CASE NO.:
Appeal (civil) 252 of 2007

PETITIONER:
Guru Jambheshwar University through Registrar

RESPONDENT:
Dharam Pal

DATE OF JUDGMENT: 17/01/2007

BENCH:
G.P. Mathur & Dalveer Bhandari

JUDGMENT:
J U D G M E N T
(Arising out of Special Leave Petition (Civil) No.15566 of 2005)

G. P. MATHUR, J.

1. Leave granted.

2. This appeal, by special leave, has been preferred against the judgment and order dated 21.3.2005 of a Division Bench of High Court of Punjab and Haryana, whereby the writ petition filed by the appellant challenging the award dated 9.11.2004 of the Industrial Tribunal-cum-Labour Court, Hisar, was summarily dismissed.

3. The respondent Dharam Pal issued a notice dated 20.1.1998 under Section 2A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') alleging that he was employed as an unskilled workman by the appellant Guru Jambheshwar University, Hisar, on 2.10.1995, but his services were illegally terminated on 15.1.1998. As the conciliation proceedings could not fructify, the Government of Haryana referred the dispute under Section 10(1) of the Act for adjudication by the Industrial Tribunal-cum-Labour Court, Hisar (hereinafter referred to as 'the Labour Court") regarding the validity of the termination of services of the respondent Dharam Pal and the relief which he was entitled to get in case the termination order was found to be illegal.

4. The respondent in his claim statement pleaded, inter alia, that he was appointed as unskilled workman on the post of Mali (gardener) in the University by a verbal order dated 2.10.1995; that he was removed from service on 2.7.1997 but subsequently he was taken back on duty on 15.10.1997; that he was illegally removed from the service of the University on 15.1.1998; that the University was paying wages of Rs.1638/- per month before his removal from service; that the University had regular work and persons junior to him had been retained in service and had been regularized; that the University was forcing the workman to work on contract basis despite the fact that there is work of regular nature; that the University was adopting unfair labour practice and that his retrenchment was illegal as neither any notice was given nor any compensation was paid to him at the time of his retrenchment.

5. The Registrar of the University filed a reply on the grounds, inter alia, that the respondent was engaged as Mali on daily wages on 2.12.1995 and not on 2.10.1995, as claimed by him; that he was appointed for doing specific job of Mali in the Farming/Horticulture Wing of the University; that the Government of Haryana on the basis of the orders passed in CWP No.4522 of 1994 (Kulbhushan v. State of

Haryana) by the High Court had issued instructions to the University vide letter No.12/5-96/Ad.I(5) dated 17.1.1996 that no appointment on daily wage basis should be made and all appointments should be made on contract basis; that in accordance with the instructions all existing employees in the University who were working on daily wage basis were put on contract basis; that the respondent and some other employees engaged on contract basis had been appointed without following any procedure; that meanwhile the University advertised the post of Mali for making regular appointments in order to comply with the requirements of Articles 14 and 16 of the Constitution; that the respondent also applied for the said post of Mali and appeared in interview but he was not selected yet he was allowed to continue; that consequent upon the closure of the farming operations in the University and cessation of other seasonal work, the respondent was given one month's notice vide University letter no.485-500 dated 15.12.1997; that on completion of one month, the services of the respondent were retrenched vide order dated 15.1.1998; that a cheque bearing no.416869 dated 15.1.1998 was also given to the respondent in compliance of Section 25F(b) of the Act as retrenchment compensation; that as there was some work in the University all the employees who were retrenched earlier were called but the respondent did not turn up for duty though 14 other employees reported for duty and were engaged and a letter in this regard was sent to the Labour and Conciliation Officer, Hisar on 21.5.1998. It was specifically pleaded that the services of the respondent were retrenched after duly complying with the provisions of Section 25F of the Act and that in the regular selection held for the post of Mali the respondent was not selected by the selection committee.

6. The parties adduced oral and documentary evidence in support of their case before the Labour Court. The Labour Court held that the instructions issued by the Government showed that the monthly wages of unskilled Mali were Rs.1642/-. The respondent had been appointed on 2.12.1995 and his services were terminated on 15.1.1998 and thus he had completed two years and one month of service on the date when he was retrenched from service. He was thus required to be paid 15 days' average pay for completion of the first year of service and 15 days' average pay for completion of second year of service as retrenchment compensation. It was further held that in order to calculate the retrenchment compensation, the legal requirement was to divide average monthly wage by 26 and not by 30, as a worker ordinarily gets four weekly holidays and has to work only on 26 days in a month. For holding so, the Labour Court relied upon some decisions of the High Courts and also a decision of this Court in Jeevanlal (1929) Ltd. V. Appellate Authority under the Payment of Gratuity Act and Ors. (1984) Lab IC 1458. After holding so, it was held that one day's average pay of the respondent would be Rs.63.15 (Rs.1642/26) and thus the compliance of Section 25F(b) required payment of Rs.63.15x15x 2 = Rs.1,894.50. It was accordingly held that the retrenchment compensation of Rs.1642/- paid by the University to the respondent fell short of the amount which was required to be paid under law and, therefore, there was non-compliance of Section 25F(b) of the Act which rendered the retrenchment of the respondent as illegal. It was further held that the University had not produced any evidence to show that the respondent had been gainfully employed after termination of his service, but looking to the fact that he was engaged in a job which did not require any qualification, it could not be held that he remained totally out of job during the intervening period and, therefore, he was entitled to 50% back wages. The Labour Court, accordingly, gave an Award directing that the respondent be reinstated with continuity in service and all other consequent service benefits along with 50% back wages from the date of issuance of demand notice dated 21.1.1998 till publication of the Award and full wages thereafter till his reinstatement.

7. The question which requires consideration is whether the Labour Court was correct in holding that one day's average pay of the respondent should be calculated by dividing his monthly salary of Rs.1642/- by 26 and the quotient so arrived at should be multiplied by 30 (15 x 2) as he had worked for two years and one month.

8. Sections 2(aaa) and 25F of the Industrial Disputes Act, 1947 read as under :-

2(aaa) "average pay" means the average of the wages payable to a workman--

(i) in the case of monthly paid workman, in the three complete calendar months,

(ii) in the case of weekly paid workman, in the four complete weeks,

(iii) in the case of daily paid workman, in the twelve full working days,

preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked.

25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

Sub-section (b) of Section 25F requires payment of retrenchment compensation to a workman which shall be equivalent to 15 days' average pay for every completed year of continuous service or any part thereof in excess of six months. Average pay has been defined in Section 2(aaa) of the Act and, therefore, average pay has to be determined strictly in accordance with the aforesaid provision and not on the basis of some hypothetical calculation. Section 2(aaa) contemplates four different kinds of wage period for payment of wages. Clause (i) speaks of monthly paid workman and here the average wage has to be calculated by arriving at the average or mean of three complete calendar months. Clause (ii) refers to weekly paid workman where the average pay would be the average or mean of four complete weeks. Clause (iii) deals with daily wage

workman and in this case the average pay would be the average or mean of wages in twelve full working days. The fourth category would be a case where it is not covered by any of the sub-clauses (i), (ii) or (iii) and in this case the average pay shall be calculated as the average of the wages payable to a workman during the period he had actually worked.

9. The language used in Section 2(aaa) is absolutely plain and clear and there is not the slightest ambiguity in the same. It is well settled principle that the words of a Statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or there is something in the context or in the object of the statute to suggest to the contrary. The true way is to take the words as the legislature have given them, and to take the meaning which the words given naturally imply, unless where the construction of those words is, either by the preamble or by the context of the words in question, controlled or altered. As is often said the golden rule is that the words of a statute must prima facie be given their ordinary meaning and natural and ordinary meaning of the words should not be departed from unless it can be shown that the legal context in which the words are used requires a different meaning. (See Principles of Statutory Interpretation by Justice G.P. Singh Ninth Edition2004 pg.78-79).

10. In the demand notice served by the respondent upon the University under Section 2-A of the Act on 20.1.1998, it was stated "that the University was paying him Rs.1638/- per month before removal." Again in para 2 of the claim statement which was filed by the respondent before the Labour Court, wherein he described himself as petitioner, it was stated "that the University was paying the petitioner Rs.1.638/- per month before the removal." In the reply, it is also the specific case of the University that the respondent was being paid on monthly basis at the rate of Rs.1642/- per month. Therefore, there is no dispute that the respondent was being paid wages on monthly basis though there is slight difference in the actual amount which was being paid to him. The Labour Court has recorded a finding that a cheque for Rs.1642/- was given by the University to the respondent as retrenchment compensation. Since the respondent was being paid wages on monthly basis, his average pay has to be calculated in accordance with the formula given in clause (i) of Section 2(aaa) of the Act which would mean the sum total of wages paid to him in three complete calendar months immediately preceding his retrenchment and dividing the said amount by three. The respondent was being paid wages amounting to Rs.1642/- per month in immediately three preceding months before his retrenchment. Therefore, the "average pay" in accordance with Section 2(aaa)(i) would come to Rs.1642/-. The respondent had worked for two years and one month and, therefore, he was entitled to thirty (15 x 2) days of average pay by way of retrenchment compensation in order to comply with requirement of Section 25F(b) of the Act. The "average pay" of the respondent being Rs.1642/- per month and he being entitled to 30 days' average pay by way of retrenchment compensation, he was required to be paid Rs.1642/- as retrenchment compensation. The University gave him a cheque for Rs.1642/- at the time of his retrenchment and, therefore, there was full compliance of Section 25F(b) of the Act.

11. The Labour Court has basically relied upon a decision of this Court rendered in Jeevanlal (1929) Ltd. V. Appellate Authority under the Payment of Gratuity Act and Ors. (1984) Lab IC 1458 for coming to the conclusion that the respondent's average pay has to be calculated on per day basis by dividing the monthly salary drawn by him by 26 and the quotient so arrived at should be multiplied by 30 in order to determine the retrenchment compensation under Section

25F(b) of the Act. It, therefore, becomes necessary to consider the aforesaid decision in detail. The issue involved in the said case related to payment of gratuity. Section 2(s) and sub-sections (1), (2) and (3) of Section 4 of Payment of Gratuity Act at the relevant time read as under :-

"2(s) "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowances."

"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 of disease.

Provided that the completion 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 purpose 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.

(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 that in the case of a piece rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account :

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.

(3) The amount of gratuity payable to an employee shall not exceed twenty months' wages."

While interpreting the aforesaid provisions, the Court held as under in para 10 of the reports :

10. In dealing with interpretation of sub-sections (2) and (3) of Section 4 of the Act, we must keep in view the scheme of the Act. Sub-section (1) of Section 4 of the Act incorporates the concept of gratuity being a reward for long, continuous and meritorious service. Sub-section (2) of Section 4 of the Act provides for payment of gratuity at the rate of "fifteen days' wages" based on the rate of wages last drawn by the employee

concerned for every completed year of service. The legislative intent is obvious. Had the legislature stopped with the words "fifteen days' wages", occurring in sub-section (2) of Section 4 of the Act, there was something to be said for the submission advanced by the learned counsel for the appellants based upon the decision of the learned single Judge of the Andhra Pradesh High Court in Associated Cement's case (1976) Lab IC 926) which was later approved by a Division Bench of the Court in Swamy's case (1978 Lab IC 1285). But the legislature did not stop with the words "fifteen days' wages" in sub-section (2) of Section 4 of this Act. The words "fifteen days' wages" are preceded by the words "at the rate of" and qualified by the words "based on the rate of wages last drawn" by the employee concerned. The emphasis is not on what an employee would have earned in the course of fifteen days during the month when his employment was last terminated, but on the rate of fifteen days' wages for every completed year of service based on the rate of wages last drawn by the employee concerned. The word 'rate' appears twice in sub-section (2) of Section 4 and it necessarily involves the concept of actual working days. In Digvijay Woollen Mills' case (AIR 1980 SC 1944) the Court rightly observed that although a month is understood to consist of 30 days, gratuity payable under the Act treating the monthly wages as wages for 26 working days is not new or unknown."
(emphasis supplied)

Paragraph 12 of the reports is also relevant and the same is being reproduced below :

12. It is not correct to say that the decision in Shri Digvijay Woollen Mills' case (AIR 1980 SC 1944) does not lay down any principle. Gupta, J. speaking for the Court set out the following passage from the judgment of the Gujarat High Court in Shri Digvijay Woollen Mills' case (para 4) :

"The employee is to be paid gratuity for every completed year of service and the only yardstick provided is that the rate of wages last drawn by an employee concerned shall be utilized and on that basis at the rate of fifteen days' wages for each year of service, the gratuity would be computed. In any factory it is well known that an employee never works and could never be permitted to work for all the 30 days of the month. He gets 52 Sundays in a year as paid holidays and, therefore, the basic wages and dearness allowance are always fixed by taking into consideration this economic reality\005\005.. A worker gets full month's wages not by remaining on duty for all the 30 days within a month but remaining on work and doing duty for only 26 days. The other extra holidays may make some marginal variation into 26 working days, but all wage boards and wage fixing authorities or Tribunals in the country have always followed this pattern of fixation of wages by this method of 26 working days."

And then observed :
"The view expressed in the extract quoted above appears to be legitimate and reasonable."

The learned Judge then went on to say :
"Ordinarily of course a month is understood to mean 30 days, but the manner of calculating gratuity payable under the Act to the employees who work for 26 days a month followed by Gujarat High Court cannot be called perverse."

He further observed that it was not necessary to consider whether another view was possible and declined to interfere under Article 136 in a matter where the High Court had taken a view favourable to the employees and the view taken could not be said to be in any way unreasonable and perverse, and then added :

"Incidentally, to indicate that treating monthly wages as wages for 26 working days is not anything unique or unknown."

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12. It may be noted that Section 4(2) of the Payment of Gratuity Act uses the expression "the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rates of wages last drawn by the employee." On account of the language used in Section 4(2) it becomes necessary to find out the rate of wages which necessarily involves the concept of actual working days. It was on the basis of the aforesaid language of the provisions under the Payment of Gratuity Act that this Court in the case of Jeevanlal (supra) observed that "although a month is understood to consist of 30 days, gratuity payable under the Payment of Gratuity Act treating the monthly wages as wages for 26 days is not new or unknown."

13. The principle laid down in the case of Jeevanlal (supra) and Shri Digvijay Woollen Mills Ltd. v. M.P. Butch AIR 1980 SC 1944 can have no application for determining the retrenchment compensation under Section 25F(b) of the Act as the word "average pay" occurring herein has been defined in Section 2(aaa) of the Act. The concept of 26 working days was evolved having regard to the definition of the word "wages" as given in Section 2(s) of Payment of Gratuity Act, which uses the expression "all emoluments which are earned by an employee while on duty or on leave." Therefore, there is no warrant or justification for importing the principle of 26 working days for determining the compensation which is payable in terms of Section 25F(b) of the Act.

14. There is another important feature which deserves notice. Subsequent to the decision of this Court in Jeevanlal (supra) an explanation has been added after second proviso to Section 4(2) of the Payment of Gratuity Act, by Act No.22 of 1987, which reads as under:-

"Explanation :- In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen."

By adding the explanation, the legislature has brought the statute in line with the principle laid down in the case of Jeevanlal (supra) and has given statutory recognition to the principle evolved, viz. that in case of monthly rated employee the fifteen days' wages shall be calculated by dividing the monthly rate of wages by twenty six and multiplying the quotient by fifteen. But, no such amendment has been made in the Industrial Disputes Act. If the legislature wanted that for the purposes of Section 25F(b) also the average pay had to be determined by dividing the monthly wages by twenty-six, a similar amendment could have been made. But the legislature has chosen not to do so. This is an additional reason for holding that the principle of "twenty-six working days" is not to be applied for determining the retrenchment compensation under Section 25F(b) of the Act.

15. We are, therefore, of the opinion that the view taken by the Labour Court is clearly erroneous in law and has to be set aside. The High Court did not go into the question at all and summarily

dismissed the writ petition by a one line order observing that the compensation offered to the workman was short of the amount actually due.

16. For the reasons discussed above, the appeal is allowed. The order dated 21.3.2005 passed by the High Court and the award of the Labour Court dated 9.11.2004 are set aside. It is held that the University had paid the retrenchment compensation to the respondent Dharam Pal in accordance with law and there is no infirmity in the order passed whereby his services were terminated. No costs.