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Court : Karnataka

Decided On : Nov-21-2000

Reported in : [2001(90)FLR382]; (2001)IILLJ451Kant

Judge : M.F. Saldanha, J.

Acts : [Payment of Gratuity Act, 1972](#) - Sections 3

Appeal No. : W.P. No. 31923/2000

Appellant : Shivalingappa

Respondent : Management of Minerva Mills and ors.

Advocate for Pet/Ap. : A.J. Srinivasan, Adv.

Judgement :

ORDER

M.F. Saldanha, J.

1. I have heard the petitioner's learned Advocate at considerable length because the point agitated by him in this case essentially centres around the question as to whether an employee who desires to agitate the question relating to quantum of gratuity paid to him at the termination of his services is free to agitate the issue after an abnormally long period of time. The petitioner in this case claims to have joined the services of the erstwhile Minerva Mills on January 1, 1946. These Mills

are supposed to have run into difficulties and were closed from April 4, 1966 to February 10, 1967 and then again from January 2, 1970 to October 18, 1971. The NTC thereafter took over this mill along with several other sick units from about the year 1972 and the petitioner claims to have been among those of the workers who were recalled when the unit was reopened and admittedly he retired from service on January 1, 1984. Along with his dues, the respondents paid him a sum of Rs. 5,995.88 being the gratuity for 12 years. Therefore on January 24, 1997, the petitioner approached the controlling authority with an application for condonation of delay in which he contended that due to poverty and illness he had not been able to agitate the claim earlier and the short contention was that the petitioners total length of service viz. the period of service put in by him with the erstwhile Minerva Mills had not been taken into consideration when computing the gratuity, that he was in fact under-paid and that consequently, the total amount of Rs. 21,268.00 which the petitioner claims to be his rightful gratuity should be awarded to him. The controlling authority dismissed the claim on the ground of gross delay and the appellate] authority has confirmed the order and it is against this order that the present petition has been directed. Incidentally I need to mention that the appellate authority has looked into the merits of the case also and has observed that the petitioner had resigned from service in the year 1972 as per the records produced and that his dues had been settled at that time and that consequently, the NTC was justified in having paid him the gratuity only for the period during which he was in their employment. The petitioners' learned Advocate submitted that the appellate authority was wrong in having looked at these documents insofar as they had not been tested in cross- examination but, more importantly his contention was that the authority was wrong in having accepted the break in service or re-employment theory as the Courts have taken the view that in situations of this type, the total length of service, even that which is put in with the previous employer must be computed. It is true that the High Courts and the Supreme Court have had occasion to look into various facets of the law and it is equally true that while construing legislation of this type, if a helpful or a charitable interpretation could provide some marginal benefits to a workman that Court would normally lean in favour of such a view. The issue before me is not really that insofar as the main ground on which the petitioner's application has been

dismissed is that of gross delay. All that I need to observe with regard to the aforesaid submission is that even with regard to normal monetary claims the Limitation Act prescribes periods of limitation, the reason being that there is such a thing as a doctrine of finality and if Courts and judicial fora do not function with some level of sanctity for the aspect of time frame it would lead to situation of total havoc.

2. The petitioner's learned Advocate strongly submitted that the petitioner was totally disqualified from agitating his claim earlier because he had gone away to his village, that he is a very poor person and that in addition, he had fallen ill. These aspects have been disputed by the respondents before the lower authority but, even assuming there is some truth in them, the issue before me is slightly larger and more important viz. the question as to whether or not, the Courts will lay down the principle that all claims even where limitations are not specifically prescribed must be agitated within a reasonable time frame. The Courts have always been extremely indulgent in cases of genuine difficulties wherein generous allowance is made in this regard but, that does not mean that one can open the flood-gates and prescribe that irrespective of when a party desires to approach a forum that the Courts will entertain such applications. In the present case, from the reply filed by the respondents there is a suggestion that the petitioner had resigned in the year 1972 and that his dues were settled up to that point of time. Since this issue is disputed I leave the matter at that, but, what was also pointed out was that the petitioner in the year 1984 had agitated this very claim, that it was quantified and paid to him for the earlier period of time and apart from these aspects, assuming without admitting that the petitioner had some grievance, It is a requirement of law that the grievance should have been agitated within a reasonable time. It is true that no hard and fast time is being laid down but, in my considered view, thirteen years delay is certainly not reasonable, not condonable and it is not justifiable. Petitioner's learned Advocate submitted that if a party comes late, since the Act itself does not prescribe any limitation, that the Act has an in-built provision whereby the party will suffer for the delay by being deprived of interest. That provision will apply if there is a reasonable delay. Where the delay is abnormal the right itself would stand extinguished apart from which, the principle of estoppel will come up insofar as it will be presumed that the settlement that had

earlier been made was in order, that the party accepted it, without finding fault and at a belated period or as an afterthought the claim is being agitated. The Courts have also to take into account the practicalities of entertaining abnormally old cases. In the present instance, the petitioner's learned advocate submitted that the respondents are a company and that they have not pleaded any inability to produce old records. That to my mind, is hardly the issue because where the delay is gross or abnormal, there is a great handicap when it comes to any respondents being able to lay their hands on old records. Often times, oral evidence is necessary which totally disappears and even documents are either lost or destroyed after a certain time lapse and consequently, there are valid reasons why the Courts will not entertain abnormally delayed claims.

3. Having very carefully evaluated the principles involved that govern situations of this type, to my mind this is not a case in which any interference is called for by the Court. The petition accordingly fails and stands disposed off. No order as to costs.

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