Nagar Palika Vs. Controlling Authority, Payment of Gratuity and ors.

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Court : Allahabad

Decided On : Jul-11-1988

Reported in : (1994)IIILLJ116All

Judge : Ravi S. Dhavan, J.

Acts : Payment of Gratuity Act, 1972 - Sections 8

Appeal No. : W.P. No. 14120 of 1987

Appellant : Nagar Palika

Respondent : Controlling Authority, Payment of Gratuity and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Markanday Katju, Adv.

Disposition : Petition dismissed

Judgement :

R.S. Dhavan, J.

1. The only question in the present writ petition is of the liability to pay interest to the retired employees, the respondents, on the gratuity which is payable under the Payment of Gratuity Act, 1972. There is no issue, in reference to the context that the respondents received the gratuity due to them, beyond the prescribed time.

The employees have claimed interest in accordance with Section 8 of the Act aforesaid. Thus, whether interest is payable is an issue raised in the writ petition.

2. The three employees are arrayed as respondent Nos. 2, 3 and 4. These are Messrs Mithualal, Din Dayal Mittal and Girja Prasad. Mithualal retired as a Sweeper (Safai Karmchari), Din Dayal Mittal retired as an Accounts Clerk and Girja Prasad retired as a Tax Superintendent. All were employed in the Nagar Palika, Khurja, the petitioner. As the issues arc common this Court will take up the matter of Mithualal.

3. The said respondent retired on February 28, 1981. He was paid the gratuity on March 30, 1981. He had to formally next apply and seek gratuity. The Nagar Palika as an employer raised an issue to the effect that it is not liable to pay gratuity to its employees upon retirement as the Act, aforesaid, does not in effect, apply to the local bodies like the Nagar Palika or the municipalities. On the application of the said respondent dated December 30, 1981 the amount of gratuity which was payable was determined as Rs. 2,580.30. The Nagar Palika, Khurja challenged the determination of this amount in appeal under Section 7(7) of the Act. The appellate authority did not agree with the Nagar Palika, as an employer, and upheld the order of determination by which gratuity was payable. In 1983 the Nagar Palika aforesaid filed a writ petition No. 7276 of 1983. The Nagar Palika applies for seeking an ad interim order, in effect, for staying the payment of gratuity. The stay order was granted on May 16, 1983. On February 8, 1984 the stay order granted was modified, to the effect, that gratuity as had been determined by the Controlling Authority would be deposited within a period of three months from the date of the order and half the amount was permitted to be withdrawn on furnishing security to the satisfaction of the Controlling Authority. In pursuance of the directions of the High Court by which the stay order was modified the amount of gratuity was deposited on May 7, 1984. The writ petition was dismissed on merits on February 21, 1986. This was Municipal Board, Khurja v. Appellate Authority and Ors., 1986 (53) F.L.R. 227. Along with this writ petition several others were also dismissed.

4. Now arises the question of the payment of compound interest at the rate of 9% per annum, as stipulated under Section 8 of the Act.

Section 8 is reproduced below:

'8 Recovery of Gratuity:-If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the collector, who shall recover the same, together with compound interest thereon at the rate of nine per cent per annum, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto'.

5. As already mentioned above the only issue raised by the petitioners in the present writ petition is that it is not liable to pay interest. The petitioner contends that the amount had been stayed by the interim order of the Court and subsequently it had to make a deposit before the Controlling Authority and at least half the amount could have been withdrawn by the employee. The petitioner, in effect, seeks a waiver of interest and by a writ of certiorari prays for quashing the order of March 4, 1987 whereby the Controlling Authority has not given any dispensation on the payment of interest which accrued on the gratuity. The other contention submitted before the Court is that the amount stayed in deposit with the Bank and had earned interest and the employee may have the interest which had accrued on the amount while it lay in deposit with the bank.

6. The action not to pay gratuity was one of the petitioner's making and it was an issue which failed. Thus, any action which the petitioner may have brought, and it proved unsuccessful, ought not to be at the disadvantage or inconvenience of the employee so as to render the intention and purpose of the Act, aforesaid, redundant. For delayed payment, in reference to the context, the employee is entitled to receive gratuity together with compound interest thereon at the rate of 9% per annum. For the purposes of this Act should an employer lay an action to stall the payment of gratuity and the action, ultimately fails, the employee is not to suffer on the hazards of litigation. The argument that the employee could have withdrawn half the amount but did not do so, is misconceived. The interim order

was sought by the employer. The withdrawal of the amount was upon the bond furnishing security. The employee elected not to withdraw the amount as furnishing security is a circumstance of distress.

7. Thus, effect has to be given to Section 8 of the Act, in its simplicity. When an employee becomes entitled to received gratuity and gratuity is not paid by the employer then the intention of the enactment is that it must be paid to the employee with compound interest at the rate of 9% per annum. It was not intended to involve an employee in a complicated calculation of interest which may have accrued at the bank for the period of an interim order during which gratuity was not paid to the employee. As Far as the employee is concerned it is delayed payment. Thus, an employee must receive the amount in accordance with the intention as expressed in Section 8. In so far as the employee is concerned the enactment must take its course in its simplicity that the payment of gratuity which has been stipulated and determined must be delivered with interest as stipulated in Section 8 of the Act aforesaid.

8. The liability of the petitioner as an employer in reference to the context, ceases in the case of respondent Mithualal and late Girja Prasad Saxena on October 14, 1986 and in the case of Din Dayal Mittal respondent No. 3 on September 18, 1986. Interest as stipulated in Section 8 of the Act aoresaid is to be paid to the aforesaid respondent calculated till the date of the payment of gratuity. One aspect may be mentioned that while the petitioner as an employer was disputing gratuity one of the employees who had retired and was awaiting payment of gratuity died. This employee was Girja Prasad Saxena, respondent No. 2 and his wife is the recipient of the amount under the aforesaid Act.

9. Gratuity has to be received by the respondent Nos. 2, 3 and 4 in the light of the observations made in this judgment. On the facts and circumstances which have been seen by this Court there is no occasion for this Court to interfere in its jurisdiction under Article 226 of the Constitution of India. The petition is thus dismissed.

10. A copy of this order may be given on payment of usual charges within 10 days.