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The Commissioner Vs. the Appellate Authority and ors.

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Court : Chennai

Decided On : Feb-15-2011

Judge : K.Chandru, J.

Acts : Payment of Gratuity Act - Section 14

Appeal No. : W.P.Nos.20530 to 20534 of 2005 and WPMP.Nos.22422,22424,22426,22428 and 22430 of 2005

Appellant : The Commissioner

Respondent : The Appellate Authority and ors.

Advocate for Def. : Mr.R.Murali, Adv.

Advocate for Pet/Ap. : Mr.P.Srinivasa, Adv.

Judgement :
O R D E R

1. The petitioner is the Erode Municipality, represented by its Commissioner. They filed these 5 writ petitions, challenging the order of the Appellate Authority under the Payment of Gratuity Act, in P.G.A.Nos.14 to 18 of 2000 and P.G.A.Nos.22 to 26 of 2000. The Appellate Authority, namely, the first respondent by his common order dated 21.01.2002 confirmed the order of the second respondent Controlling Authority made in various gratuity applications.

2. The writ petitions were admitted on 23.06.2005. Pending the writ petitions, this Court granted an interim stay on the finding that the entire amount as awarded are in deposit with the second respondent.

3. The only contention raised by the petitioner Municipality was that since the contesting respondents (R3) have been paid pension and DCRG, they are not eligible for any further amount separately as gratuity. Both the authorities R1 and R2 have committed error in computing the gratuity.

4. The grounds raised by the petitioner in these writ petitions are no longer res integra. It is an admitted case that the petitioner Municipality do not enjoy any exemption under Section 5 of the Act and mere payment of pension and DCRG will not take away the right of the employee to receive gratuity.

5. It is necessary to refer to Section 14 of the Payment of Gratuity Act, which is as follows:- "14.Act to override other enactments, etc.- The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."

6. The Supreme Court in Katheeja Bai v. Superintending Engineer reported in (1984) 3 SCC 518 rejected a similar contention when the employer attempted to state that a Special Contribution of PF would be equated to pension and therefore, there was no necessity to pay gratuity. In paragraph 7, it was observed as follows:- "7. Dr Chitale invited our attention to Section 14 of the Payment of Gratuity Act, 1972 which provides, The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act. He argued that the provision for Special Contribution under Regulation 37 was inconsistent with the provisions of the Payment of Gratuity Act and therefore the latter should prevail to the exclusion of the former. This argument is dependent on the assumption that the Special Contribution under Regulation 37 is the same thing as the gratuity contemplated by the Payment of Gratuity Act. We have held that it is not and the argument, therefore, fails."

7. Very recently, the Supreme Court in Allahabad Bank and another v. All India Allahabad Bank Retired Employees Assn. reported in (2010) 2 SCC 44, had rejected a similar contention. In Paragraph 36 and 38, it was observed as follows:-

"36. The appellant being an establishment is under the statutory obligation to pay gratuity as provided for under Section 4 of the Act which is required to be read along with Section 14 of the Act which says that the provisions of the Act shall have effect notwithstanding anything inconsistent therein contained in any enactment or in any instrument or contract having effect by virtue of any enactment other than this Act. The provisions of the Act prevail over all other enactments or instruments or contracts so far as the payment of gratuity is concerned. The right to receive gratuity under the provisions of the Act cannot be defeated by any instrument or contract.

37. There is no material placed before us that the employees while opting for the pension scheme at the time of their superannuation /retirement either expressly or impliedly waived their statutory right to claim payment of gratuity under the provisions of the Act. In the circumstances we find no merit in the submission made by the learned counsel for the appellant in this regard. For the aforesaid reasons we find no merit in the appeal. 2010 2 SCC had rejected a similar contention."

8. In the light of the above, all the writ petition will stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed. In view of the dismissal of the writ petitions, there is no impediment for the third respondent in all the writ petitions to withdraw the amount lying in deposit with the second respondent.

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