CASE NO.:
Appeal (civil) 3889 of 2007

PETITIONER:
M.C. CHAMARAJU

RESPONDENT:
HIND NIPPON RURAL INDUSTRIAL (P) LTD

DATE OF JUDGMENT: 24/08/2007

BENCH:
C.K. THAKKER & TARUN CHATTERJEE

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 3889 OF 2007
ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 11321 OF 2006

Hon. C.K. THAKKER, J.

1. Leave granted.

2. This appeal is filed against the judgment and order dated September 26, 2005, passed by the Division Bench of the High Court of Karnataka at Bangalore in Writ Appeal No. 2458 of 2005 (L-PG). By the said order, the Division Bench of the High Court set aside the order passed by the Controlling Authority and Assistant Labour Commissioner (Central), Bangalore under the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act') and confirmed by the Appellate Authority and also by a Single Judge of the High Court.

3. Short facts giving rise to the present appeal are that according to the appellant, in September, 1984, he was appointed as Supervisor by Mr. V.K. Poddar, Managing Director of Agarwal Investments, Poddar Granites and Hind Nippon Co. Ltd. According to him, he worked as Supervisor in Poddar Mines at Sira upto 1990 and thereafter was transferred to other quarry. He worked at various places like Bellary, Sira and Chamaraya Nagar. He worked till February, 1993. From March, 1993, however, he was neither paid his salary nor served with any order of termination or dismissal. On September 27, 1993, the appellant addressed a letter asking the Management to settle his dues and also to pay gratuity under the Act. But it was not paid. He, therefore, approached the Controlling Authority and Assistant Labour Commissioner, Bangalore by making an application under sub-section (4) of Section 7 of the Act read with sub-rule (1) of Rule 10 of the Payment of Gratuity (Central) Rules, 1972. The Controlling Authority, after hearing both the parties and perusing the materials placed before him, held that the appellant was entitled to gratuity. Accordingly, an order was passed on May 26, 2003 that the appellant was entitled to a sum of Rs.16,875/- towards gratuity. Since the respondent-employer had not paid the amount of gratuity within 30 days of the leaving of services by the workman, the payment was ordered to be made with interest @ 10% p.a. from June 12, 1993 till the date of payment.

4. Being aggrieved by the order of the Controlling

Authority, the respondent-Company filed an appeal before the Appellate Authority under the Act. The Appellate Authority vide his order dated December 20, 2004 dismissed the appeal and confirmed the order passed by the Controlling Authority.

5. The Management challenged the said order by filing a writ petition in the High Court but the learned Single Judge also dismissed the petition confirming the orders passed by the Authorities under the Act. The aggrieved Management challenged the order of the learned Single Judge in intra court appeal and as stated above, the appeal of the Management was allowed by the Division Bench setting aside all the orders and holding that the application filed by the workman was liable to be dismissed.

6. The appellant has challenged the said order before this Court.

7. On July 10, 2006, notice was issued by this Court. Later on, the parties appeared and the matter was ordered to be posted for final hearing.

8. We have heard learned counsel for the parties.

9. Learned counsel for the appellant contended that the Division Bench was wholly unjustified in setting aside the orders passed by the Authorities under the Act and confirmed by the learned Single Judge. It was also submitted that while setting aside the orders, the Division Bench has virtually re-appreciated the evidence which could not have been done and on that ground also, the impugned judgment deserves to be set aside. It was further submitted that a finding of fact was recorded by the Authorities under the Act that different units where the appellant had worked, were 'one' and there was 'funcitonal unity' and the appellant was entitled to gratuity since he had worked for more than five years. Such finding could not have been disturbed by the Division Bench. It was, therefore, submitted that the appeal deserves to be allowed by setting aside the judgment of the Division Bench and confirming the view taken by the Authorities under the Act and by the learned Single Judge.

10. Learned counsel for the respondent, on the other hand, supported the order of the Division Bench and submitted that since the appellant was not entitled to gratuity, the Division Bench was right in allowing the appeal and dismissing the application filed by him.

11. Having heard learned counsel for the parties, in our opinion, the appeal deserves to be allowed. From the record, it is clear that the question which was raised before the Authorities under the Act was whether the appellant had completed five years' continuous service so as to be eligible to claim gratuity under the Act. The Authorities considered the said question and on the basis of the evidence adduced before them, held that various units where the appellant had worked were "one and the same" and hence the entire service of the workman ought to be considered and taken into account for the purpose of computation of benefit of gratuity. On the basis of the above reasoning, the Controlling Authority as well as the Appellate Authority held that the appellant was qualified and entitled to gratuity under the Act.

13. The Appellate Authority, after considering the arguments of the parties and the findings recorded by the Controlling Authority, concluded;

"I have carefully perused the records on which the CA has placed reliance on. I am in

full agreement with the findings of the CA. The CA has given cogent reasons for arriving at his conclusion that the respondent herein is entitled for payment of gratuity right from September 1984. The learned counsel for the appellant has not countered the statement of the respondent that Shri V.K. Poddar runs the establishments of Aggarwal Investments, Poddar Granites and Hind Nippon and that there is just interchangeability in the services of the respondent. Two witnesses have been lead by the respondent herein before the CA in support of his claim that he had worked during the period from 1984 onwards with Poddar Granites and Aggarwal Investments. Nothing has been produced before me to show that the said two companies are indeed run by a different person other than Shri V.K. Poddar. Hence, I have to draw an adverse inference that the three companies including the appellant company is run by Shri V.K. Poddar and hence there is functional integrally among these three establishments and that the services of respondent has been merely transferred to the appellant company without his knowledge. It appears that the appellant has been changing the employer-ship of the respondent solely to deprive him of the statutory benefits. Hence, I am of the considering opinion that the decision of the CA under challenge is in order".

14. To us, the learned Single Judge was wholly right in dismissing the writ petition on the basis of the findings recorded by the Authorities under the Act and in not interfering with the said orders. The Division Bench, surprisingly, went into the questions of fact and came to the conclusion that it was not established by the appellant-workman that he had worked for more than five years continuously in the Company so as to be eligible to claim gratuity. The Division Bench also perused certain documents and observed that certain letters said to have been written were not on the letterhead of the Company and it could not be said that the appellant had worked for a period of five years continuously which was an essential requirement to claim gratuity. On that reasoning, the Division Bench held that the case was of 'no evidence'. The Bench also held that the onus to establish eligibility was on the employee and since it was not discharged by him, he should fail. Accordingly, the orders were set aside.

15. In our considered opinion, the Division Bench ought not to have undertaken the above exercise which had been done by the Controlling Authority as also by the Appellate Authority. The High Court was exercising power of 'judicial review' which, in its inherent nature, has limitations. This is particularly true since the learned Single Judge also did not think it fit to interfere. We are, therefore, of the view that the Division Bench was wrong in setting aside all the orders and in allowing the appeal of the Management and in dismissing the application filed by the workman.

16. There is another aspect also which is relevant. The Act has been enacted with a view to grant benefit to workers, a 'weaker section' in industrial adjudicatory

process. In interpreting the provisions of such beneficial legislation, therefore, liberal view should be taken. A benefit has been extended by the Authorities under the Act to the workman by recording a finding that the applicant (appellant herein) had completed requisite service of five years to be eligible to get gratuity. In that case, even if another view was possible, the Division Bench should not have set aside the findings recorded by the Authorities under the Act and confirmed by a Single Judge by allowing the appeal of the employer.

17. Finally, we are of the view that on the facts and in the circumstances of the case also, the Division Bench was not justified in setting aside the orders passed by the Authorities and confirmed by the learned Single Judge considering comparatively a small amount involved in the appeal. As already noted in the earlier part of the judgment, the appellant was held entitled to Rs.16,785/- along with interest @ 10% p.a. To us, therefore, even on that ground, the Division Bench should have refrained from quashing the orders.

18. For the foregoing reasons, the appeal deserves to be allowed and is accordingly allowed. The order passed by the Division Bench of the High Court is hereby set aside and the orders passed by the Controlling Authority and Appellate Authority under the Payment of Gratuity Act, 1972 as confirmed by the learned Single Judge is hereby restored. In the facts and circumstances of the case, however, there shall be no order as to costs.

19. The payment to which the appellant-workman is held entitled shall be made within a period of twelve weeks from today.