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**THE FINANCE CO. LTD**  
**VS**  
**KODDIPPILI**

COURT OF APPEAL.

EKANAYAKE, J.

SRI SKANDARAJAH, J.

CA 1111/2003.

OCTOBER 12, 2005.

NOVEMBER 19, 2005.

MARCH 15, 2005.

*Payment of Gratuity Act, No. 12 of 1983, section 5(1) - Extension granted- Continued in employment after date of retirement on same terms and conditions - Gratuity accepted on date of retirement - Does the acceptance of gratuity affect the continuity of employment - Computation of period of serving ?*

The petitioner's retirement age was 21.05.1999. He was paid the full gratuity on 24.06.1999. However he was employed on contract from 22.05.1999 by letter dated 17.05.1999 for a period of one year and this was extended until 31.05.2002.

The 2nd respondent Commissioner of Labour held that the petitioner was in employment till 31.05.2002 and he was therefore entitled to gratuity for the entire period till 31.05.2002.

The petitioner contends that on the 1st respondent retiring from services from the company, his services has come to an end and immediately thereafter there was a new contract of employment although the 1st respondent continued to work from the very date after he retired.

**HELD:**

- (1) The petitioner was given an extension before the retirement date and he continued in service in the same capacity even after the said date of retirement, the salary that was offered during the extension indicates that the 1st respondent's annual increments were taken into consideration-thus there is no break in service on the date of retirement.
- (2) In determining the continuity of service and to determine the obligation cast by law upon the employer under the payment of Gratuity Act the acceptance of the gratuity will not have a bearing.

**APPLICATION** for a Writ of Certiorari.

*I. S. de Silva for petitioner.*

*H. G. Dharmadasa for 1st respondent.*

*Ms. Eresha de Silva, SC for 2nd - 4th respondents.*

*Cur. adv. vult.*

November 23, 2005.

**SRISKANDARAJAH, J.**

The Petitioner in this application is seeking a writ of certiorari to quash an order of the 3rd Respondent dated 3rd June 2003 (P6). By this order the petitioner was directed to pay a sum of Rs. 103,380.99 as gratuity and surcharge to the 1st Respondent who was an employee of the Petitioner Company. This order was made on a complaint made by the 1st Respondent to the Commissioner of labour that he was not paid gratuity for the entire period he served in the Petitioner's company but he was only paid gratuity up to 21.05.1999. The submission of the Petitioner is that the 1st Respondent reached his retirement age of 55 on 21.05.1999; according to the letter of appointment his services has come to an end on that day. The

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1st Respondent was paid on 24.06.1999 the full gratuity payment which was an amount of Rs. 96,905/- less a sum of Rs. 30,178.84 on account of an outstanding loan. The balance sum due as gratuity was accepted by the 1st Respondent (P5d) on account of all dues payable by the Petitioner Company. Thereafter he was employed on contract from 22.05.1999 by a letter of 17.05.1999 for a period of one year (P5e) and this was extended until 31.05.2002 (P5F to P5h). The position of the Petitioner is that the 1st Respondent is only entitled for gratuity for the period he served as a permanent employee. At the time of retirement his services with the Petitioner has come to an end. The contract of employment entered into between the Petitioner and the 1st Respondent after the 1st Respondent's retirement cannot be considered as continuous service. After inquiry the 3rd Respondent rejected the submission of the Petitioner and made the impugned order dated 03.06.2003. The Petitioner submitted that this order does not give any reason and contains an error in computing the said sum due to the 1st Respondent.

It is the submission of the Petitioner that on the 1st Respondent retiring from the services of the company his services has come to an end and immediately thereafter there has been a new contract of employment although the said 1st Respondent continued to work in the Petitioner's Company from the very date after he retired. The said period of contract is completely distinct from his original employment and the word uninterrupted service in the definition of completed service only refers and contemplates a case where the workman continued to work until he retired from the Company but if during the aforesaid service due to no fault of the workman he could not work then it is deemed that he has been in uninterrupted service. But once his services have been interrupted on retirement as in this case his service has come to an end and his employment has been legally and legitimately interrupted. The Petitioner further submitted that it cannot be argued that merely because the 1st Respondent continued to be in service after retirement that he has been in uninterrupted service.

The 1st respondent claimed that he is entitled for the gratuity for the entire period of service and no deduction can be made in the gratuity on account of dues to the company. The 1st Respondent in this case is not only in the Petitioner's service after the retirement but he was holding the same position as internal Auditor and he was awarded his annual increments after the date of retirement when he was working under the said contract (P5e&P5f). The 1st Respondent was informed before he reached his retirement date by a letter dated 17.05.1999. (P5e) that his services would be extended for one year with effect from 22.05.1999. In view of this extension, the services of the 1st respondent did not come to an end on 21.05.1999 as per the letter of appointment. The service of the 1st Respondent was extended from time to time and was terminated by letter dated 20.05.2002 (P5h) on 31.05.2002.

The payment of gratuity is governed by the Payment of Gratuity Act, No. 12 of 1983. Section 5 (1) of the said Act provides :

"Every employer who employs or has employed 15 or more workmen on any day during the period of 12 months immediately preceding the termination of the services of workmen in any industry shall on termination (whether by the employer or workman, or on retirement or by the death of the workmen or by operation of law or otherwise) of service at any time after the coming into operation of this Act, of a workman, who has a period of service of not less than 5 completed years under that employer, pay to that workman in respect of such service, and where the termination is by death of that workman, to his heirs, a gratuity computed in accordance with the provisions of this Part within a period of 30 days of such termination"

The Petitioner submitted that under section 5(1) of the Gratuity Act, gratuity has to be paid when an employee ceases to be in employment

and the same has to be paid within one month. The Petitioner has paid the gratuity to the 1st Respondent within one month of the date of retirement *i. e.* 24th June 1999 (P5d). By accepting the gratuity the 1st Respondent has accepted the termination of service and he cannot thereafter claim gratuity for the period he has served on contract. By the conduct of the 1st Respondent he is estopped from claiming any gratuity for the period he has served on contract.

The 1st Respondent by his letter dated 4.6.1999 (3R3) requested the Petitioner not to pay him his gratuity up to 21.05.1999 in view of the extension of services. The petitioner nevertheless paid his gratuity up to 21.05.1999. In any event in determining the continuity of service and to determine the obligation cast by law upon the employer under the Gratuity Act the acceptance of the gratuity will not have a bearing. In view of the fact : that the Petitioner was given an extension before the retirement date and he continued in service in the same capacity even after the said date of retirement, the salary that was offered during the extension indicates that the 1st respondent's annual increments were taken into consideration. This Court is of the view there is no break in service on the date of retirement. Therefore the 3rd Respondent has correctly decided that the 1st Respondent served the Petitioner's Company continually for a period of approximately 9 years until his services was terminated on 31.05.2002 by letter dated 20.05.2002 and therefore he is entitled for gratuity for the entire period of service. In these circumstances there is no reason for this court to interfere in the order dated 3rd June 2003 (P6) and therefore the Court dismisses this application without costs.

**EKANAYAKE, J.** – *I agree.*

*Application dismissed.*