally cause a break in service so that if an employee, after unauthorised absence from work, is allowed to resume after such unauthorised absence he should not be entitled to claim continuous service in view of the break in his service. In support of this argument reliance has been placed on the decision of this Court in Buckingham and Carnatic Co. Ltd. v. Workers of the Buckingham and Carnatic Co. Ltd. [[1953] S.C.R. 219.]. In that case this Court has held that the continuity of the service of the workers was interrupted by the illegal strike and so they were not entitled to claim holidays with pay under s. 49B(1) of the Indian Factories Act. It would, however, be noticed that the said decision turned upon the definition of the word "strike" in s. 2(q) of the Industrial Disputes Act, 1947, read with the relevant provision of s. 49-B of the Indian Factories Act, 1934; and there can be no doubt that in a different context the same words can and often have different meanings. As this Court has observed in Budge Budge Municipality v. P. R. Mukherjee [[1953] 1 L.L.J. 195, 198.], "the same words may mean one thing in one context and another in different context. This is the reason why decisions on the meaning of particular words or collection of words found in other statutes are scarcely of much value when we have to deal with a specific statue of our own; they may be helpful but cannot be taken as guides or precedents". Therefore, the meaning attributed to the words "continuous service" in the context of the Factories Act may not have a material bearing in deciding the point in the present appeal.

6. The same comment falls to be made in regard to the argument based on the definition of the expression "continuous service" contained in s. 2(eee) of the Industrial Disputes Act, 1947. The said section provides that "continuous service" means uninterrupted service and includes service which may be interrupted merely on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workmen. This definition is undoubtedly relevant in dealing with the question of continuous service by reference to the provisions of Industrial Disputes Act but its operation cannot be automatically extended in dealing with an interpretation of the words "continuous service" in an award made in an industrial dispute unless the context in which the expression is used in the award

justifies it. In other words, the expression "continuous service" may be statutorily defined in which case the definition will prevail. An award using the said expression may itself give a definition of that expression and that will bind parties in dealing with claims arising from the award. Where, however, the award does not explain the said expression and statutory definitions contained in other Acts are of no material assistance it would be necessary to examine the question on principle and decide what the expression should mean in any given award; and that is precisely what the tribunal had to do in the present case.

7. "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. On the other hand, if an employee continues to be absent from duty without obtaining leave and in an unauthorised manner for such a long period of time that an inference may reasonably be drawn from such absence that by his absence he has abandoned service, then such long unauthorised absence may legitimately be held to cause a break in the continuity of service. It would thus always be a question of fact to be decided on the circumstances of each case whether or not a particular employee can claim continuity of service for the requisite period or not. In our opinion, therefore, the view taken by the tribunal is substantially right though we would like to make it clear that in addition to the cases where according to the tribunal continuity of service would come to an end there would be the class of cases where long unauthorised absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee. With this modification we confirm the award and dismiss the appeal. There would be no order as to costs.

8. Appeal dismissed.