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Court : Karnataka Dharwad

Decided On : Mar-05-2015

Judge : B.S. Patil

Appeal No. : W.P. No. 5919 of 2008 C/w. W.P. No. 5920 of 2008 (L-PG)

Appellant : Madhukar and Others

Respondent : The State of Karnataka, By its Secretary, Department of Rural and Urban Development and Others

Judgement :

(Prayer: W.P.No.5919/2008 is filed under Articles 226 and 227 of Constitution of India praying to quash the Circular/order dated 05.03.2005 issued by respondent No.1 vide Annexure-C and the order dated 23/25.02.2008 and order dated 23/25.2.2008 vide Annexures-E and F respectively passed by respondent No.2.

W.P.No.5920/2008 is filed under Articles 226 and 227 of Constitution of India praying to quash the order dated 23/25.2.2008 vide Annexure-A passed by respondent No.3 and Circular/order dated 05.03.2005 issued by respondent No.1 vide Annexure-B and etc.)

1. These two writ petitions are directed against the orders passed by the Deputy Labour Commissioner and Appellate Authority under Payment of Gratuity Act,

Belgaum in exercise of power under Section 7(7) of the Payment of Gratuity Act, 1972.

2. Petitioners were employed under the 3rd respondent Hubli-Dharwad Municipal Corporation. Petitioners 1 and 2 in W.P.No.5919/2008 have retired on 31.07.1994 and 30.06.2000 respectively. Petitioner in W.P.No.5920/2008 who is represented by his legal representatives had retired on 30.06.2000. It is necessary to notice that the said employee died on 29.03.2000 leaving behind petitioners 1 to 5 as his legal representatives.

3. Question that falls for consideration in this case is whether the petitioners are entitled for payment of gratuity in terms of the provisions contained in Payment of Gratuity Act, 1972. The Controlling Authority/Assistant Labour Commissioner before whom the claim was made by the employees held that as only part of the gratuity amount had been paid, the employees were entitled for the remaining amount of gratuity payable under the provisions of the Central Act and that the said amount shall be paid along with interest at 10% per annum from the date the amount became due and payable.

4. The respondent - Corporation took up the matter in appeal before the Deputy Labour Commissioner. The Corporation produced a notification dated 05.03.2005 whereunder in exercise of the power under Section 5 of Payment of Gratuity Act exemption was given to the provisions of the Central Act, 1972 having regard to the fact that employees of the respondent - Corporation had been extended benefit of gratuity and other retiral benefits on par with the State Government employees. Indeed, petitioners have also challenged this notification in these writ petitions. As a matter of fact, this notification was earlier challenged before this Court in W.P.No. 12182/2005. By order dated 22.06.2007, this Court disposed of the writ petition holding that as the matter was pending before the Appellate Authority, the notification had to be considered by the Appellate Authority.

5. Learned counsel for the petitioners submits that employees of Municipal Corporation are governed by Payment of Gratuity Act, 1972 and mere fact that pensionary benefits on par with State Government employees had been extended to the employees of the respondent - Corporation would not absolve the employer

of its obligation to pay the gratuity calculated in terms of the provisions of the Central Act. He has placed reliance on the judgment of the Apex Court in the case of MUNICIPAL CORPORATION OF DELHI Vs. DHARAM PRAKASH SHARMA and ANOTHER - 1999 (81) FLR 867. Learned counsel also points out that there was no valid notification issued in terms of Section 5 of the Central Act exempting application of the Central Act.

6. Learned counsel appearing for the respondents strongly supports the order passed by the Deputy Commissioner and the notification issued by the State Government exercising power under Section 5 of the Act.

7. Having heard the learned counsel for both parties, I find that admittedly petitioners were the employees of Hubli-Dharwad Municipal Corporation to whom benefit of Karnataka Civil Service (Pension) Rules have been made applicable with effect from 03.05.1991. In fact, State Government has extended such benefits to all the employees of the City Municipal Corporations coming within the jurisdiction of the State, whereupon these employees have been entitled for payment of gratuity, pension and other retiral benefits. It is not the case of the petitioners that benefits extended to the petitioners on par with the State Government employees are not favourable as compared to the amount of gratuity payable under the Central Act. Indeed, there cannot be any dispute that the retiral benefits including gratuity and pension payable to the State Government employees as extended to the employees of the City Municipal Corporations are beneficial compared to the amount of gratuity that is payable under the Payment of Gratuity Act, 1972. It is for this reason, the appropriate Government i.e., the State Government has issued the impugned notification exempting the Municipal Corporations and its employees from the operation of the Act. The notification issued, no doubt, has been brought into effect retrospectively from 01.01.1971. As per Sub-section (3) of Section 5 of Payment of Gratuity Act, 1972, a notification under Sub-sections (1) or (2) of Section 5 exempting any establishment from the operation of the Act could be issued retrospectively, but not so as to come into effect from the date earlier to the date of commencement of the Act to prejudicially affect the interests of any person.

8. In this case, some of the petitioners have retired in 1996 and some in 2000. Therefore, mere fact that the notification has been given retrospective effect from 01.01.1971, would not render it illegal being violative of Sub-section (3) of Section 5 so as to nullify the interests of the claimant, as long as it does not prejudicially affect the interests of the petitioners. Therefore, I do not find any substance in the contention urged by the petitioners in this regard.

9. Insofar as the judgment of the Apex Court referred to supra, the facts and circumstances in the said case reveal that there was no notification issued exempting the establishment in question from the operation of the Central Act. In such circumstances, the Apex Court has held that mere fact that pension rules made applicable to the employees of Delhi Municipal Corporation were favourable to the employees, wherein certain amount of gratuity was admissible, would not be a ground to exclude the operation of Central Act, in the absence of any exemption from the operation of the Central Act. In this case, operation of the Central Act has been exempted by issuing a notification. Hence, there is no justification for the learned counsel for the petitioners to place reliance on this judgment which is inapplicable to the present case.

For the reasons stated above, these writ petitions being devoid of merit are dismissed.

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