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Court : Chennai

Decided On : Mar-16-2012

Judge : K.Chandru, J.

Acts : [Constitution of India](#) - Article 226; Payment of Gratuity Act - Section 7(7), 14, 4(5)

Appeal No. : W.P.(MD)No.11896 of 2008 W.P.(MD)No.11897 of 2008
W.P.(MD)No.11898 of 2008

Appellant : Venugopal

Respondent : The Joint Commissioner of Labour.

Advocate for Pet/Ap. : Mr.D.Shanmugaraja Sethupathi, Adv.

Judgement :

These three writ petitions have been preferred under Article 226 of the [Constitution of India](#) praying for the issue of a writ of certiorarified mandamus to call for the records pertaining to the P.G.A.I.A.Nos.17,16 and 18 of 2006 dated 25.6.2007 respectively by the appellate authority under the Payment of Gratuity Act (Joint Commissioner of Labour), Madurai and quash the same and to further direct the respondent to pay Rs.1,40,450/-, Rs.77,380/- with interest to the first two writ petitioners and to pay interest to the third writ petitioner as per the order made in P.G.Case Nos.18, 20 and 19 of 2004, dated 3.4.2006 respectively by the Authority under the Payment of Gratuity Act.

COMMON ORDER

1. The three writ petitions were filed by three employees of the second respondent Management. In these three writ petitions, the challenge is to the order passed by the first respondent viz., Joint Commissioner of Labour cum the Appellate Authority under the Payment of Gratuity Act made in PGA Nos.17/2006, 16/2006 and 18/2006 respectively.
2. By the impugned order, the first respondent allowed the appeal filed by the second respondent Management and set aside the order passed by the Controlling Authority viz., the Assistant Commissioner of Labour in P.G.Case Nos.18/2004, 20/2004 and 19/2004.
3. The writ petitions were admitted on 22.12.2008. On notice, the second respondent is represented by counsel.
4. It is seen from the records that the second respondent is having its own scheme for Voluntary Retirement. According to the scheme, those who retired from service, they can get benefit of gratuity for 45 months of salary. This scheme was modified from 01.05.2002 in its 92nd General Body Meeting held on 11.04.2002. The petitioners submitted applications seeking for voluntary retirement from service and they were relieved from service on 30.04.2002. As per Resolution No.3(2), the petitioners are entitled to gratuity of 45 months of salary along with other retirement benefits. But however, they were only paid limited amount and did not paid full gratuity as agreed to in the General Body Meeting. Hence, the petitioners made an application for gratuity before the Controlling Authority under the Payment of Gratuity Act.
5. The applications were registered and assigned different P.G.A.numbers as noted above and notice was issued to the second respondent Management. The second respondent Management stated that the petitioners applied for voluntary retirement from service on 17.04.2002, 25.04.2002 and 27.04.2002 respectively and they were paid part of the gratuity amount and due to paucity of funds the petitioners agreed to receive the balance as and when their financial position improves. They have also availed loan towards purchase of household articles by

availing credit facilities from the State Bank of India and since the amounts were not paid, the amounts were adjusted for the balance payment towards the bank loan. The petitioners had also filed a suit before the District Munsif Court at Kumbakonam, which was also subsequently not pressed and hence dismissed. The Controlling Authority by its order dated 03.04.2006 allowed their appeal and held that the general body resolution made in the 92nd meeting is fully applicable to the petitioners and therefore, they are entitled for 45 months salary as gratuity and also ordered interest to be paid on the said amount.

6. Aggrieved by the said order, the second respondent filed appeal before the first respondent under Section 7(7) of the Payment of Gratuity Act. It was contended by them that the authority under the Gratuity Act has no power to enforce a private scheme framed for voluntary retirement benefit. Since they have already paid the gratuity due, the question of payment of interest on the unpaid amount does not arise. Registering the appeals with various numbers as noted above, the authority issued notice to the petitioners. The petitioners also filed counter statement dated Nil (December 2006). In the counter statement, it was stated that the authority has jurisdiction to enforce a private scheme of gratuity.

7. The first respondent after hearing both sides passed separate orders dated 25.06.2007 and held that the authority under the Gratuity Act has no jurisdiction to enforce a private scheme of gratuity. Reliance was placed on the judgment of the Gujarat High Court in Gujarat State Export Corporation Ltd., v. Madhusudan L.Khandwala and another reported in 2004-II LLJ 389. In that view of the matter, he set aside the order passed by the Controlling Authority.

8. Though the learned counsel for the petitioners contended that Section 14 of the Gratuity Act has overriding effect over other scheme of gratuity and that the authority can enforce even private terms of gratuity, Mr.P.Chandra Bose, learned counsel for the first respondent contended that the Act do not contemplate any such power with the authority to enforce private scheme of gratuity.

9. The learned counsel for the second respondent relied on the judgment of the Kerala High Court reported in (1999) II LLJ 1351 Ker [Ayyappan v. Joint Commissioner]. Reliance was placed on paragraphs 3 and 4, which is as follows:-

3.A reading of the entire provisions of Section 4 makes it clear that gratuity payable under the Act is limited to 15 days wages for every completed year and an employee can claim gratuity from the employer if he is entitled for better terms in accordance with any other better provisions of conditions of service. Therefore, the gratuity in terms of Clause 9 of Ext.Government order providing for one month's wages for every completed year is not the gratuity payable under the Act.

4.Section 7 of the Act enables an employee to approach the controlling authority for determination of the amount towards gratuity. Section 7 can be invoked only by a person who is eligible for payment of gratuity under this Act. The gratuity claimed by the petitioner is not under this Act but under Ext.P2. Under the Act the petitioner is entitled only to the rate as mentioned in Sub-section 2 of Section 4. The amount granted in Ext.P4 is equal to that rate. Therefore, limiting of the gratuity payable to the petitioner under the Act to 15 days' wages for every completed year as contained in Ext.P4 is justified though on a different ground. On that basis, the petitioner cannot challenge the quantum of gratuity directed to be paid in Ext.P4. Therefore, Ext P4 to that extent alone is upheld. But the finding that Ext.P2 is not applicable to the petitioner is set aside and left open.

10. He further relied on the judgment of the Calcutta High Court reported in 1982 (II LLJ 324 [Eastern Coal Fields Ltd., v. Regional Labour Commissioner]. In paragraph 6, it was observed as follows:-

6. ...It also appears to me the Payment of Gratuity Act in a beneficial legislation intended to give benefits to the employees and the provisions of the Act should be construed liberally in a way so that the beneficial intention is not frustrated by any strict and narrow interpretation but the benefit under the Act reaches the maximum possible employees. In my view, the provisions of Section 4(5) of the act has authorised the Controlling Authority to grant a higher quantum than quantum of gratuity under the Act in view of favourable conditions of service, although in the absence of such favourable conditions, such higher quantum could not have been decided by the Controlling Authority. In my view, it will not be proper construction in keeping with the beneficial purpose of the legislation, that although under Section 4(5) of the Act an employee may be entitled to a higher payment of

gratuity but for enforcing such favourable terms of service for higher gratuity, he should move a different forum and the authority under the Gratuity Act cannot entertain such claim of higher amount of gratuity. In the facts of the case, it does not appear that the Tribunals below have acted beyond the jurisdiction and/or have made adjudications not warranted in law. Hence no interference is called for in the constitutional writ jurisdiction and the writ petition is dismissed without any order as to costs.

11. The learned counsel also referred to the judgment of the Gujarat High Court reported in 2004 (II) LLJ 389 Gujarat State Export Corporation Ltd., v. Madhusudan L.Khandwala, which was relied on by the Appellate Authority and referred to the following passage found in paragraph 12:- 12.In considered opinion of this Court, the benefits, to the extent of the same are flowing from the provisions of the Gratuity act, the Authority under the Act has power to adjudicate for the same. But if benefits sought for are arising from settlement or private scheme, the same cannot be agitated before the Authority under the Act.

12. A reference was also made to another judgment of the Gujarat High Court in Gujarat State Road Transport Corporation v. Chandrakant Tapubhai Vyas reported in 2004-III LLJ 86. In paragraph 6, it was observed as follows:- 6. ...it appears that the jurisdiction of the controlling authority would be attracted only if there is statutory liability to pay the amount of gratuity, and there is non-payment by the employer concerned.

13. He further referred to another judgment of the Kerala High Court reported in 2003 (99) FLR 154 [Thomas Kurian v. Idukki District Co-operative Bank Ltd and others] for contending that once maximum gratuity is paid as per the Act, there is no further scope for deciding the matter by the authorities. Reliance was placed on paragraph 5, which is as follows:- 5. ...The Controlling Authority constituted under the Gratuity Act is incompetent to consider the legality or propriety of exhibit P-1 circular as he does not have any authority or jurisdiction to consider the same. When the right to get the maximum amount of gratuity under the Gratuity Act is not disputed by the bank, the Controlling Authority has no jurisdiction in adjudicating the dispute regarding the excess amount paid to the employee.

14. Lastly, the learned counsel referred to the judgment of the Supreme Court reported in (2010) 2 SCC 44 [Allahabad Bank and another v. All India Allahabad Bank Retired Employees Association]. and relied on the following passage found in paragraph 44:-

44. ... The Act nowhere confers any jurisdiction upon the Controlling Authority to deal with any issue under sub-section (5) of Section 4 as to whether the terms of gratuity payable under any award or agreement or contract is more beneficial to employees than the one provided for payment of gratuity under the Act. This Court's order could not have conferred any such jurisdiction upon the Controlling Authority to decide any matter under sub-section (5) of Section 4, since Parliament in its wisdom had chosen to confer such jurisdiction only upon the appropriate Government and that too for the purposes of considering to grant exemption from the operation of the provisions of the Act.

15. In the light of these legal precedents and the factual matrix involved in the writ petition, the order passed by the first respondent does not call for any interference. Accordingly, all the three writ petitions will stand dismissed. However, there shall be no order as to costs.

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