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SHRI DIGVIJAY WOOLLEN MILLS LTD. ETC.

v.

MAHENDRA PRATAPRAI BUCH ETC.

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July 23, 1980

[A. C. GUPTA AND N. L. UNTWALIA, JJ.]

Payment of Gratuity Act, 1972—Section 4(2)—Scope of—Gratuity how calculated.

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Section 4(2) of the Payment of Gratuity Act, 1972 provides that 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 15 days' wages based on the rate of wages last drawn by the employee concerned.

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The employers sought to pay gratuity by dividing the workman's monthly wages by 30 and computing the 15 days' wages on that basis but the workman demanded that his monthly wages should be taken as what he got for 26 working days and not by taking half of his wages in a month of 30 days.

The Controlling Authority upheld the workman's contention. In dismissing the employer's petition under Art. 227 of the Constitution the High Court observed that a worker received a full month's wages not by remaining on duty for all the 30 days within a month but by remaining on work and doing duty for only 26 days and, therefore, gratuity payable to him should be calculated on this basis.

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Dismissing the employers' appeals,

HELD : The view taken by the authorities, and upheld by the High Court, is not in any way unreasonable. Although a month is understood to mean 30 days, the manner of calculating gratuity payable under the Act to employees who worked for 26 days a month followed by the High Court cannot be called perverse. [67C]

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Treating monthly wages as wages for 26 working days is not new or unknown. The expression "average of the basic wage" occurring in an award has been interpreted by this Court to mean the wage earned by a workman during a month divided by the number of days for which he has worked and multiplied by 26 in order to arrive at the monthly wage for the computation of gratuity payable to the workman. [67D & H]

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Delhi Cloth and General Mills Company Ltd. v. Workmen and others etc., [1969] 2 SCR 107, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1088 of 1976 and 480 of 1977.

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Appeals from the Judgments and Orders dated 19-4-1976 and 12-10-1976 of the Gujarat High Court in S.C.A. No. 495/76 and S.C.A. No. 1641/76 respectively.

P. R. Mridul, P. H. Parekh and C. B. Singh and Miss Vineeta Caprihan for the Appellant in CA No. 480/77.

Gobind Das, A. N. Karkhanis and T. Sridharan and Mrs. Sunanda Bhandare for the Respondent in CA No. 480/77. A

Y. S. Chitale, P. H. Parekh, R. Karan Jawala and Miss Vineeta Caprihan for the Appellant in CA No. 1088/76.

Y. M. Tarkunde, K. L. Hathi and P. C. Kapur for the Respondent in CA No. 1088/76. B

Shanker Ghosh, G. B. Pai, and D. N. Gupta for the Intervener. (Superintendent, Mines and Quarries, Bisra Stone Lime Co. Ltd. & Anr.)

Anil Kumar Gupta for the Intervener (Baba Jija Bhai Talekar).

The Judgment of the Court was delivered by C

GUPTA, J. A common question arises for consideration in these two appeals relating to the mode of calculating fifteen days' wages of a monthly rated employee under section 4(2) of the Payment of Gratuity Act, 1972 (hereinafter referred to as the Act). Section 4(2) provides : D

"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 : E

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 : F

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." G

"Wages" has been defined in section 2(s) of the Act as follows :

" "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 allowance." H

It is not necessary to state the facts in any great detail. In both cases the respondent was a monthly-rated employee and the appellant, a public limited company, was his employer. In Civil Appeal No. 1088 of 1976 (Shri Digvijay Woollen Mills Limited—appellant v.

- A Shri Mahendra Prataprai Buch—respondent) the respondent ceased to be an employee on attaining the age of superannuation after completing 19 years of service. The appellant company calculated the amount of gratuity payable to him on the basis that fifteen days' wages was half of the monthly wages last drawn by him. The respondent demanded an additional sum as gratuity on the ground that his monthly
- B wages should be taken as what he got for 26 working days, his daily wages should be ascertained on that basis and his fifteen days' wages worked out accordingly, not by just taking half of his wages for a month of 30 days or fixing his daily wages by dividing his monthly wages by 30. The Controlling Authority under the Act accepted the respondent's contention and his decision was affirmed by the appellate authority. A division bench of the High Court of Gujarat at Ahmedabad summarily dismissed the petition under Article 227 of the Constitution made by the appellant company challenging the decision of the authorities under the Act. The learned Judges however gave reasons in support of the order made. The appeal before us is by special leave.
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- In Civil Appeal 480 of 1977 (The Maharana Mills Limited—appellant v. Shri Gopal Das Ladhabhai Kakkad—respondent) the respondent resigned his job after a little over 22 years of service. The appellant company paid him gratuity calculating his daily wages by dividing his monthly wages by 30 and computing fifteen days' wages on that basis.
- E Here also the respondent claimed an additional sum as gratuity and the basis of the claim was the same as in the other appeal. The Controlling Authority accepted the respondent's contention and the appellate authority affirmed his decision following the view taken by the Gujarat High Court in the other case. In this case also the Gujarat High Court summarily rejected the petition made by the appellant company challenging the decision of the authorities under the Act. This appeal however is brought on a certificate granted by the High Court.
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- In dismissing the petition in Digvijay Woollen Mills case the division bench of the Gujarat High Court observed as follows :
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- "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 utilised 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
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and dearness allowance are always fixed by taking into consideration this economic reality.....A worker gets full month's wages not by remaining on duty for all the 30 days within a month but by 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."

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The view expressed in the extract quoted above appears to be legitimate and reasonable. 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 the Gujarat High Court cannot be called perverse. It is not necessary to consider whether another view is possible. The High Court summarily dismissed the petition of the appellant in both the appeals before us and upheld the decision of the authorities under the Act. We are not inclined to interfere with the decision of the High Court because it seems to us that the view taken by the authorities is not in any way unreasonable or perverse. Incidentally, to indicate that treating monthly wages as wages for 26 working days is not anything unique or unknown, we may refer to a passage from the judgment of this Court in *Delhi Cloth and General Mills Company Ltd. v Workmen and other. etc.*⁽¹⁾ which disposed of several appeals arising out of an award made by the Industrial Tribunal, Delhi. In the award schemes were framed relating to the payment of gratuity. The expression "average of the basic wage" occurring in the schemes was explained by this Court as follows:

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"It was also urged by Mr. Ramamurthi that the expression "average of the basic wage" in the definition of "wages" in Cl. 4 of the Schemes is likely to create complications in the implementation of the Schemes. He urged that if the wages earned by a workman during a month are divided by the total number of working days, the expression "wages" will have an artificial meaning and especially where the workman is old or disabled or incapacitated from rendering service, gratuity payable to him will be substantially reduced. We do not think that there is any cause for such apprehension. The expression "average of the basic wage" can only mean the wage earned by a workman during a month divided by the number of days for which he has worked

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(1) [1969] 2 S.C.R. 107.

A and multiplied by 26 in order to arrive at the monthly wage for the computation of gratuity payable. Counsel for the employers agree to this interpretation."

B In the view we take we do not find it necessary to consider the decisions of some of the High Courts cited at the bar taking one view or the other on the question involved in these appeals; also, the decisions based on some provisions of the Minimum Wages Act and other statutes which were relied on by either side are in our opinion not relevant on the question of computation of fifteen days' wages under section 4(2) of the Payment of Gratuity Act.

C The appeals are dismissed, in civil appeal 480 of 1977 with costs, in civil appeal 1088 of 1976 this Court while granting special leave on September 22, 1976 had directed the appellant to pay the costs of the appeal in any event accordingly respondent Mahendra Prataprai Buch will be entitled to his costs.

P.B.R.

Appeals dismissed..