



**LABOUR RESEARCH**  
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**Editorial****LABOUR FRIENDLY LEGISLATIONS  
GRATUITY ACT**

**T**he Government of India is yet to come out with comprehensive legislations which are labour friendly in the country. One of the enactments which was conceived keeping the retirement of the workers in the country was the Payment of Gratuity Act 1972 - one of the first labour law which contemplated the need for providing succour and relief to all those workers who retire on superannuation/death/resignation/retranchment from their employment. The Gratuity amount is treated as a reward, or superannuation benefit or a relief to the workers on their retirement or to their families on their death while in service so that they are able to lead a good life on the cessation of their services. The Act was extended to all those Government employees, Public Sector Units and the institutions which are managed and supported by the Governments as also the Private Companies. The Payment of Gratuity Act 1972 has undergone a series of changes/amendments which were meant to improve the application of the Act to the workforce in the country.

The Payment of Gratuity Act 1972 was a law which makes compulsory on the part of all the employers whether in Public Sector or Private Sector to pay a lumpsum relief at the time of the cessation of service either by superannuation, death or by resignation provided they have completed a minimum service of 5 years. The employer has every right to provide a better scheme than the minimum assured under the Payment of Gratuity Act of 1972 whenever they want to make their employment attractive to the workers in the organization. However, no institution can escape from the liability of the application of the Act on any grounds unless they have a better Gratuity Scheme. In State Bank of India, the Management wanted that they should be exempted from payment of Gratuity Act since they have two superannuation benefits viz., Provident Fund Scheme and Pension Fund Scheme, which was rejected by the Government on the grounds that this is a statutory enactment and compulsory to every employee and hence the State Bank of India should also pay the Gratuity as per the Payment of Gratuity Act 1972.

It has been the demand of the worker's unions since a long time that the existing provisions of Gratuity Act should be made workers friendly. At present the

**UNION IS STRENGTH**

employees who are on contractual employment/ temporary employees are not eligible for the benefit of the Gratuity under the Gratuity Act. The Government has so far been making improvement only in regard to the Gratuity Ceiling under the Act. The Government of India whenever makes the changes in the Ceiling of Gratuity amount, the implementation is effective from the date of the amendment to the Act in the Parliament, which has been causing a lot of hardship to the workers in the Private Sector as also the institutions owned by the Government of India under Public Sector as they do not extend this benefit from the same date as it was extended to employees in the Government.

The Workers Union have also been demanding that the Gratuity should be treated as a benefit on par with the Provident Fund and should be paid to each and every employee on the basis of the services he rendered in an institution without insisting for the minimum service of 5 years. The big stumbling block in this area has been the powerful industry lobby which always comes in the way of any improvement in the Gratuity Act - since they consider it as an additional burden on their establishment.

It is happy development that the Government of India under the present Government is seriously considering some of these demands of the Union. The one which is already contemplated is to reduce the minimum service required under the act from 5 years to 3 years. The other one is to bring all the workforce whether they are under permanent employment or temporary employment or on a contractual employment under the purview of the Payment of Gratuity Act.

The Government is also contemplating whether they can improve the method of calculation of the eligible Gratuity Amount under the act. At present the employees are entitled to get 15 days of salary last drawn that is Basic Pay and Dearness Allowance for every year of completed

service. For the purpose of computation of calculation of the 15 days salary, the month will be taken as 26 days instead of 30/31 days. The definition of 5 years of continuous service was challenged in a number of Courts. The residual service after considering the full year of service is treated as one year in case the residual service is more than 6 months and in the cases of lesser months of service the same is ignored.

The issue of continuous service was challenged in one of the cases filed before the High Court of Rajasthan and it was held that there is no need for the employee to complete full 5 years of continuous service and thus the benefit of the fraction service of more than 6 months was extended and the court also opined that there is a need to examine the possibility of taking into account the services rendered elsewhere as well for the purposes of the total requirement of service. However, with the proposed changes contemplated by the Government to reduce the 5 years minimum service to 3 years, it will provide relief to millions and millions of workers who are serving as contract labours as well as the temporary employees on a continuous basis if the Government succeeds in convincing the industry lobby for these changes in the Gratuity Act.

There are number of decisions by the various courts declaring that the Gratuity amount is a trust amount due to the family of the employees and it cannot be attached for the purpose of recovery from the employee concerned. The Act also prescribes in clear terms that the grounds under which the Gratuity Amount can be forfeited and they are very stringent in nature. Any attempt by the Managements to victimize the workers under the provisions of the Gratuity Act and deny the same has been strongly condemned by the courts in various cases. The full amount of Gratuity payable in the case of death is exempted from the Payment

of Income Tax.

There are a number of cases challenging some of the decisions in regard to the Payment of Gratuity in several courts. These cases are mainly in regard to the discrimination of the date of implementation of the Act while making improvement in the maximum ceiling prescribed under the Act.

The calculation of the Gratuity in the case of the Government servants is slightly different in the sense they are given the benefit of 1/4th of last drawn salary that is the Basic Pay and Dearness allowance for every 6 months of service with the maximum eligible lumpsum payment of 16 months' salary with a Maximum ceiling of Rs.20 lacs as per the Payment of Gratuity Act. The entire amount is exempted under the Income Tax. The workers in the Private Sector are also eligible to claim the exemption of Income Tax upto the amount of Rs.20/- lacs as per the Act.

There are several infirmities which is affecting the workers in the Private Sector in comparison to the employees in the Government service. The Income Tax in real sense is fully exempted in respect of the Government servants since they have a ceiling of Rs.20 lacs and the exemption is also available upto Rs.20 lacs whereas the other employees serving in the private sector are required to pay Income Tax in case they are entitled to get more than the ceiling prescribed by the Government under the Payment of Gratuity Act. This needs to be corrected. The other infirmity is in regard to the date of effect. The Government should fix up a common date for every one including those who are the Government servants to avoid this discrimination whenever the amendments are affected in regard to the ceiling of gratuity payable under the Gratuity Act.

The Gratuity is a welfare scheme. There is no need to the Government to go for consultation for each and every improvements with the

industry lobby that always come in the way of any improvement in the superannuation benefits contemplated by the Government. It has already caused a lot of damage to the working class in the country. Hence, the Government should go ahead with the improvements in the Gratuity Act on its own assessment rather than going for the mercy of the industrial lobby if the Government is really interested to provide succour to the working class at the fag end of their lives.

It is fervent desire of the All India State Bank Officers' Federation that the Gratuity Act should be comprehensively amended/updated providing for the following reliefs to the workforce in the country.

- (a) The minimum service for the purpose of the Gratuity should be done away with. The minimum number of employees should be also reduced from the present number of 10 to 5.
- (b) The workers should be eligible for the receipt of Gratuity on the basis of their services irrespective of the fact whether they are employed permanently, temporarily or on contractual basis;
- (c) The entire amount received by way of Gratuity should be eligible for exemption under the Income Tax Act;
- (d) The Payment of Gratuity should become mandatory to all establishments whether in Public or Private Sector and should be brought under the act and no exemption should be provided from the Payment of Gratuity under the Act.

Let us hope that some of the initiatives which are in the pipeline due to the interest shown by the Government will fructify shortly and benefit a large number of workers in the country. ■

**NEVER BEND BEFORE THE INSOLENT MIGHT**

## EMPLOYMENT GENERATION IN INDIA

**T**he Indian economy is considered as the fastest growing economy in the world. It is expected to become the 5th largest economy in the world in the near future. The GDP growth is also put on higher trajectory anticipating it around 10% in the near future. In these backgrounds, the country was expected to



generate sufficient employment opportunities to the youth of the country. The creation of jobs is a key performance of any Government. All their economic activities is surrounded with the single objective of creating jobs for the unemployed youth of the country. The employment opportunities in the traditional sector including the Government and the Public Sector institutions, the responsibility is now passed on to the other sectors of the economy. The emphasis is now on the entrepreneur skills of the younger generation who would be able to generate a huge employment opportunities. The new sectors of the economy such as telecom, infrastructure, banking, the service sector, the agriculture, the tourism which has a tremendous scope for the hospitality industry to grow tremendously, the greater opportunities, in science and technology advancement, the education field etc., were considered as a strong source of employment opportunities by our planners. The export was expected to go up very substantially giving tremendous boost for the foreign trade and the job opportunities. The movement of goods and services including the labor and capital was also expected to provide a big boost to the employment opportunities to our youth both inside as well as outside the country.

The populist schemes of Poverty alleviation and generation of rural employment through various schemes floated from the Government for the benefit of rural areas are not a solution to the current unemployment problem. The creation of schemes such as Food for Work, 100 days guaranteed work are able to touch only a tip of the iceberg of the total

employment in the country. These are temporary reliefs but not a permanent solution.

The international rating agencies have been giving full marks to the Indian economy as regards their economic recovery during the last two years with the devastating effect that the demonetization had on the economy of the country. The

GST scheme introduced by the Central Government is also getting lot of appreciation by the International Agencies and they are very confident that India along with China will be the economic super power in the near future.

However, paradoxically the growth in the economy is proving a jobless growth. The majority of the Indian population lives below the poverty line. We have not been able to ensure the equi-distribution of the economic prosperity. The 10% of the population controls the 90% of the wealth of the country whereas 90% of the population is still struggling sharing between them just 10% of the total wealth of the country. The agriculture sector is no longer an avenue for creation of more jobs. The disparity between the poor and the rich has multiplied. We see the number of millionaires increasing every year. In the same breath we also see the poor farmers are committing suicide. The statistics show that at every half an hour one farmer commit suicide in the country. The Indian agriculture has come a long way. The country has created a record for ensuring food security within a period of 2 decades after the Independence. Its success in the agriculture had become a source of inspiration to all the under developed and developing countries in the Asian as well as African countries in particular the third world countries who were heavily depending upon the alms of the colonial rulers for their existence. The total agriculture production is estimated to be around 220 million tonnes due to the increase in agricultural production during the year 2018. It is nearly 5% more than what it was during the year 2017. We have a rosy macro statistics

**DEFEND THE ECONOMIC SOVEREIGNTY OF THE COUNTRY**

painting a glorious picture of our economy.

When it comes to the actual situation, the country is passing through a serious crisis as regards the generation of the employment opportunities for the younger people who come out of the educational institutions every year. The unemployment is on the increase threatening the very success of the economic story of the country. The promise of the Prime Minister that he is creating one crore job every year will have to be taken with a pinch of salt. Conflicting reports are appearing in the press and the other communication medias as regards the actual creation of the jobs in the country. It is reported that more than 12 million people enter the job markets in the country. The potential for the jobs availability in the country is far less than the requirement and as such we add every year more than 7 million people to the basket of unemployment threatening the popular belief that the country is growing at faster and recording the magic figure of GDP growth of 10% per annum. There are contradicting claims as regards the creation of jobs in the country. There are claims by the independent columnist that the total jobs created by the Government is about 15 million whereas the Government and policy think tank NITI Aayog seem to have taken a middle path with claims of 7 million job creation during the year.

The International Labour Organization (ILO) declared that unemployment rate in India will stay at 3.5 percent and nearly 77 percent of employment in India would be "vulnerable" indicating the uncertainty of the job security in the country. The Government is thus under tremendous pressure when the NDA Government goes for the election in the coming year.

The basic flaw in regard to the authenticity of the data is that the source of data is ineffective. The main source from which the Government is collecting the data is the Employees Provident Fund Organizations – which has the figures in regard to all those concerns which has employment of more than 10 workers as the EPF is compulsory for them. The systematic destruction of the Employment Exchange Offices under the Labor Department in the State Governments all over the country – a more transparent agency which could provide the statistics

in regard to the employment seekers have been lost.

The extraneous threat to our workforce from the policies of the foreign countries in particular restrictions to the entry into their countries by the professionals from the country is yet another big challenge to our younger generation who were able to move outside the country and take employment opportunities elsewhere. The protectionist policy of the US, UK, Australia and other countries have become another serious matter for the job seekers from our country in those countries. The US regime in the recent past has virtually put a lot of embargo about our professionals entering into their country for employment opportunities.

More than 93% of the workforce is still unorganized. The organized sector is hardly about 7% of the total workforce in the country. As a result, the total number of jobs created in the unorganized sector is still a mystery. The concept of outsourcing, the contractual employment etc., are now taking the main stage rather than providing of permanent employment in all sectors of the economy. There is no bondage between the employer and the employee and as a result there is no commitment on the part of the workers to remain tucked to a single organization throughout their lives. The Government is allergic to the formation of the unions by the workforce in the new sectors of the economy. The systematic victimization of the IT and BT professionals whenever they attempted to form the trade unions by the Management of the various IT companies have made it a difficult task to the unions to enter into the campus of IT companies.

The bigger threat in resolving the unemployment problem is the growth of population in an alarming speed. It will swallow all the progress and success of the Government in ensuring a reasonable rate of growth of the economy as well as the GDP in the country. There is a need to come out with people movement in tackling the issue of the growing population in the country. The China is able to tackle this issue effectively and now it is for the Indian Government to take appropriate action to arrest the growing population in the country. ■

**SUCCESS COMES TO THOSE WHO DARE AND ACT**

## POTENTIAL OF INDIAN YOUTH: TODAY AND TOMORROW

India is said to be enjoying population dividends. Is it real? Are we utilizing the potentials of our youth optimally? In fact, today tapping the potentials of our youth is an important challenge facing the country.

The youth in India is bulging. The population in the age-group of 15-34 increased from 353 million in 2001 to 430 million in 2011. A research study conducted by IRIS Knowledge Foundation in collaboration with UN HABITAT estimates that population of Indian Youth is likely to reach 464 million by 2021 and then marginally decline to 458 million by 2026. The present youth shares some unique characteristics like relatively better education, better connection within and outside the country, internet connectivity and wider social networking.

The present generation is fortunate to have a larger platform. The present day youth is blessed with Facebook, LinkedIn, Twitter, Blogs and Television Shows to be in the centre of attention. Another feature of younger generation is that they are clear about what they want to be. Basically they want to climb up the social ladder and do not hesitate to take dare steps. In addition, they are more vocal than previous generation.

### Concerns of Today's Indian Youth

*The prevailing situation is not favourable to Indian youth. What are their main Concerns?*

**1. EDUCATION:** No doubt, there is a rapid growth in the number of Educational Institutions in the country. However, it is not uniform across the length and breadth of the country. Further, it is not equally accessible to all the sections of the society. The youth are demanding better and skill-based Education.



They want career-oriented education.

**2. JOB:** Present-day youth struggle to get admission in prestigious educational institutions and parents spend huge amount of money on the education of their children. However, the skills and education acquired by our youth do not match with the job requirements. Therefore, after completion of the course the youth struggles to get good jobs in formal sector in the growing competitive world. At the

same time, the youth cannot remain without job for long time. He has no choice and has to take up whatever job comes on his way. The lucky ones who get the job are under-employed, under-paid and have to bear longer duration of work.

In spite of some advantages, due to lack of communication and other skills, the probability of a youth remaining unemployed is much higher than that for an adult person especially in case of females. In fact, the youth are bearing the brunt of unemployment problem which forces them to migrate to foreign countries. They are the first victim of economic recession in the form of retrenchment

**3. CORRUPTION:** initially every youth desires to lead an honest and ideal life. After seeing widespread corruption at various levels he gets frustrated. Frustration of youth was expressed in the form of massive support to the recent movement against corruption led by Anna Hazare. In addition to this, the youth took active interest in recent election and voted for the development of the country.

**4. VALUES:** In the past, age-old ethical values played a crucial role in the life of people of India. Feeding of poor people in the houses of wealthy persons in villages was a common scene. Rich people met at least a part of marriage expenses of poor households. Wealthy people considered that the wealth possessed

WORK IS WORSHIP, DO YOUR DUTY

by them as wealth of the society and that they were mere trustee of the wealth of the society.

It appears that even kings took up the construction of huge temple complexes to encourage the skills of sculptors and provide employment to unskilled workers and thereby ensure food security. Due to the influence of western civilization and too much commercialization there is erosion in Indian value system.

### **What are our Youth Doing?**

Let us first focus our attention on educated youth. Only after coming out of educational institutions, the youth realise that the education acquired by them does not fetch them a good job. They start preparing for competitive exams conducted by various recruitment authorities. Many of them take regular coaching. Recruitment is cumbersome, long-drawn and time-consuming process. The process starts with the advertisement for vacant posts followed by written exams held after couple of postponements on unreasonable grounds. After a long gap the results of exams are announced. Personal interviews are held in a phased manner.

A section of youth considers that the jobs in India are not adequately remunerative and prepare themselves for jobs in advanced countries. This movement of educated youth to advanced countries in search of lucrative jobs started with medical graduates and then spread to engineering graduates and now to people with management skills. Lucky ones get good job. Many persons migrate to advanced countries on the pretext of higher education only to secure job after the education. Having landed in host country they do not hesitate to do all types of jobs. Sometimes they are condemned to lead a mechanical life. Most of them prefer to stay there and do not mind in facing all types of hardship but are very reluctant to come back to India. In the process they positively contribute to the development of the host countries by providing cheap labour, which is unrecognized and unnoticed.

Indian youth either knowingly or unknowingly contribute immensely to the nation building process

of the host countries. From theoretical angle, growth rate of any economy is the sum of growth rate of labour force and the growth rate of technology. It may be noted that most of the advanced countries are experiencing stagnancy in their domestic population and in the absence of inflow of our youth in those countries; the growth rate of labour force would be near zero which would bring down growth rate of their economy. In short, our youth instead of participating in nation building process of India are actively participating in nation building process of host countries. This contribution of our youth is generally goes unnoticed. Even if it is recognised, it is not duly acknowledged

### **Who should be blamed for this tragedy? Should the blame be put on the shoulders of the youth or their parents or on insensitive political leaders or on complacent administrators?**

What our semi-skilled youth with low level of education doing? There are a good number of persons in towns and metropolitan cities who manage to complete matriculation and acquire skills like car driving. With a dream of making fast bucks they migrate to foreign countries. Incidentally, by migrating their social status in their native place improves which will fetch them good dowry. On the other hand youth, especially in border areas, who stay back and earn limited income are likely get addicted to drugs. In fact, Punjab has become gateway to India from Pakistan for drug smuggling. It is said that nearly 80 per cent of families suffer from drug addiction. It appears that an addict spends one thousand Rupees per day on drugs. Earlier people consumed liquor. Now there is a spurt in the sales of drugs.

What about our uneducated and rural youth? In informal sector, especially in rural area, youth constitutes disproportionate share in unemployed persons. Due to economic and social constraints many of them are forced to remain in rural areas and are underemployed/ disguised unemployed. Sizeable rural youth move to urban area and with meager earnings lead a miserable life, mostly in slum area without any basic facilities and with no medical and educational facilities to their children.

Some youth with some ambition are likely to fall prey to smugglers and traffickers, who promise them to provide job with decent income and comfortable living conditions. Huge inflows of migrant labour and malpractices in recruitment have driven down the market wage rate in the host countries. The problem of migrant labour is aggravated due to poor working conditions and insecurity. Confiscation of passport, unlawful deduction from wages and additional hours of work make the lives of migrant labour miserable.

In short, they are being lured by unscrupulous agents and find themselves in harsh, unfriendly, undreamt environment from which it is difficult to come out. In their own way they contribute to the growth of those countries which is not recognised by any one. A good number of them meet their end and their relatives struggle to get back their body to their native place. They remain unsung heroes.

**Can we afford to ignore this trend? Can we stop this Movement? If yes, how can we stop? What is the solution to this problem?**

Youth have played an important role in the development of every advanced nation. Therefore, it is the duty of the parents, elders and leaders to look into the problems of our youth and channelize their boundless energy for nation-building activities. Otherwise, their energy maybe dissipated in wrong direction creating chaos in the country. Our youth, whether in India or outside must be proud of India. In this context, it is worthwhile to consider the proposal to have compulsory military training to our youth for a couple of years. It will also make our youth more disciplined which is essential for all types of jobs.

Governments in both origin and host countries should develop an efficient recruiting system and exchange regular information. The policies must ensure safe migration with freedom, dignity, equity and security. It should be made mandatory to foreign employer to intimate Indian Embassy before employing any Indian. Further, the Indian embassy should keep track of Indians.

There is an urgent need for collection and analysis

of data of migrant labours by age and by sex.

To fight the menace of drug addiction there is a need for opening more de-addiction centres and intensification of drug de-addiction drive.

Many self-employment and wage-employment programmes have been launched in India with limited success. For various reasons their full potentialities are not realised. Involvement of youth in the implementation of programmes for distribution of job-cards, ration-cards, Aadhar cards etc, along with Officials would reduce the leakages to a great extent. Youth must be made to realize their power and responsibility. Youth must be encouraged in all possible manners to start their own business. They should become entrepreneur that is job-providers and not mere job- seekers. India has a great opportunity to meet worldwide demand for work force.

It can become an international out-sourcing hub for skilled manpower. However, only 2 percent of Indian work force has undergone skill training. We have to impart some communication skills, a good knowledge of English and some spiritual input. Spiritual input is necessary to drive home the point that means are as important as the goals and mad rat race will not ensure happiness. Our policies must attract youth like magnet.

In Globalisation Era it is difficult and not fair to prevent youth from moving out. Let them go abroad learn and work. Let them be exposed to external world. It will enrich them and make them more matured. Only then they start appreciating the merits of our rich culture. After adequate experience in foreign countries they must be motivated to come back to India and contribute their might in nation building activities. They should be made to realise that they are not doing any favour to India but only partially repaying their debt to their mother land. They need not permanently remain in India. If they so desire they must be encouraged to go abroad only to come back to serve the country with richer experience.

These measures are likely to fetch real demographic dividends instead of ending up with demographic disaster. ■

**Source: The Hans India**

**STRONG REASONS MAKE STRONG ACTIONS**

## SENSE, SENSATION AND SENSITIVITY

Men are blessed with the benefit of enjoying the beauty of various creations of nature with their sensory organs, such as eyes, nose, tongue, ear and body. We see objects through our eyes, smell through the nose, taste food through the tongue, hear the sound through the ear and feel with our body touch. Synchronization of the function of various sensory organs makes a man perfect. Life would have been monotonous if one could not enjoy the beauty of nature, taste the food we consume, hear the melody around him and feel the heat and cold in the atmosphere, through these sensory organs. Mind is an amazing mechanism that make use of various sensory organs in the body whenever required. Creative faculty of mind is set in motion entirely by emotion.

Among all sensory features sense of smell is most sensitive and powerful, that resides in the same part of the brain as in the case of emotion. It is directly connected with our emotion than any other sense. Apart from one's personality every person in the society is connected or identified with the others, through his body odour through the sweat, emanated in their body, mostly out of the nature of food one consume, oil or perfume one use. Smell is not only a source of enjoyment but also a protector against the impending danger around us that makes one to get alert. Smell also is an indicator of the quality of food one is going to consume through action of reflex. This reflex action also gives him the stimulus to relish the food that makes him to digest the food fast.

Most of the living creatures on earth has got a natural instinct of recognizing around 1000 different smells around them if they are in their normal health. If



they are unable to recognize and appreciate any smell around them despite holding the object close to their nose, it only shows some deficiency in their system; which normally people may not notice. It can be a sign of something serious in them such as onset of Parkinson or Alzheimer disease or due to common cold or nasal infection or polyp in

the nose. Under such circumstances we may not be able to enjoy our surroundings or the food we consume. But one need to take it as a symptom of an impending disease. Any physical deficiency relating to smell can be indentified in a nuro clinic through a smell identification test. Miscellaneous

Nature has provided human being with a chemistry of mind which operates in a manner similar to the principles of chemistry through which people are attracted each other. Body odour also makes people to attract or dislike each other. Certain smell can also lead to many nostalgic moments in life. History also reveals that many fragrances are created in the past out of romances to suit to one's lover. Many immortal loves also were linked to fragrance of different flowers. Jasmine always has got an esthetic smell of purity, sanctity poverty and divinity that linked to various holy ceremonies.

Every day we are confronted with different types of smells. The five million olfactory cells in our body can sniff out one molecule of odour causing substance in one part per trillion of air. We take about 23000 breaths per day processing about 440 cubic feet of scent laden air. Compared to man, women have got a natural instinct of identifying the smell than man. However the ability to sense varies from person to person. According to research an average human being can recognize about 10000 different smells. This also indicates the quality of one's health. ■

MAN IS THE ARCHITECT OF HIS OWN FUTURE

## **The Management of Sri Ramnarayan Mills Ltd. Vs. Secretary, Coimbatore District Textile Workers Union (HMS) and Ors.**

**[Civil Appeal No.1977 of 2010]**

**Abhay Manohar Sapre, J.**

1. This appeal is filed against the final judgment and order dated 13.08.2007 passed by the High Court of Judicature at Madras in W.A. No. 2675 of 2002 whereby the Division Bench of the High Court dismissed the Writ Appeal and affirmed the order of the Labour Court and Single Judge.

2. Facts of the case lie in a narrow compass. They, however, need mention in brief infra to appreciate the short controversy.

3. The appellant is a limited company having its mill in Coimbatore. The appellant being an employer applied to the Joint Commissioner of Labour (Respondent No.3) praying in their application that they be allowed to add one more new ground namely "break in service" in Clause 16 of the Chapter of Punishment in Certified Standing Orders in addition to the existing grounds specified therein.

4. In other words, the appellant's prayer was that if any employee commits "break in service" in any year, then it should be regarded as one of the ground for punishment enabling the employer (appellant) to take action against such employee under their certified standing order. They, therefore, prayed that they may be allowed to add this new ground in Clause 16 of the Chapter of Punishment in Certified Standing Orders.

5. On 02.04.1992 the third respondent (Joint Commissioner of Labour) allowed the said application of appellant and permitted them to amend their certified standing orders by adding "*brake in service*" as one new ground in Clause 16 of the Chapter of Punishment in Certified Standing Orders.

6. The Workers' Union (Respondent No.1) felt aggrieved by the order dated 02.04.1992 filed

appeal in the Labour Court. By order dated 06.02.1995, the Labour Court allowing the appeal and setting aside the order dated 02.04.1992 held that if the proposed amendment is allowed, it would cause immense prejudice to the rights of the workmen and further the employer would likely to misuse this new ground of punishment mostly for their benefit. It was also held that apart from these two reasons, it would also defeat the object of the Payment of Gratuity Act while calculating the employee's continuous service as defined under the Payment of Gratuity Act which provides for different modes of calculation.

7. The appellant felt aggrieved of the order of the Labour Court and filed the writ petition in the High Court at Madras questioning therein the legality and correctness of the order of the Labour Court. By order dated 19.07.2002, the learned Single Judge dismissed the appellant's writ petition which gave rise to filing of the intra court appeal by the appellant (employer) before the Division Bench of the High Court.

8. By impugned order, the Division Bench dismissed the appeal and affirmed the order of the Labour Court and Single Judge. It is against this order; the appellant (employer) has felt aggrieved and filed the present special leave to appeal in this Court.

9. So the short question which arises for consideration in this appeal is whether the Courts below (Labour Court, Single Judge and the Division Bench) were justified in rejecting the application filed by the appellant (employer) to the Joint Commissioner of Labour (certifying officer) seeking therein a permission to add one more new ground i.e. "break in service" in Clause 16 of the Chapter of Punishment in Certified Standing Orders.

10. Having heard the learned counsel for the parties and on perusal of the record of the case and the

written submissions, we find no merit in this appeal.

11. The Division Bench dealt with this issue in Para 6 of the impugned order which reads as under: "We have considered the above submission of the learned counsel for the appellant. In fact, what is sought for is to include 'break in service' as one of the punishment under Clause 16 of the Standing Orders. To say in other words, if the workman does not come for duty, for any reason, break in service will be effected for such period of absent.

By permitting the appellant to modify the Standing Order so as to include the break in service as one of the punishment, in fact, will enable the appellant to exercise the power to impose the punishment in an arbitrary manner i.e., if an employee is punished for the absence in accordance with the existing Standing Order, continuity of service of the employee is not disrupted whereas, if the appellant is permitted to modify the Standing Order so as to include the break in service as also one of the punishment, even a half day absent from duty in a year of 12 months, will give an opportunity to the appellant to take disciplinary action against an employee concerned at the end of the year and to impose a punishment of break in service, which will have a consequence of depriving the employee's right to get gratuity for that particular year.

When so many other 6 punishments have been enumerated under Clause 16 of the said Standing Order, there is no need to include the punishment of break in service as one of the punishments. In fact, permitting the appellant to include 'break in service' as one of the punishment, defects the object of the Payment of Gratuity, that is to say, as per Gratuity Act, on completion of every continuous service of 5 years, an employee is eligible to get the gratuity. As referred above, if for a particular period of absents, to say for a day also, this proposed modification enables an employer to impose a punishment of break in

service. Consequently, for that particular year, an employee will not get gratuity inspite of the fact that he had worked for 12 calendar months. Now, only 240 days shall be taken into account and not 240 days attendance shall be taken into account.

As such, if the modification is allowed, the future right of the employee to get a gratuity for a particular year will get affected. Apart from this, if an employee, for certain reasons beyond his control, was forced to be absent even for a day, he can be imposed with the punishment of break in service which will have consequence on his gratuity. That apart, if an employee has to be punished for the absent as referred above; the punishment of either censure, reduction in rank or payment cut etc. may be imposed and continuity of service of that employee is not disrupted. If the appellant is permitted to include break in service also as one of the punishment, even for one day or half a day absent from duty in a year of 12 months, will give power to the appellant to impose the punishment of break in continuity of service in order to deprive the employee's right to get the gratuity for that particular year.

In fact, this proposed amendment is against the welfare of the employee and as rightly held by the learned Single Judge, besides, this can be exercised in an arbitrary manner, consequently, the employees will be penalized. That apart, as rightly held by the learned Single Judge, on the appreciation of the entire materials, the Labour Court has arrived at a factual conclusion that the amendment sought for, namely, inclusion of break in service in Clause 16 is unreasonable and it would be possible for the Management to act arbitrarily. That apart, by including the break in service as one of the punishment, in fact, what the appellant intends to do is only to get an opportunity to impose punishment which will have an impact in the gratuity of the employee of the concerned year."

12. The Division Bench, in our considered opinion, rightly concluded that a "break in service" cannot be allowed as a ground by way of punishment in

Clause 16 of the Chapter of Punishment in Certified Standing Orders for the following reasons:

13. Firstly, the existing grounds enumerated in Clause 16 by way of punishment are sufficient to take care of any misconduct committed by any employee and there appears no reason to introduce one more new ground in the existing grounds specified in Clause 16 for imposing a new punishment.

14. Secondly, the proposed ground, if allowed, would likely to be misused by the employer against its employees for their own benefit and detrimental to the employees' interest.

15. Thirdly, it would enable the employer to take action against its employees even in a situation where an employee is found absent even for a day and such absence will be treated as "break in service" under the Certified Standing Orders and also under the Payment of Gratuity Act. It will, therefore, be in conflict with the definition of the expression "continuous service" defined under the Payment of Gratuity Act which gives different modes of calculation for determining the

continuous service for payment of gratuity amount.

16. Fourthly, such ground will, therefore, defeat the very object of the Payment of Gratuity Act which is a beneficial legislation enacted for the benefit of the employees and lastly, it is neither bona fide nor reasonable and nor required and hence it cannot be allowed.

17. In our opinion, we find no good ground to differ with the reasoning assigned by the Division Bench mentioned above for rejecting the application made by the appellant (employer) for adding, "break in service" as a new ground for punishment in the Certified Standing Orders. The reasons given by the Division Bench, in our view, deserve to be upheld.

18. In the light of the foregoing discussion, we find no merit in this appeal. The appeal thus fails and is accordingly dismissed.■

.....J. (ABHAY MANOHAR SAPRE)  
 .....J. (INDU MALHOTRA)

New Delhi,  
 November 02, 2018

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