

S.S. Ambe Vs. Eskaylab Ltd.

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Court : Karnataka

Decided On : Sep-23-1987

Reported in : ILR1988KAR1979

Judge : Chandrakantaraj Urs and Navadgi, JJ.

Appeal No. : R.F.A. No. 416 of 1987

Appellant : S.S. Ambe

Respondent : Eskaylab Ltd.

Advocate for Def. : K.N. Srinivasan, Adv.

Advocate for Pet/Ap. : S. Krishnaiah, Adv.

Disposition : Appeal rejected

Judgement :

Chandrakantaraj Urs, J.

1. This is an appeal preferred by the unsuccessful plaintiff. It arises in the following circumstances:

The plaintiff was an employee of defendant-2 - Eskaylab Limited. He resigned from the employment on 30-4-1980 allegedly on account of some injury he suffered to his toes. He was paid a sum of Rs. 3,202-50 as gratuity under the Scheme

sponsored by the employer defendant-2, but the plaintiff refused to receive the same. The plaintiff learnt that other employees of defendant-2 had been paid more and, therefore, he entered into correspondence with defendant-2. He claimed that he was entitled to the maximum gratuity payable, namely, Rs. 30,000/- on account of his long service of 22 years which was unblemished. Not having received proper reply to his notice issued to defendant-2, he presented the suit.

2. The defendants through defendant-2 resisted the claim. It was contended by them that the Scheme governing the payment of gratuity to the plaintiff did not allow any amount other than what the employer in his discretion paid by way of gratuity. They admitted that they had paid Rs. 3,200-50 as gratuity to the plaintiff on his resignation which was declined by him. (However, it is noticed that the plaintiff restricted his claim to Rs. 26,797-50 after giving deduction to what the Company had offered to pay. But there was no separate prayer in the alternative that the amount offered to be paid at least should be decreed to be paid).

3. On such pleadings, the trial Court framed as many as five issues and they are as follows :

1. Whether the plaintiff proves that he is entitled to gratuity under Rule 6(iv) read with Rule 7(a) of the Scheme?

2. Whether the plaintiff is entitled to gratuity amount of Rs.26,797-50 ps?

3. Whether the plaintiff is entitled to interest? If so, at what rate?

4. Whether the defendant proves that the suit has not been valued properly?

5. To what amount?

4. (sic) issues 1, 2 and 3, the Court below found against the plaintiff. In the result the suit came to be dismissed.

5. We do not think it necessary to advert to all the evidence on record. The trial Court decided the question purely on the language of the Scheme which governed the service conditions of the plaintiff on the date of his resignation. The Scheme known as 'Employees' Group Gratuity Life Assurance Scheme' which was marked

as Exs.P-4 and P-5 corresponding to Exs.D-4 and D-5 marked by the defendants undisputedly and admittedly governs the case. Under Paragraph 6, the benefits of the Scheme are made available to employees who do not draw more than Rs. 1,000/- per mensem. Paragraph-7 provides for cases in which gratuity is not payable subject to the exceptions therein. We therefore, must determine whether the plaintiff was entitled to payment of gratuity in the sums claimed by him under the proviso to Clause (a) of Paragraph-7 of the Scheme as his salary was far above Rs. 1,000/- and therefore not covered by Paragraph-6 of the Scheme, if the determination by us is in favour of the plaintiff, then the Judgment and Decree of the trial Court has to be reversed and this Court has to decree the suit of the plaintiff.

6. Before us Mr. Krishnaiah learned Counsel for the appellant-plaintiff, has strenuously contended that there being no difference, as held by the Supreme Court between retirement and resignation, the plaintiff should have been awarded on proper application of the criteria or guidelines which the proviso to Clause (a) of Paragraph-7 contains and any exgratia payment made in the absolute discretion of the employer without having regard to the criteria or guidelines would be arbitrary exercise of the discretion and, therefore, violation of Article 14 of the Constitution, particularly when some of the employees who resigned or retired later than the plaintiff had been paid higher amount by way of gratuity which was admitted by the Company.

7. The case relied upon by the teamed Counsel for the appellant-plaintiff is the case of SUDHIR CHANDRA SARKAR v. TATA IRON AND STEEL CO. LTD. AND ORS., : (1984)11LLJ223SC in that case, the suit for recovery of gratuity amount due to plaintiff was decreed by the trial Court but was, however, set aside or reversed by the High Court of Patna. On appeal to the Supreme Court on special leave, the Supreme Court set aside the order of the High Court and restored that of the trial Court. The principle, according to us, on which the Supreme Court reversed the order of the High Court was that once the conditions of service which included payment of gratuity were incorporated into the Standing Orders, the relationship between the employer and the employee became of statutory conditions and, therefore, there would be no room for discrimination by the

employer. In the course of the order at Paragraph 12, it has been observed by the Supreme Court that retirement does mean no more than termination of service.

8. It was on account of that specific observation, the learned counsel contended that whatever be the reason for termination, so long as the same is not the result of dismissal for misconduct, the gratuity becomes payable to the employee.

9. The Supreme Court has held that retirement does no more than amount to termination in the context of severance of service or severance of master and servant relationship. It has not equated resignation with retirement. The two terms must be understood differently having regard to the context in which they are required to be interpreted. Resignation is a case where termination of the master and servant relationship is brought about by the exercise of the volition of the employee, whereas retirement, voluntary or otherwise, would depend upon the conditions of service providing for severance of status or relationship depending on the age upto which the employee is to serve the master or the number of years service after which he may seek voluntary retirement. A voluntary retirement in such circumstances does no more than amount to seeking the benefits of retirement before the age of superannuation is reached. But resignation is different. In that, the employee refuses to work any more for the particular employer and would not amount to seeking voluntary retirement. To understand this in the context of this case, it will be useful for as to extract Paragraph 7 in Ex.P-4, the Scheme which was in force on the date of resignation of the plaintiff.

'7. When Gratuity not payable.

Save as in Rule 6, the Company need not pay gratuity in the following circumstances:-

(a) in case of voluntary retirement before superannuation or resignation.

Provided that the Company may, in its absolute discretion, pay gratuity to any employee regardless of his salary in such amounts as it deems fit in each such case having regard to the length and quality of the service of the employee concerned to the Company and the circumstances in which the employee leaves

the Company's services, so, however, that the gratuity actually paid does not exceed 50% of a month's salary for each completed year of service or Rupees Thirty thousand, whichever is less.

(b) in case of dismissal for misconduct.'

10. From the language employed, it is clear that it disentitles a person from claiming gratuity as part of his contractual rights. Sub-clause (b) disentitles absolutely in the circumstances of dismissal for misconduct, while sub-clause (a) merely provides that people who voluntarily retire or resign will not be entitled to the gratuity subject to the exception stated in the proviso. That exception is, as it is apparent from the that people who voluntarily retire or resign will not be entitled to the gratuity subject to the exception stated in the proviso. That exception is, as is apparent from the language, that the Management in its discretion may pay gratuity though there is no contractual compulsion or obligation to pay. If they pay, then they must take into account the length of service, the quality of service and the manner of the severance of the relationship of employer and employee and determine the amount. Failure to determine the amount in that manner does not entail the Management with any penal consequences. Correspondingly nor does it give a legal right to the employee to enforce payment of gratuity in a particular sum having regard to the guidelines.

11. Guidelines are there only for the guidance of the particular officer who has to exercise the discretion on behalf of the Management and only when the Management decides to give gratuity. If it decides to give certain amount and discard the guidelines, the employee must be content that what has been decided is the amount of gratuity due.

We, therefore, find that on facts the ruling of the Supreme Court is not attracted with any vigour to the facts of the case.

12. It was at one time urged by Mr. Krishnaiah, learned Counsel for the plaintiff-appellant that he made the claim under the Payment of Gratuity Act. But this Court is unable to see any such plea though it was later pointed out to us that it was the stand of the Management that a sum of Rs. 3,202-50 was paid under the Payment

of Gratuity Act.

13. We have satisfied ourselves that there has been no plea that the plaintiff was entitled to any statutory relief in the matter of payment of gratuity. We, therefore do not find any infirmity in the Judgment and Decree of the lower Court and on facts and application of law is distinguishable from the decided case of Sudhir Chandra Sarkar supra. But we must, however, add that if the second defendant is still prepared to pay what he offered to pay, it is open to him to pay and it is equally open to the plaintiff to accept the same.

Appeal is rejected.

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