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Court : Chennai

Decided On : Jul-18-2000

Reported in : (2001)ILLJ799Mad

Judge : R. Balasubramanian, J.

Acts : Industrial Disputes Act, 1947 - Sections 33C(2)

Appeal No. : W.P. No. 10267/1992

Appellant : Murugesan S.

Respondent : First Additional Labour Court and anr.

Advocate for Def. : V. Karthic, Adv.

Advocate for Pet/Ap. : D. Hariparanthaman, Adv.

Judgement :
ORDER

R. Balasubramanian, J.

1. The writ petitioner, who is no more and who is stated to have died pending writ petition, filed an application in C.P. No. 436 of 1989 under Section 33-C(2) of the Industrial Disputes Act before the Labour Court, Madras for computing the benefits due to him arising out of a scheme called Voluntary Retirement Scheme framed by

the respondent. That application was dismissed and the correctness of the said order is being challenged in this writ petition before this Court. In this order the parties to the proceedings would hereinafter be referred to as the workman and the company respectively as they are arrayed before the Labour Court. Heard the learned counsel on either side.

2. The case of the workman, as placed before the Labour Court, is that, he joined the services of the company on December 12, 1955 and retired on June 21, 1986 under Voluntary Retirement Scheme as a Clerk. The Scheme provides for, among other things, ex-gratia payment and souvenir on the basis of the service eligibility as per the Rules. For those, who have put in 30 years of service and above a larger benefit is granted to the workmen and for those, who have put in 25 years of service but less than 30 years of service, a lesser benefit is granted. Counting his service from December 12, 1955 and ending with June 21, 1986, the case of the workman is that, he had put in 30 years of service and therefore he is entitled to a larger payment under the head 'ex-gratia payment and souvenir'. The objection of the company is that the workman joined the services of the company only on July 2, 1956 and counting his period of service from that date till he retired voluntarily on June 21, 1986, his period of service will be lesser than 30 years by a few days, his claim on that head was settled on the basis of his having completed 25 years of service but below 30 years of service.

3. On the side of the workman, he examined himself as W.W. No. 1 before the Labour Court. He had marked two exhibits namely, W.Es. 1 and 2. On the side of the company, a Senior Executive was examined as M.W. 1 and as many as 10 exhibits namely, M.Es. 1 to 10 were marked. The Labour Court, on going through the oral evidence placed before it and also applying its mind to the documentary evidence, came to the conclusion that the workman had joined the services of the company only on July 2, 1956 as contended by the company. On that basis the Labour Court dismissed the claim petition, since admittedly the company had settled the claim of the workman on the basis of his having put in above 25 years of service and below 30 years of service. The only question that arises for consideration in this writ petition is whether the date of service of the workman from December 12, 1955 should be taken into account for the purpose of counting

his total years of service in the company or his date of entry into the company namely, July 2, 1956 should be taken into account for the very same purpose? It is better, I extract hereunder the relevant portion in the Voluntary Retirement Scheme as well as the Rule on which both the parties rely upon. The Voluntary Retirement Scheme had come into force on May 15, 1986 and it was to be in force till June 9, 1986. Paragraph 2.1 of the Scheme reads as follows:

2.1. The voluntary retirement scheme shall cover all workmen, viz., non-covenated staff. Lower Grade Employees drawing staff rates of Dearness Allowance and all other Lower Grade Employees borne on the regular rolls of the Establishment of Madras and sought Indian Branches/Branch Offices/Depots/Fertiliser Mixing Works/ Seed processing units of E.I.D. Parry (India) Limited.'

Paragraph 3.2 of the Scheme reads as follows:

'3.2. Ex-gratia payment and souvenirs on the basis of service eligibility as per rules.'

The Rule referred to in Paragraph 3.2 of the Scheme is found at Page No. 21 of the booklet and it is extracted hereunder:

'Ex-gratia Payment: This will remain at two months' Basic Pay and Dearness Allowance for those who have completed 30 years or more of service. However in the case of those employees with over 25 years of service but less than 30 years of service, it has been decided that we now allow one month's Basic Salary and Dearness Allowance as ex-gratia payment.

'In addition, it has been decided that all those retiring on account of superannuation at the end of the year should be invited for the tea party.'

4. Both Paragraph 3.2 of the Scheme as well as the Rule extracted above give importance to the 'service', which a workman had put in. Under the Rule referred to above, 30 years of service or more would put the workmen on a higher benefit, whereas any period of service by him for a period lesser than that, would put him on another basis, under which he will be entitled to a lesser amount. The word 'service' is not defined either in the Scheme or in the Rule itself. However the

argument of the learned counsel for the company is that, by reading Paragraph 2.1 of the Scheme it is clear that it covers only those workmen, who are on the regular rolls of the establishment and it excludes, though not expressly at least impliedly, those, who are only on casual status. Therefore the argument of the learned counsel for the company is that, assuming for a moment without admitting that the workman was in the employment of the company, yet on his own snowing, he was, working only on a casual basis from December 12, 1955 till July 2, 1956, on which date he was absorbed as a permanent employee. The learned counsel for the respondent heavily relies upon a seniority list prepared in the year 1986, which shows the entry point of the workman in the company as July 2, 1956. However the learned counsel for the petitioner would contend that the word 'service' is not defined in the Voluntary Retirement Scheme or in the Rule and there is no reason at all as to why the service put in by the workman from December 12, 1955 till July 2, 1956 should not be taken into account.

5. In the light of the arguments advanced by the learned counsel on either side, I perused the Scheme as well as the Rule referred to above. I also applied my mind carefully to the oral evidence placed by the parties concerned. Workmen Witness No. 1 would state that his temporary service for the period from December 12, 1955 to July 2, 1956 should be taken into account for calculating his total period of service. However W.W. No. 1 would assert in his evidence that only the services borne on the regular rolls of the establishment should be taken into account. Therefore there is oral assertion by one against the other. In the context of the oral assertion, this Court perused the entire materials available on record, which may help in solving the dispute between the parties. As rightly pointed out by the learned counsel for the petitioner, the word 'service' is not defined either in the Scheme or in the Rule itself. It is not possible to accept the contention of the learned counsel for the respondent that the Voluntary Retirement Scheme would only cover those people, who were on regular rolls of the establishment even at their inception. The Scheme itself had come into force on May 15, 1986. It will definitely apply to those, who are on the regular rolls of the establishment as on the date and not to any other person. It is not in dispute that the writ petitioner was on the regular rolls of the establishment of the company as on May 15, 1986 when the Scheme was introduced.

6. In the context of the above meaning that could be attributed to paragraph 2.1 of the Scheme, it is not possible to accept that all those persons, who were on a casual basis at the inception, should not be given the benefit of that temporary service while calculating the total number of years of service put in by the workmen. From a reading of the Voluntary Retirement Scheme, such a construction cannot be made. In this context the learned counsel for the petitioner brought to my notice two judgments of the Hon'ble Supreme Court of India namely, Gujarat Steel Tubes Ltd v. Gujarat Steel Tubes Mazdoor Sabha, : (1980)ILLJ137SC and Workmen of Williamson Magor & Co Ltd. v. Williamson Magor & Co. Ltd and Anr., : (1982)ILLJ33SC . In the first judgment, while dismissing that case, the Hon'ble Judges of the Supreme Court of India realising the difficulties of both the management as well as the workmen, went on to hold that it is a problem of humanist justice and that every proposal must be bottomed on the basic economic fact that the beneficiaries are from the many below the destitution line. The learned Judges further went on to state as follows:

'This Court has, in a very different context though has drawn attention to the Gandhian guideline: 'Whenever you are in doubt... apply the following test. Recall the face of the poorest and the weakest man whom you may, have seen, and ask yourself, if the step you contemplate is going to be of any use to him. It is apt here.'

In the second judgment, the learned Judges, referred to an earlier judgment of the Hon'ble Supreme Court of India reported in K. C. P. Employees Association, Madras v. Management of K.C.P. Limited, : (1978)ILLJ322SC . The relevant portion in that earlier decided case was extracted in the second referred to judgment. The portion extracted in that judgment is as follows:

'This Court in the case of K.C.P. Employees' Association, Madras v. Management of K. C. P. Limited, Madras and Ors. (supra), observed in : (1978)ILLJ322SC : '6. In Industrial Law, interpreted and applied in the perspective of Part IV of the Constitution, the benefit of reasonable doubt, on law and facts, if there be such doubt must go to the weaker section, labour. The Tribunal will dispose of the case making this compassionate approach but without over-stepping the proved facts.'

7. Having these two judgments in mind, I once again applied my mind to find out whether the dispute could be resolved either in favour of the workman or in favour of the company, purely on the construction of the terms of the Voluntary Retirement Scheme and the Rule referred to above. The word 'service' is not defined either in the Scheme or in the Rules. It is not possible to totally exclude, on the facts of this case, the temporary service put in by the workman from December 12, 1955 to July 2, 1956, while calculating his total service for the purpose of availing the benefits under the Voluntary Retirement Scheme. Even assuming there is a doubt as to which way the construction should go in view of the judgments referred to above, I am inclined to show the benefit of that doubt in favour of the workman. In this context I state hereunder that additional affidavit dated February 27, 2000 sworn to on behalf of the company is filed and it discloses that the workman had been paid a sum of Rs. 23, 532, to which he is not entitled to at all. In Paragraph 5 of that affidavit there is a tabular statement, which shows the details of payment to which the workman is entitled to. The learned counsel for the respondent would state that the company would be entitled to recover that amount by resorting to civil Court and in that event, the claim of the workman, being very negligible compared to the claim of the company against him, this Court will be in a position to refuse the relief that is likely to the granted to the writ petitioner. I am not inclined to accept this argument of the learned counsel for the respondent/company. If the company is entitled to recover be excess amount, it is always open to it to do so in accordance with law. Accordingly the order under challenge is set aside and C.P. No. 436 of 1989 is remitted back to the Labour Court for a limited purpose of quantifying the benefits due to the deceased workman under the Voluntary Retirement Scheme on the basis that the workman had put in 30 years of service. The Labour Court is directed to dispose of the remitted proceedings, after applying its mind to the fact that the workman had put in 30 years' of service, in any event not later than 60 days' from the date of receipt of the records as well as the copy of the order in this writ petition. This writ petition is allowed with no order as to costs.

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