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**A. Siddaramaiah Vs. the Asst. Labour Commissioner and the Controlling Authority and anr.**

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**SooperKanoon Citation : [sooperkanoon.com/387708](http://sooperkanoon.com/387708)**

**Court : Karnataka**

**Decided On : Dec-13-2002**

**Reported in : ILR2003KAR5010; (2004)IILLJ175Kant**

**Judge : V. Gopala Gowda, J.**

**Acts : [Payment of Gratuity Act, 1972](#) - Sections 2(S), 4(2), 7 and 14**

**Appeal No. : W.P. No. 18133/2001**

**Appellant : A. Siddaramaiah**

**Respondent : The Asst. Labour Commissioner and the Controlling Authority and anr.**

**Advocate for Def. : Puttige R. Ramesh, Adv.**

**Advocate for Pet/Ap. : V.S. Naik and ;Manjula N. Kulkarni, Adv.**

**Disposition : Petition allowed**

**Judgement :**

**ORDER**

**Gopala gowda, J.**

1. The petitioner who was working as Driver in Kanakapura Depot, Karnataka State Road Transport Corporation (in short 'the Corporation') has filed this Writ Petition seeking for issuance of a writ of certiorari or order or direction quashing that portion of the order passed by the first respondent dated 6.6.2000 vide Annexure -D directing the Corporation to pay the balance amount of Rs. 4,628/- as against Rs. 38,669/-. Further the petitioner has sought for issuance of a writ of mandamus directing the second respondent to pay the aforesaid balance amount of gratuity urging various facts and legal contentions.

2. The case of the petitioner is that, he was appointed as Driver in the Kanakapura Depot of the Corporation which is under the jurisdiction of 2nd respondent on 13.11.1976 and retired from service on 31.12.1994 on attaining the age of superannuation after rendering service for a period of 18 years and one month. His basic pay was Rs. 2,325/- per month and was drawing Dearness Allowance of Rs. 2,132/- per month. In the Corporation, the Gratuity Scheme is framed in the settlement between it and workmen representatives for which its employees are entitled to the gratuity amount to be calculated at the rate of one month salary for every completed year of service.

3. It is the further case of petitioner that, after his retirement, the second respondent paid a sum of Rs. 41,656.25 to him, which according to him is less and is claiming an amount of Rs. 80,326/-. Aggrieved by the same, he has approached the Management Since the Management did not consider his claim, he filed a petition under Section 7 of the [Payment of Gratuity Act, 1972](#) (in short 'the Act') before the first respondent who passed an order on 6.6.2000 vide Annexure -D holding that petitioner is entitled to receive the balance amount of Rs. 4,628/- only towards gratuity. The contention of the petitioner is that, first respondent has calculated the gratuity amount at the rate of 15 days salary for every completed year of service whereas, the Scheme prevailing in the 2nd respondent Corporation and applicable to the petitioner is to be calculated at the rate of one month salary for every completed year of service. Therefore, the petitioner's counsel contends that the order passed by the first respondent is totally erroneous in law.

4. The learned Counsel for the petitioner has strongly placed reliance upon the memorandum of settlement dated 27th September 1981 which has come into force with effect from 1.1.1980 and Clause -7 of the said Settlement pertaining to payment of Gratuity to the employees of the Corporation. Clause -7(a),(b) and (c) of the said Settlement reads thus:

'Gratuity

(a) Gratuity shall be paid in accordance with the Gratuity Regulations or in accordance with the provisions of the Gratuity Act, 1972 whichever is beneficial to the employee.

(b) The quantum of gratuity shall be equal to one month's pay for each completed year of service. For incomplete period of final year of service, if any pro-rata contribution of gratuity shall be reckoned for completed months excluding part of the month if any. In the event of payment of gratuity to employees dismissed from service for misconduct, the Management may deduct from the gratuity payable, financial loss if any, caused to it on account of any such misconduct.

(c) Gratuity shall be paid on the basis of pay drawn on the date of any events stipulated in Clause (5) of Gratuity Regulations and the pay would include basic pay, personal pay and charge allowance consequent upon holding incharge of a higher post and not additional charge.'

5. The learned Counsel for the petitioner contended that, by a careful reading and interpretation of Sub-clause (a) and (b) of Clause 7 of the Settlement between the parties, the payment of gratuity by the Corporation to its employees is more than the gratuity amount specified under the provisions of the Payment of Gratuity Act. Therefore, the learned Counsel for the petitioner submits that, payment of gratuity under the settlement is more beneficial than the provisions of the Act. Therefore, the Corporation should have made calculation of gratuity amount payable to the petitioner under Clause-7 of the settlement. If there is inconsistency between Sub-clause (b) and (c) of Clause-7 of the Settlement then, in view of Section 14 of the Act which provision has got a overriding effect on other enactments or instruction or any contract having effect by virtue of any enactment other than this Act, the

more beneficial than Act must be extended in favour of the employee. Therefore, the learned Counsel for the petitioner submits that, the calculation made by the first respondent regarding the payment of gratuity amount to the employee is not in conformity with the provisions of the Act of 1972 and Clause 7 of the Settlement. Therefore, the petitioner has approached this Court as he is aggrieved of the impugned order, though the petitioner has got an alternative statutory remedy of appeal against the same passed by the first respondent under Sub-section (7) of Section 7 of the Act, as it is purely the question of interpretation of the provisions of the Payment of Gratuity Act and Clause 7 of the Settlement referred to supra and to find out the correctness of the impugned order.

6. This Court, after hearing the learned Counsel for the parties for the reasons recorded in its order dated 21.10.2002 directed the Corporation counsel to file the affidavit of the Managing Director having regard to the settlement dated 6.7.1977 instead of correctly mentioning the date as 27.9.1981 upon which much reliance is placed by the learned Counsel for the petitioner. Accordingly, the Managing Director of the Corporation has filed an affidavit explaining the mode of calculations made by the Corporation. It is stated that the calculation made by the Corporation under the provisions of the Act is more beneficial to the employee by giving illustration of its ex-employee at paragraph-9 of the affidavit and also stated at paragraph-6 with regard to Clause-7 (a)(b) and (c) of the Settlement. The calculation of the payment of gratuity amount to the petitioner is made on the basis of settlement dated 6.6.1977.

7. As could be seen from the memorandum of Bipartite settlement signed by the parties in Form-H dated 6.6.1977 which is replaced by the Corporation and the representatives of the workmen, another settlement dated 27.9.1981 with regard to various service conditions including payment of gratuity. The payment of gratuity under the above settlement has been given effect to from 1.1.1980 which is applicable to the fact situation of the present case also.

8. With regard to Clause 7 in the said settlement of 1981, nothing has been stated in the affidavit filed by the Managing Director, Therefore, illustration given at paragraph - 9 of Sri Basavaiah's case with reference to Clause - 7 of the

settlement is wholly inapplicable to the fact situation of the case on hand. The learned Counsel Mr. P.R. Ramesh placed strong reliance upon Clause - 7 of the settlement and the Circular No. 4/99 dated 30.4.1999 which have been applied for the purpose of determination of one month salary as specified under Clause 7(b) and (c) of the Settlement referred to above. Elaborating his submission, he has contended that, one month salary has been referred to in the Regulations with regard to basic salary but not with regard to DA, one month salary to be calculated payable towards the gratuity amount for each completed year of service has been clarified under Sub-clause (c) of Clause 7 of the settlement that pay drawn including the basic, personal pay and charge allowance but, the DA is not included. Either the salary or the wage is not defined under the Regulation or under the Settlement and the calculation of gratuity amount payable to the employees under the same and therefore, the learned Counsel would submit that the Corporation has not been following the mode of calculation specified under Clause (b) and (c) of Clause-7 of the settlement, but it has followed the calculation procedure under the provisions of the Act, regarding the payment of gratuity amount to eligible employees of the Corporation. Therefore, it is contended that the calculations made by the Controlling Authority in respect of the claim of the petitioner placing reliance upon the provisions of the Act is the correct mode of calculation which cannot be found fault with by this Court for the reason that, first respondent has accepted the calculations made by the Corporation after having satisfied that the mode of calculation is made regarding the payment of gratuity amount to the petitioner as provided under clause of settlement is less beneficial than the one provided under the Payment of Gratuity Act. Sri Ramesh, Counsel appearing for second respondent - Corporation submitted that there is no error in law in the impugned order passed by the first respondent which calls for interference by this Court and therefore, he has prayed for dismissal of the Writ Petition.

9. After hearing the learned Counsel for the parties, the correctness of the legal submissions made at the Bar is carefully examined, considered and answered the same with reference to the provisions of the PGA Act, settlement and the Circular by assigning the following reasons.

10. It is an undisputed fact that calculations regarding the payment of gratuity amount to the petitioner is made by respondent-Corporation with reference to Regulation and the provisions of the PGA Act and Circular No.4 of 99. It is an undisputed fact that there was Bipartite settlement dated 6.6.1977 between the Corporation and its workmen representatives regarding payment of gratuity amount as specified under Clause - 7, the same was replaced by another settlement dated 27.9.1981 on the basis of Charter of Demands submitted by the Mysore State Road Transport Employees Federation on 30.4.1980 regarding various conditions of service of its employees including payment of gratuity amount. The said Charter of demands of the workmen was the basis for joint negotiations held between the parties on different dates. Clause -7 of the settlement dated 6.6.1977 has been replaced by another settlement dated 27.9.1981 which has been given effect to from 1.4.1981. The said clause is already extracted in this judgment.

11. Section 4 of [Payment of Gratuity Act, 1972](#) provides for mode of calculation to be made for determination of the gratuity amount payable to eligible employees of the Corporation as provided under Section 4(2) of the Act, wherein it is stated that, for every completed year of service or part thereof in excess of six months the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned. First proviso of said Sub-section gives the mode of calculation to be made in respect of piece rated employee. If Clause-7(a) & (b) of the said Settlement are carefully read which are binding between the parties, which Sub-clauses of the settlement make it very clear that if the payment of gratuity is under the provisions of Payment of Gratuity Act or Regulations whichever is beneficial to an employee shall be paid to the employees of the Corporation. Sub-clause(b) of Clause 7 of the settlement specifies the quantum of Gratuity amount to the eligible employee is equal to one month pay. Sub-clause (c) of Clause 7 of the settlement further provides that gratuity shall be calculated on the date of any events stipulated in Clause (5) of the Regulations and the pay would include basic pay, personal pay and charge allowance. By a careful reading of the above clause of the Settlement as a whole, the payment of gratuity to the eligible employee of the Corporation under the above said Bipartite settlement is more beneficial than under the provisions of the

Act and Regulations. The said beneficial provision under the settlement is protected under Section 14 of the Act. Under Clause -7 Sub-Clause (a) of the Settlement, the quantum of gratuity payable to employee of the Corporation shall be one month pay for each completed year of service. Either salary or wage is not defined either under the Regulations or under the Settlement. Therefore, this Court has to borrow the definition provision of 'Wages' from the provisions of Section 2(s) of the Act for the reason that the benefit of the said provision is more beneficial to the employees than the quantification of amount specified either under Clause - 7 of the Memorandum of Settlement or the Regulations which beneficial provision of the Settlement shall be given to its employees. Certainly, by reading Clause -7(a) of the Memorandum of Settlement, the intentment of the parties to the Bipartite settlement is very clear and therefore the said clause of the settlement shall be read along with Section 14 of the Act, 1972 and more beneficial part of the settlement as well as the provisions of the Act shall be extended to the employees when the claim of gratuity amount has to be determined as the said interpretation would achieve the object and intentment of the provisions of Section 14 of the PGA Act. Though Payment of Gratuity Act has come into force with effect from 1972, the Management of Corporation and the employees Federation, after due negotiations on the Charter of demands have entered into settlement amicably with regard to various conditions of service including payment of gratuity amount to its eligible employees upon which the petitioner's counsel has rightly placed reliance in justification of the claim of the petitioner.

12. Clause-7 of the settlement has been explicitly made it very clear that between the provisions of Regulations and the Gratuity Act, the amount must be determined as per terms and conditions of Clause-7 of the settlement, Sub-clause (b) of the same specifies one month pay for each completed year of service payable to an employee. Sub-clause(c) of Clause-7 of the settlement further clarifies with regard to payment of gratuity shall be made by the Corporation on the basis of pay drawn on the date of any events stipulated under Clause 5 of the Gratuity Regulations and pay would include basic pay, personal pay and charge allowance, upon which strong reliance is placed by the counsel for Corporation contending that the component of DA is not part of one month pay for the purpose

of computation of one month's pay at the time of determining the gratuity amount due to an employee under the Settlement by the Corporation. The Calculation of gratuity amount due to the petitioner was made with reference to the provisions of the Gratuity Act, as the same is more beneficial than the settlement referred to supra. The illustration of its ex-employee has been given in the affidavit of the Managing Director of the Corporation at Paragraph-9 which has been accepted by the first respondent and therefore the learned Counsel has urged that it cannot be found fault with by the Corporation as the same is in conformity with Clause -7 of the Memorandum of Settlement. This legal argument of the learned Counsel for the Corporation is examined very carefully by this Court with reference to Clause - 7 of the Memorandum of Settlement and Section 14 of the Payment of Gratuity Act and definition Clause of wages under Section 2(s) of the Act keeping in view the overriding effect of the above provision of the Act, 1972. The settlement Clause - 7 is more beneficial than the provisions of the Act regarding the payment of gratuity amount to the employees of the corporation.

13. By reading the provision of Sub-clause (a) and (b) of Clause-7 of the settlement, it further makes it clear that the Corporation as a package deal has entered into the Bipartite memorandum of Settlement with its employees federation and it has agreed to pay the gratuity amount to its eligible employees more than the amount as specified under the provisions of Sub-section (2) of Section 4 of the Act, 1972. Sub-clause (b) of Clause 7 of the settlement has specified the amount of gratuity for one year of completed service one month pay. The quantum of gratuity payable to an employee is specified stating that it shall be equal to one month pay for each completed year of service which makes it very clear that in Sub-section (2) of Section 4 of the Act the quantum of payment of gratuity is only 15 days vide last drawn pay to the employee concerned because either under Sub-clause (b) or (c) of Clause-7 of the settlement the DA component is not mentioned for the purpose of calculation to be made of one month's pay and therefore the contention of the corporation's counsel that it need not consider for arriving at a figure of calculation of one month pay including the component D.A. amount payable to the employee for the reason that either the regulation nor the settlement of 1981 defines one month's pay. Under Payment of Gratuity Act, Section 2(s) clearly defines the wages which includes all emoluments which are

earned by an employee while on duty. Normally under the terms and conditions of employment, the allowances paid or payable in cash include DA, but it does not include bonus. In view of Section 14 of the Act in the absence of definition of one month's pay or wages either under the regulation or under the Settlement, the definition of wages shall be borrowed from the provisions of PGA Act having regard to the object, intentment and purpose of entering into settlement between the parties agreeing to pay more gratuity amount by the corporation to its employees more than the amount specified under Sub-section (2) of Section 4 of the Act. Therefore, the submission made by the learned Counsel on behalf of the Corporation that one month's pay does not include DA and therefore, the mode of calculation adopted by the Corporation as stated by the Managing Director in his affidavit that the provisions of gratuity under the regulations and Clause 7(b) and (c) of the Settlement the quantum of gratuity payable by the Corporation under the provisions of Sub-section (2) of Section 4 of the Payment of Gratuity Act is more beneficial is wholly untenable in law. For the reasons stated supra the contention of the learned Counsel for the Corporation cannot be accepted by this Court as the Corporation has entered into settlement with its employees agreeing to pay gratuity by replacing earlier Clause -7 of agreement dated 6.6.1977 extending more beneficial gratuity amount than the quantum specified under Sub-section (2) of Section 4 of the Act by agreeing to pay one months pay for each completed year of service to the eligible employees of the corporation, which include DA component by borrowing the definition of wages from the Act.

14. For the reasons stated supra, the petitioner must succeed. Accordingly, the petition is allowed. Rule issued and the Impugned order at Annexure-D dated 6.6.2000 is hereby quashed. The Corporation shall give effect to the terms and conditions of the Settlement of 1981 by following this judgment and make calculations regarding the determination of the gratuity amount to the employees of the Corporation and pay gratuity amount to them including the petitioner. The less paid gratuity amount shall be paid to him with in four weeks from the date of receipt of this order.