

(2009) 02 MAD CK 0057

In the Madras High Court

Case No : Writ Petition No. 6746 of 1999

A.M. Sampath

APPELLANT

Vs

Bank of Baroda

RESPONDENT

Date of Decision : 02-02-2009

Acts Referred:

Bank of Baroda Officers Service Regulations, 1979 — Regulation 46
Constitution of India, 1950 — Article 14
Payment of Gratuity Act, 1972 — Section 14, 4(2)

Citation : (2009) 121 FLR 698 : (2009) 3 LLJ 555 : (2009) 4 MLJ 160

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : C.R. Chandrasekar, for the Appellant; Bhiman, Sampathkumar, Associates for (R1) and P. Gurunathan, GA for (R2), for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The petitioner is seeking to challenge the order of the second respondent, appellate authority under the Payment of

Gratuity Act (constituted by the Central Government) made in G.A. No. 52/98 dated 31.12.1998 and seeks for a direction to the first respondent

to pay the amount of Rs. 60,197/- as ordered by the Controlling Authority under the PG Act made in G.A. No. 25/97 dated 16.3.1998 together

with interest at the rate of 10% per annum from the date it became payable, viz., 19.9.1996 till the date of payment.

2. The writ petition was admitted on 19.4.1999. On notice from this Court, a counter affidavit dated 13.7.1999 has been filed by the first respondent.

3. It is seen from the records that the petitioner was an employee of the first respondent bank and was appointed even before the bank was

nationalised. He was appointed on 02.4.1962. He got retired from service in the cadre of middle management scale III Officer on 31.4.1964 on attaining the age of superannuation of 60 years. He had put in 32 years of service. He was paid a sum of Rs. 1,65,100/- being 15 months salary towards gratuity. It was calculated on the basis of his average basic salary payable during the twelve months preceding his retirement and also an additional gratuity in terms of Chapter 10.4 of the Bank of Baroda Service Conditions of Officers as on 31.12.1969 at the rate of 6 months pay and allowances drawn by him immediately prior to his retirement as an Officer. This payment was made as per the scheme enunciated by the Bank of Baroda Gratuity Fund which was constituted as a Trust.

4. It was claimed that Regulation 46 of the Bank of Baroda Officers Service Regulations, 1979 dealt with the scheme of payment of gratuity to officer employees. As per the said scheme, an officer employee was given an option on 01.7.1979 either to accept the pattern of extra gratuity at the rate of half a month's pay for each completed year of service beyond thirty years or to continue the present system of payment of an additional amount equivalent to 6 month's pay and allowance immediately prior to his retirement. The petitioner had opted for the present system as per the service conditions laid down under Chapter 10.4 as of 31.4.1969. The petitioner was paid the initial gratuity of Rs. 1,65,100/- on the basis of the pay which was revised with retrospective effect from 01.7.1973 and he was also paid the arrears of pay and allowance consequent upon the revision.

5. There was also a joint note of conclusion arrived at and minutes were recorded on 23.6.1995 between the Federation of the first respondent bank, viz., Indian Banks' Association on the one hand and the Officers' Organisation on the other hand. Later the Board of Directors of the first respondent bank adopted certain amendments to the Service Regulations, 1979 on 19.9.1996 in consultation with the RBI and with the previous sanction of the Government of India. It was due to these amendments, the pay and allowances were revised with effect from 01.7.1993. But nevertheless the petitioner was not paid gratuity arrears on the basis of the revision of pay effected from 01.7.1993.

6. Therefore he filed an application before the controlling authority under the

Gratuity Act claiming the balance of gratuity. The controlling authority after hearing the parties came to a conclusion that the petitioner was entitled to get a gratuity of a sum of Rs. 2,25,297/-. After giving credit to the amount of Rs. 1,65,100/-, it was held that the petitioner was entitled to get the balance of Rs. 60,197/-. The petitioner's Gratuity Application No. 25/97 thus came to be allowed by an order dated 16.3.1998.

7. The first respondent bank aggrieved by the said order filed an appeal before the second respondent appellate authority. The appellate authority after notice to the petitioner and after hearing the parties allowed the appeal vide Gratuity Appeal No. 52/98 and by order dated 31.12.1998 set aside the order passed by the Controlling Authority. The appellate authority held that the memorandum of understanding between the IBA and the Officers Federation came to be made on 01.11.1994 whereas the petitioner got retired even five months earlier on 31.5.1994. Therefore, in view of the MoU providing for gratuity payment on the revised pay only with effect from 01.11.1994, he was not eligible for the extra amount as claimed by him.

8. Mr. C.R. Chandrasekaran, learned Counsel for the petitioner submitted that the order of the appellate authority impugned in the writ petition is contrary to the provisions of the Payment of Gratuity Act. The authority failed to take note of the overriding effect of Section 14 of the PG Act over the Industrial Labour Understanding dated 26.3.1995. The authority also failed to note that the scales of pay of the officers were amended on 19.12.1996 with retrospective effect from 01.7.1993 and the petitioner was also paid the arrears of pay with effect from 01.7.1993. He also submitted that it cannot be the legal position that the employees who have been drawing same salary as on 01.7.1993 getting different gratuity on the basis of their dates of retirement.

9. Mr. Bhiman, learned Counsel for the first respondent bank placed reliance upon the counter affidavit and referred to paragraphs 5 and 6, which are as follows:

5. ... There is a valid and reasonable basis for the purpose of calculation of gratuity pursuant to the MOU, namely Gratuity shall be calculated on the basis of revised salary for those who retire on or after 01.11.1994. The MOU itself has not been challenged before the proper Forum till this

date. When that is the position, to come forward with a case without making full representation of circumstances smacks of unfair attempts to

derive a material gain beyond the scope of accepted and established rules.

6. The averment that the cut-off date under the MoU is violative is simplistic. Such a classification pursuant to consultation with all the interested

parties cannot but be reasonable. Moreover, the MOU itself has not been challenged before this Hon"ble Court in this W.P.

10. The learned Counsel for the petitioner Mr. C.R. Chandrasekar, drew the attention of this Court to the judgment of the Karnataka High Court

in Y.R. Shenoy v. Syndicate Bank and Ors. reported in 2003-II-LLJ 977, wherein the High Court set aside the memorandum of understanding in

respect of the Syndicate Bank excluding the employees who retired from 01.7.1993 to 31.10.1994 from having benefit out of the pay revision to

be taken into account for the purpose of gratuity. The learned Counsel relied upon the following passages found in paragraphs 12 and 13, which

are as follows:

Para 12. Therefore, gratuity is a statutory right to be earned by long and continuous service, which is payable as a retiral benefit, a definite sum as

lumpsum payment on retirement. It is a right if accrued cannot be taken away by agreement between the parties. Amount payable is also definite,

by agreement between the parties it cannot be reduced, but it could be enhanced.

Para 13. Re. Point No. (ii). The joint note entered into between the management and the officers' union is binding on the parties. However, if the

term of the agreement is inconsistent with the provisions of the Payment of Gratuity Act, 1972 such a term of the agreement has no effect. Even

otherwise the consideration or object of an agreement is of such a nature that if permitted it would defeat the provisions of any law the said term of

the agreement would be unlawful, void ab-initio and unenforceable. When the gratuity payable to an employee is statutory right which he has

earned by long and continuous service, thus when once it is accrued, by agreement of the parties what is accrued cannot be deprived. Merely

because an employee had the benefit of the other provisions of the agreement that does not estop the employee from challenging that portion of the

agreement which is unlawful, void ab-initio. If the said offending portion of the

agreement could be separated without nullifying the entire agreement

it is permissible to challenge that portion of the agreement which is unlawful. Therefore, it is open to the petitioners who had the benefit of the

remaining portion of the agreement to challenge that portion of the agreement which deprives them of a statutory right which has accrued to them

by their long continuous service.

11. The learned Counsel also brought to the notice of this court, a Division Bench decision of the Kerala High Court which dealt with the similar

issue in respect of the Syndicate Bank in the case relating to Syndicate Bank and Ors. v. Celine Thomas and Ors. reported in 2006-II-LLJ 413.

He referred to the following passages found in paragraphs 7, 13 and 14:

Para 7. Memorandum of Understanding cannot meddle with the statutory prescriptions. Nobody can agree by way of a settlement at the behest of

an organisation taking away the benefit conferred on individuals by way of statutes or statutory rules. There need not have any authority to

substantiate this. Statutory prescriptions crystallize the rights in favour of the subjects of that statute. It cannot be varied to their disadvantage unless

otherwise by amendment to the statute.

Para 13. ... No nexus is pointed out for bringing any classification between those who retired between April 1, 1992 and October 31, 1994 and

those who retired between November 1, 1994 and June 23, 1995. Both these artificial groups of retirees had retired from service prior to the date

of arriving at the Memorandum of Understanding, but after the date of retrospectivity to the MoU. They therefore form themselves into one class

as all of them retired later than the giving effect to the pay revision by the Memorandum of Understanding. When persons forming same class are

treated differently it violates Article 14 of the Constitution denying them equal protection of law and equality before law. Denial of gratuity to the

writ petitioners is therefore discriminatory. Consequently, on that reason alone, we have to sustain the view taken by the learned Single Judge.

Para 14. Consequently, W.A. No. 1584 of 2002 stands dismissed and O.P. No. 23514 of 1998 stands allowed with consequential direction to

pay the respective employees the amount of gratuity payable based on the revised pay as entitled to them.

12. It will not be out of place to refer to a judgment of a Division Bench of this

Court, to which I am a party (K. Chandru, J.), in P. Selvaraj v.

Management of Shardlow India Ltd. Chennai reported in 2007 (1) LLN 835. The following passage with reference to the effect of the term "last

drawn wage" found in the Gratuity Act may be extracted:

Para 35. ... The Gratuity Act is a beneficial piece of legislation and it should receive an interpretation consistent with the principles of equity and fair

play. Therefore, the term ""last drawn wage"" found in Section 4(2) of the Gratuity Act should receive its full meaning and it cannot give any

fractured interpretation. Further, the settlement provides as to what should be the wages that should be paid to a workman and that the

management cannot adopt an artificial interpretation with reference to the term ""wages"". It is in this context, the term ""wages"" which is defined

under the Gratuity Act, must include not only what is paid but also what is payable to a workman.

13. In the light of the above binding precedents and the factual matrix involved in this case, the order passed by the second respondent appellate

authority is liable to be set aside. Accordingly, the writ petition stands allowed. The order of the second respondent in G.A. 52 of 1998 dated

31.12.1998 stands set aside and the first respondent is hereby directed to pay the petitioner a sum of Rs. 60,197/- as ordered by the controlling

authority vide order dated 16.3.1998 in G.A. No. 25 of 1997 together with interest at the rate of 10% with effect from 19.9.1996 till the date of

the payment. This order shall be complied with within a period of eight weeks from the date of receipt of a copy of this order. There will be no

order as to costs.