

The Management Vs. the Controlling Authority

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Court : Chennai

Decided On : Feb-10-2011

Judge : K.Chandru, J.

Acts : [Payment of Gratuity Act, 1972](#) - Sections 7(7), 2A, 4(1), 14

Appeal No. : W.P.Nos.1258 and 26684 of 2004

Appellant : The Management

Respondent : The Controlling Authority

Advocate for Def. : Ms.R.Swarnalatha, Adv.

Advocate for Pet/Ap. : Mr.C.Prakasam, Adv.

Judgement :

COMMON ORDER

1. The 1st Writ Petition No.1258 of 2004 is filed by the management of the Cooperative Society seeking to challenge an order passed by the 1st respondent Controlling Authority in P.G.Case No.101 of 2002 dated 14.11.2003. By the aforesaid order, the 1st respondent computed the gratuity of a sum of Rs.1,09,163/- payable to the 2nd respondent workman. The petitioner did not file any appeal against the said order under Section 7(7) of the [Payment of Gratuity Act, 1972](#) to the appellate authority but has rushed to this Court contending that they have has no other alternate remedy. This statement made by the petitioner

society is clearly erroneous and not supported by law.

2. The Writ Petition was admitted on 29.1.2004. Pending the Writ Petition, this Court directed the petitioner society to pay 50% of the terminal benefits within four weeks. Subsequently on 9.11.2004, it was brought to the notice of this Court that the petitioner did not comply with the said order and hence the application for interim relief was dismissed recording the same.

3. During the pendency of the Writ Petition, the 2nd respondent filed W.P.No.26684 of 2004 seeking for a direction to pay the gratuity computed by the Gratuity Authority in PGA No.101 of 2002 dated 14.11.2003. That Writ Petition was admitted on 20.1.2004. Since the said Writ Petition is connected with the earlier Writ Petition, they were tagged together and heard.

4. Heard the arguments of Mr.C.Prakasam, learned counsel for the petitioner management, Mr.R.Murali, learned Government Advocate taking notice for the Controlling Authority under the [Payment of Gratuity Act, 1972](#) cum Assistant Commissioner of Labour, Salem and Mrs.R.Swarnalatha, learned counsel for the workman.

4. It is seen from the records that the employee was terminated from service. He raised a dispute before the Labour Court in I.D.No.4 of 1992, which was originally filed as I.D.NO.279 of 1983 and subsequently transferred to the Labour Court, Salem and was renumbered as 4/92. The Labour Court held that the employee's non-employment was not justified and directed reinstatement with 50% of the backwages. As against the said order, the management of the society filed a Writ Petition before this Court in W.P.No.11630 of 1995. In the meanwhile, as the award was not implemented, the workman filed a Claim Statement in C.P.No.261 of 1995 claiming the backwages payable under the Award. In the meanwhile, when the Writ Petition came up for hearing, the matter was compromised and a settlement was filed before this Court on 11.8.1997. The said settlement was marked before the Controlling Authority as Ex.A.9. In their settlement, it was recorded that the management had reinstated the workman by a Resolution dated 6.8.1997 to give effect to the award and he has also been reinstated on 15.8.1997. The management also agreed to pay Rs.75,000/- towards backwages till

reinstatement. But, subsequently, in the joint memo filed, it was agreed that all the disputes have been settled by the compromise memo and the management agreed to pay another Rs.75,000/- in three equal installments once in 4 months as a full and final settlement and that he has already been reinstated to work till his superannuation. In that view of the matter, Industrial Dispute, Claim Petition and the Writ Petition came to be disposed of by this court recording the joint memo of compromise.

5. Subsequently, the employee worked in the Society till his superannuation on 31.5.1999. Thereafter, when he claimed gratuity and the same was not paid, he moved the authority for a claim for gratuity for the period from 4.9.1967 to 31.5.1999 for a period of 32 years.

6. The authority took the Gratuity Application as P.G.Case No.101 of 2002 and issued notice to the management. The management in their counter statement stated that the workman was initially dismissed for misappropriation and subsequently the Labour Court had set aside the termination order and when the matter was challenged in a Writ Petition, the matter was compromised between the parties. Since the employee was dismissed on the ground of misappropriation, his claim for gratuity was not legally valid. Before the Controlling Authority, 11 documents were filed on the side of the employee and he examined himself as P.W.1. On the side of the petitioner society, one Thangamani was examined as R.W.1 and four documents were filed and marked as Ex.R.1 to R.4. The authority on an analysis of all the evidence both oral and documentary came to the conclusion that the employee had worked for 32 years and his last drawn salary was Rs.5913/-. The authority also referred to the Writ Petition filed by the employee before this Court in W.P.No.688 of 2000 claiming terminal benefits and that Writ Petition came to be allowed by this Court on 4.4.2000 and in that order, this Court directed the society to settle all the terminal benefits within 12 weeks, failing which interest will accrue to the employee. Subsequently the management filed an application treating the said order as ex parte order. But, however, this Court in the clarification application filed by the management in W.P.M.P.No.29996 of 2000 on 21.1.2001 held that the earlier order was passed on merits and it was a misdemeanor to treat it as ex parte order and the

management was directed to comply with the order within three months. This proceedings were also marked before the authority as Ex.A.10. Therefore, the authority found that the terminal benefits of the employee was not settled and the earlier joint memo of compromise could not have been intended to exclude gratuity component because subsequent to the memo of compromise, the employee was restored to service and after few years of service, he retired from service. Hence, it could not have been the intention of the authorities to settle only few benefits.

7. In the counter statement filed before the authority, a copy of which has been furnished by Mr.C.Prakasam, it is seen that the stand of the management is reflected in paragraph 8, which is as follows: "The applicant has been reinstated in service by the management and he has been paid wages on par with other employees. The applicant has not been ordered to be treated that 'he should be deemed to be in service' for his non-working period in the respondent/bank. The un-employment period/non-working period of the applicant in the respondent/bank has been treated as the period without any wages."

8. Therefore, if the stand of the management has to be correctly understood, they were only pleading that the past service of the workman could not be accounted as there was no order treating them as 'deemed continuous service'. Such an argument cannot be accepted. A perusal of the definition 'continuous service' provided under Section 2A of the [Payment of Gratuity Act, 1972](#) will include even an uninterrupted service as set out in the said provision. In the present case, the joint memo of compromise filed before this Court only settles the claim of the workman with reference to his non-employment as reflected in the Award made in I.D.No.4 of 1992 and C.P.No.261 of 1995 as well as the Writ Petition. The fact that they paid the extra amount did not indicate that it was intended to include gratuity upto that period because he was reinstated with the service continuity as seen from the statement made in the counter statement. Even otherwise so long as the gratuity has not been paid as per the provisions of law, in view of the contingency falling under Section 4(1) of the [Payment of Gratuity Act, 1972](#), any private arrangement cannot be pressed into service, as such a private arrangement will be hit by Section 14 of the [Payment of Gratuity Act, 1972](#). The Act only attracts the favourable terms of gratuity and not denial of gratuity altogether.

9. The Supreme Court recently in Allahabad Bank and another vs. All India Allahabad Bank Retired Employees Association reported in (2010) 2 SCC 44 has held as follows: "14. A plain reading of the provisions referred to hereinabove makes it abundantly clear that there is no escape from payment of gratuity under the provisions of the Act unless the establishment is granted exemption from the operation of the provisions of the Act by the appropriate Government.

19. Gratuity payable to an employee on the termination of his employment after rendering continuous service for not less than 5 years and on superannuation or retirement or resignation, etc., being a statutory right cannot be taken away except in accordance with the provisions of the Act whereunder an exemption from such payment may be granted only by the appropriate Government under Section 5 of the Act which itself is a conditional power. No exemption could be granted by any Government unless it is established that the employees are in receipt of gratuity or pension benefits which are more favourable than the benefits conferred under the Act."

10. In the light of the same, this Court does not find any infirmity in the order passed by the authority and hence the Writ Petition No.1258 of 2004 stands dismissed not only on merits but also on the ground that the petitioner did not file any appeal as statutorily provided therein. The petitioner society is hereby directed to comply with the order passed by the authority in P.G.Case No.101 of 2002 dated 14.11.2003 within a period of eight weeks from the date of receipt of a copy of this order without driving the workman any further setting the law in motion. The fact that the employee has filed W.P.No.26684 of 2004 seeking for a direction to make payment. In the light of the same, this direction is issued.

11. In view of the above, W.P.No.1258 of 2004 stands dismissed. W.P.No.26684 of 2004 stands disposed of with the above direction. However, parties are allowed to bear their own costs.