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The Commanding Officer Vs. Rajendrakumar

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Court : Kerala

Decided On : Oct-07-2013

Judge : Hon'Ble the Chief Justice Dr. Manjula Chellur

Appellant : The Commanding Officer

Respondent : Rajendrakumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN MONDAY,THE7H DAY OF OCTOBER201315TH ASWINA, 1935 W.P.(C).No.12189 of 2012 (W) ---------- PETITIONER:- ---------- THE COMMANDING OFFICER, I.N.S.DRONACHARYA, KOCHI - 682 001. BY CENTRAL GOVERNMENT COUNSEL SRI.M.R.JAYAPRASAD. RESPONDENTS:- ---------- 1. RAJENDRAKUMAR, NO.1/1647, AMARAVATHY, KOCHI - 682 001, ERNAKULAM.

2. CONTROLLING AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT, 1972 AND THE ASSISTANT LABOUR COMMISSIONER (CENTRAL), KENDRIYA SHRAM SADAN, OOLIMUGHAL, KAKKANADU, ERNAKULAM, PIN - 682 030.

3. APPELATEAUTHORITY UNDER THE PAYMENT OF GRATUITY ACT, 1972 AND THE REGINAL LABOUR COMMISSIONER (CENTRAL), COCHIN,

KENDRIYASHRAM SADAN, KAKKANADU, ERNAKULAM, PIN - 682 030. R1 BY ADVS. SRI.A.JAYASANKAR SRI.MANU GOVIND SRI.ANIL VINCENT. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON0710-2013, ALONG WITH W.P.(C).Nos.12305/2012-K & 12304/2012-K, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:- W.P.(C).NO.12189 OF2012W APPENDIX PETITIONER'S EXHIBITS:- ---------- EXT. P1 TRUE COPY OF THE

ORDER
DATED2403-2011 OF THE CONTROLLING AUTHORITY, SECOND RESPONDENT . EXT. P2 TRUE COPY OF THE TRUE COPY OF THE

ORDER
DATED1702-2012 OF THE APPELLATEAUTHORITY,THE THIRD RESPONDENT. RESPONDENT'S EXHIBITS:- ---------- NIL. (TRUE COPY) K. Vinod Chandran, J.

---------- W.P.(C).Nos.12189 of 2012-W, 12305 of 2012-K & 12304 of 2012-K ---------- Dated this the 07th day of October, 2013

JUDGMENT
The Commanding Officer of INS Dronacharya, the common petitioner in the above writ petitions, challenge the respective orders passed by the 2nd and 3rd respondents, allowing gratuity by separate orders in the case of each of the 1st respondent in the writ petitions. Since there is a slight difference in the facts of W.P.(C).No.12304 of 2012, the same is considered separately.

2. The respective 1st respondent in W.P.(C).Nos.12189 of 2012 and 12305 of 2012 were employees in the Unit Run Canteens of the petitioner. When they were terminated from service, the said employees challenged the same before the Central Government Labour Court, Ernakulam and the Labour Court passed an award directing reinstatement of the workmen with continuity of service, full back wages and other attendant benefits. The petitioner challenged the same in O.P.No.23134 of 2000, wherein a learned Single Judge of this Court following the

WP(C).No.12189 of 2012 & - 2 - connected cases. judgment in Union of India v. M.Aslam [(2001) 1 SCC720, remoulded the relief to grant benefits as per the said judgment of the Supreme Court, so as to secure ends of justice. The said judgment in O.P.No.23134 of 2000 dated 23.12.2005 has become final.

3. Based on the above judgment, the respective 1st respondent-employees approached the Central Government Industrial Tribunal-cum-Labour Court with a claim petition, C.P.No.72 of 2006, under Section 33C(2) of the Industrial Disputes Act, 1947 (for brevity "I.D.Act"), and the same was granted. The petitioner-Management was again before this Court in W.P.(C). No.18753 of 2009 challenging the orders passed in the claim petition. A Division Bench of this Court, finding that the award itself had become final, since the earlier judgment was not challenged, refused to interfere with the order impugned. The writ petition, hence, was dismissed.

4. Since O.P.No.23134 of 2000 and W.P.(C).18753 of 2009 were relevant for consideration of the present writ petitions, I have called for the records of those cases and looked into it.

5. In the present case the claim made by the workmen referred to above was with respect to gratuity. One claimed to have resigned on 24.09.2009 and the other claimed to have retired on WP(C).No.12189 of 2012 & - 3 - connected cases. 30.04.2010. The said respondents, being A.S.Rajendrakumar and A.J.Cleetus, were party respondents in O.P.No.23134 of 2000 and W.P.(C).18753 of 2009. Hence, they were parties to the award of the Labour Court and also to the order in the claim petition. The contention raised by the petitioner-Management before the Authority under the Payment of Gratuity Act, 1972 (for brevity "Gratuity Act") was that their claim for gratuity can be considered only from the date of their reinstatement as per the award. The award had become final by virtue of the judgment of the learned Single Judge in O.P.No.23134 of 2000. As is revealed from the records in O.P.No.23134 of 2000, the award of the Labour Court is dated 01.02.2000 and was published in the Gazette of India dated 25.03.2000. The workmen referred to above are specifically mentioned in the award and it was directed that they would be reinstated with continuity of service, full back wages

and other attendant benefits. When back wages and continuity of service have been granted to the workmen and the said orders have been complied with by the petitioner-Management, it is not open for the Management to contend in the application for payment of gratuity that they should be considered for gratuity only from the date of reinstatement. WP(C).No.12189 of 2012 & - 4 - connected cases.

6. It is contended by the learned counsel for the respondent that Aslam's case (supra) has been reconsidered by the Supreme Court and the same has been found to be not correctly decided, in Civil Appeal No.3495 of 2005 decided on 28.04.2009. In the said circumstances, it is the contention of the petitioner-Management that the award cannot be enforced at least with respect to the payment of gratuity, since the same is a fresh cause of action. However, it is to be noticed that the award itself was passed on 01.02.2000 and the same was not based on Aslam's case (supra). In fact this Court, in a writ petition by the Management, had moulded the reliefs and added something more based on Aslam's case, in O.P.No.23134 of 2000. The finding of the Hon'ble Supreme Court that Aslam's case was not decided correctly, hence does not upset the findings in the award in any manner. In fact what has been granted by the award and also the modifications attempted by this Court have crystallized to the respondent-workmen therein. In such circumstance, the Management cannot contend that the payment of gratuity will be confined to the period from which the workmen were reinstated and continuity in employment cannot be counted for the purpose of gratuity. In that view of the matter, W.P.(C). Nos.12189 of 2005 and 12305 of 2012 are dismissed. WP(C).No.12189 of 2012 & - 5 - connected cases.

7. However, with respect to W.P.(C).No.12304 of 2012, the same stands on a slightly different footing. The 1st respondent therein (P.A.Sathyan) was never a party to any of the proceedings; as noticed above, either before the Labour Court at the time of passing of the award or the claim petition or before this Court in the subsequent writ petitions. The contention of the workman there, is that he had been appointed along with others who were terminated. His contention in fact was that he had been continued when the others were terminated and he had no occasion to seek reinstatement. He was also, however, given the benefit of Aslam's case (supra), which is not very relevant for consideration of the present

issue, which relates only to the payment of gratuity. Before the Authority under the Payment of Gratuity Act as also the Appellate Authority, the petitioner-Management merely denied the employment, however, did not state categorically as to the period of his employment; nor did they produce any evidence to show when the 1st respondent was appointed as a workman. The Appellate Authority specifically referred to the findings in the award which, as is noticed above, was available in the records of O.P.No.23134 of 2000. Exhibit M3 was the civilian staff monthly salary register maintained in the Unit Canteen from August 1997 to December, 1994 and Exhibit M3(a) was WP(C).No.12189 of 2012 & - 6 - connected cases. the register thereafter. It is specifically noticed by the Labour Court on going through the said Exhibits that as on 28.02.1992 besides the terminated workmen, there were 8 more employees. The workman in W.P.(C).No.12304 of 2012, Sri.P.A.Sathyan, is specifically named therein. In such circumstance, it cannot be said that the 1st respondent in W.P.(C).No.12304 of 2012 is not entitled to gratuity as has been claimed by the other respondents in the two writ petitions dismissed earlier. The factum of employment of the 1st respondent being evident from the records and the fact finding authority having come to a conclusion on the basis of the records, it is not proper for this Court to interfere with the same under Article 226 of the Constitution of India. Hence, W.P.(C).No.12304 of 2012 also stands dismissed. The writ petitions are dismissed. No costs. Sd/- K.Vinod Chandran Judge. vku/- (true copy)

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