

1973

Present : Wijayatilake, J.

SWADESHI INDUSTRIAL WORKS LTD., Appellant, and  
Mrs. DAPHNE DE SILVA, Respondent

S. C. 275/71—L. T. Case No. 7/1757/70

*Labour Tribunal—Termination of an employee's services—Claim for gratuity in addition to Provident Fund benefits—Maintainability—Delay in making the application for relief—Circumstances when it may be excused—Industrial Disputes Regulations, Regulation 16.*

In an application for relief made to a Labour Tribunal by an employee after the termination of her services—

*Held*, that the receipt of a sum by way of Provident Fund benefits does not necessarily preclude an employee from maintaining a claim for a gratuity as well.

*Held further*, that the long delay in making the present application was excusable in view of the state of uncertainty previously in regard to the interpretation and validity of the Industrial Disputes Regulation 16 and also as to the nature of a claim for gratuity in the field of Industrial Law. The Prescription Ordinance is of little relevance in this field except perhaps as a guide.

**A**PPEAL from an order of a Labour Tribunal.

*Issidore Fernando*, with *N. T. S. Kularatne* and *H. L. de Silva*, for the employer-appellant.

*L. W. Athulathmudali*, for the applicant-respondent.

*Cur. adv. vult.*

September 28, 1973. WIJAYATILAKE, J.—

Mr. Fernando, counsel for the appellant, submits that the learned President has made a final order in this case without, in the first instance, giving a ruling on the preliminary objection on the averment of undue delay in the preferment of this Application. However, on a perusal of the proceedings, I do not think it is open to the appellant to pursue this ground as it is evident that the submissions of counsel made before the President have not been restricted to this objection alone. If the President had made such a serious omission, at least an affidavit could have been filed setting out this alleged irregularity.

Mr. Fernando submits that, in any event, the respondent is not entitled to claim a gratuity as she has received a sum of Rs. 5,435.14 by way of Provident Fund benefits at the time she voluntarily left the services of the employer on 30.10.65. She had been employed under this employer since 1.10.44 in the capacity of a clerk-cum-telephone operator and at the time she

left the services she was in receipt of salary of Rs. 350 per mensem. Mr. Fernando submits that the receipt of the Provident Fund benefits precludes her from maintaining a claim for gratuity as well. He relies on a judgment of Thamotheram J. in S. C. 13/71. L.T. No. 11/A/66. With respect, I do not think this judgment upholds the principle as set out by Mr. Fernando. On the other hand, in my opinion, as submitted by Mr. Athulathmudali, the principle as set out by de Kretser J. in *Hatton Transport Agency Co. Ltd. v. George* 74 N. L. R. 473 appears to be more in point. It also meets the submission made by Mr. Fernando in regard to the propriety of a claim for gratuity when the termination is of a voluntary character.

Mr. Fernando has also submitted that there has been considerable delay in making this application—the termination being on 30.10.65 and the application being on 6.10.70 nearly 27 months after the judgment of Weeramantry J. in 71 N. L. R. 25. Mr. Athulathmudali submits that the applicant cannot be blamed for this delay as the law itself was in a state of uncertainty in regard to the interpretation and validity of Regulation 16 of the Industrial Disputes Act and also as to the nature of a claim for gratuity in the field of Industrial Law. The following cases speak for themselves :

*Ram Banda v. The River Valleys Development Board*,  
71 N. L. R. 25.

*River Valleys Development Board v. Sheriff* 74 N. L. R.  
505.

*The Ceylon Workers' Congress v. Superintendent, Beragala Estate* 76 N. L. R. 1.

*Richard Peiris & Co. Ltd. v. Wijesiriwardene* 62 N. L. R.  
233.

*The United Engineering Workers' Union v. Devanayagam*  
69 N. L. R. 289.

As Mr. Athulathmudali submits any legal advice during the formative period of our law and procedure would have been of an uncertain character and one cannot, in the field of Industrial Law, penalise this lady who has served her employer for 21 years for not preferring her claim promptly. Mr. Fernando has stressed the principle that—"Delay defeats equity", but in my view, in the context of this case there has been no such undue delay. I agree with the submission that ordinarily a period of 27 months for a claim of this nature would be too long. As to whether the claim is stale depends on the facts of each case as often the delay

is attributable to the employer giving hope of an amicable settlement and thereafter resiling from it. In my opinion, the Prescription Ordinance relied on by counsel is of little relevance in this field except perhaps as a guide.

Mr. Fernando further submits that the President has failed to give his mind to the basis of the computation in fixing the gratuity. I do not think there is any merit in this submission either as the figures speak for themselves. The award is for a sum of Rs. 7,000 for a period of 21 years.

I accordingly dismiss the appeal with costs fixed at Rs. 250.

*Appeal dismissed.*

