(2016) 03 AHC CK 0025

In the Allahabad High Court

Case No : Civil Misc. Writ Petition A No. 14161 of 2012

Awadesh Kumar Rai & Another — APPELLANT

Vs

Registrar, U.P. Co-operative Societies & Other — RESPONDENT

Date of Decision : 28-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 4(2)

Citation : (2016) 4 ADJ 465 : (2016) 3 AllWC 3061 : (2016) 2 CLR 97 : (2016) 149 FLR 634 : (2016) 3 LLN 32

Hon'ble Judges : Tarun Agarwala;Mukhtar Ahmad, JJ.

Bench : Division Bench

Advocate : C.S.C, R.P.S. Kushwaha, Shiv Nath Singh and Saryam Singh, Advocates, for the Respondent

Final Decision : Allowed

Judgement

1. We have heard Sri Devendra Pratap Singh, the learned counsel for the petitioners and Sri Satyam Singh, the holding brief of Sri Shiv Nath Singh, the learned counsel for the respondents no. 2 and 3. The petitioner no. 1 retired on 30.06.2008 upon reaching the age of superannuation as Deputy General Manager in District Cooperative Bank Ltd., Ghazipur. The petitioner no. 2 retired on 31st January, 2009 upon reaching the age of superannuation as Deputy General Manager from District Co-operative Bank Ltd. Pilibhit.

2. The petitioner no. 1 received an amount of Rs. 4,48,239/- towards gratuity on 15th September, 2009. The petitioner no. 2 received a sum of Rs. 4,98,986/- towards gratuity on 29th July, 2009. Both the petitioners filed separate representations with regard to the calculation of gratuity, which was considered and the difference of amount was paid to petitioner no. 1 vide cheque dated 18.05.2010 and the petitioner no. 2 was paid vide cheque dated 5th May, 2010.

3. The petitioners contend that the calculation of gratuity by the respondents was wrongly calculated, which was not in accordance with the procedure prescribed

under the Payment of Gratuity Act, 1972 (hereinafter referred to as the Act) and further interest, as provided under Section 7 (3-A) of the Gratuity Act, has also not been paid on the initial amount or on the revised amount and therefore, a writ of mandamus should be issued directing the respondents to pay the difference of gratuity amount as per calculation provided under Section 4 (2) of the Payment of Gratuity Act as well as interest as per Section 7 (3)-A of the said Act.

4. Para-13 of the counter affidavit reveals that the petitioners were to be paid gratuity as per Rule 67 of the Co-operative Banks Centralised Service Rules, 1976 (hereinafter referred to as the Rules of 1976). In para-9 of the counter affidavit, the respondents contend that the gratuity amount is required to be disbursed as per the provisions of Co-Operative Banks Centralized Service Group Gratuity-Cum-Life Assurance Scheme (hereinafter referred to as the Assurance Scheme). In Para-20 of the counter affidavit, the respondents contend that calculation of the salary can not be worked out on 26 working days, since no such rules are provided.

5. In the light of the aforesaid, we have heard the learned counsel for the parties and we find that the services of the petitioners are governed by the CoOperative Bank Centralised Service Rules, 1976, which have been framed in exercise of power conferred by Section 122 of the U.P. Co-Operative Societies Act, 1965. Rule 67 provides for payment of gratuity. For facility, the said provisions is extracted here-under:-

"Gratuity:

67. A member of the service shall be granted gratuity equivalent to 15 Days salary for every completed year of service subject to a maximum of 20 months salary (part of year if less than six months, to be ignored), if he has attained the age of retirement or has resigned or been declared invalid for service by Chief Medical Officer or has been retrenched or dies while he is in service.

Provided that a member shall be illegible for gratuity only if he has put in at least 5 years of continuous service immediately preceding resignation, retrenchment, invalidation or death. In case of death, gratuity shall be payable to the nominee of the member and in the absence of nomination to his legal heir:

Provided further that-

(a) the gratuity of a member whose services have been terminated for any act of wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the bank in which he is working or may have worked, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to a member shall be wholly forfeited-

(i) If the services of such member have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) If the services of such member have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

6. A perusal of Rule 67 indicates that a member of the service shall be granted gratuity equivalent to 15 days salary for every completed year of service subject to a maximum of 20 months salary, if he has attained the age of retirement.

7. Section 4 of the Payment of Gratuity Act 1972 provides that the gratuity would be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation. Explanation to Section 4(2) provides that in the case of monthly rated employee, fifteen days'' wages for every year of service would be calculated by dividing the monthly rate of wages, last drawn by him by twenty-six and multiplying the quotient by fifteen. For facility, the Section 4 (2) of the Payment of Gratuity Act, 1972 and the explanation is extracted here-under:-

"4. Payment of gratuity.- (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,--

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

[Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.]

Explanation.--For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days'' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of [an employee who is employed in a seasonal establishment and who is not so employed throughout the year], the employer shall pay the gratuity at the rate of seven days'' wages for each season.

[Explanation.--In the case of a monthly rated employee, the fifteen days'' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.]"

8. At this stage, Section 4-A of the Payment of Gratuity Act, 1972 provides compulsory insurance to be provided by every employer towards his liability for payment towards gratuity under this Act. Based on the provisions of Section 4-A of the Act, the Co-operative Banks Centralised Service Group Gratuity-Cum-Life Assurance Scheme was framed which according to the respondents is applicable upon the petitioners'' services and the gratuity amount is required to be disbursed under the scheme.

9. The respondents have relied upon the provision of clause 8 of the scheme. For facility, the said provisions as well as appendix-1 is extracted here-under:-

"Section IV

Benefits of Survival to superannuation date:

Upon a Member''s retirement at Superannuation Date there shall become payable to the Trustees, for the benefit of the Member an amount equal to 15 days salary as on the Annual Renewal Date last preceding the Superannuation Date multiplied by the total number of years of service completed by the member, subject to a maximum of 20 months Salary.

The Trustees shall pay the benefits to the Member in accordance with the provisions of Appendix (I).

Members who have not rendered 5 years service shall not be entitled to any benefits hereunder. The Assurances effected in respect of such members would be surrendered by the Trustees and the Surrender Value credited to Sur1-10plus Account."

APPENDIX (I)

Contingency on the Happening of which Benefits become payable

BENEFITS

(1) After the member has rendered service of not less than 5 years upon his retirement on or after Superannuation.

(2) Upon the member becoming disabled due to accident or discease whilest in service (rendering the employee incapable of performing work which he was capable of performing before the accident or disease resulting in such disablement)

15 days'' salary of the Member as on the date of retirement for each year of service subject to a maximum of 20 month''s salary.

15 days Salary of the member as on the date of disablement for each year of service subject to a maximum of 20 month''s Salary

(3) In the event of the death of the member before Superannuation Date whilest in the service of the Employer.

(a) In respect of a Member who is declared to be insurable and for 1-10 whom life cover has been granted:

15 days'' Salary of the member as on the Annual Renewal Date last preceding the date of death for each year of his anticipated service upto the Superannuation Date but for his earlier death subject to a maximum of 20 month''s Salary.

PROVIDED THAT the benefits payable hereunder shall not be less than the benefits in paragraph (c) below:

NOTE---" Anticipated Service" shall mean the Service which the member would have completed had the be member lived upon his Superannuation Date.

(b) In respect of a member who is declared to be insurable on the Entry Date and/or Annual Renewal date but uninsurable on subsequent Annual Renewal Dates.

(i) Sum for which the Member''s life was assured by the Corporation under Term Assurance on the date death of the Member and

(ii) The value of Assurance under pure Indowment,

PROVIDED THAT the total benefits payable vide (i) and (ii) above shall not be less than the benefits in paragraph (c) below;

(c) In respect of a Member who is declared to be uninsurable on the Entry Date and Annnual Renewal Date.

15 day''s salary of the Members on the date of death for each year of service upto the date of death subject to maximum of 20 month''s salary.

(4) After the member has rendered service for not less than 5 years Upon his termination or resignation from service of the employer prior to Superannuation Date.

15 day''s salary of the member as the date leaving service for each year of Service subject to a maximum of 20 month''s salary."

10. A perusal of this provision indicates that upon a member''s retirement, the gratuity shall become payable which should be equal to 15 days salary as provided in Appendix-1. The method of calculation of 15 days salary is, however, not given under clause-8 or in Appendix-1 to this Assurance Scheme.

11. Clause 17 of this Assurance Scheme provides that if anything contained in the Rules is in contravention of the provisions of Payment of Gratuity Act 1972 or the Rules framed thereunder, the provisions of the said Act and Rules would prevail, meaning thereby, if there is conflict between the Assurance Scheme framed under Section 4-A of the Payment of Gratuity Act, in which case the provisions of Payment of Gratuity Act 1972 or the Rules framed thereunder would prevail over the Assurance Scheme.

12. There is no method of calculation provided under Rule 67 of the 1976 Rules or under the Assurance Scheme which have been framed under Section 4-A of the Payment of Gratuity Act. The method of calculation of 15 days salary has been provided in the Explanation to Section 4 (2) of the Payment of Gratuity Act.

13. In our opinion, this provision will prevail and the calculation has to be made by the respondents as per the Explanation to Section 4 (2) of the Payment of Gratuity Act which provides that wages for every year of service would be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

14. The contention that there is no rule which provides calculation of salary of 26 working days is misconceived inasmuch as the authority respondents have not considered the Explanation to Section 4(2) of the Payment of Gratuity Act 1972 which is applicable to the petitioners'' case.

15. In the light of the aforesaid, we are of the opinion that the calculation of the gratuity is required to be done by the respondents considering Rule 67 of the 1976 Rules and Clause-8 of the Assurance Scheme read with Clause-17 and Section 4 (2) to the Explanation of the Payment of Gratuity Act.

16. We also find that the petitioners retired on 30.06.2008 and 31st January, 2009, respectively whereas the gratuity was paid to the petitioner no. 1 on 15th September, 2009 and to the petitioner no. 2 on 29th July, 2009, respectively. The difference was subsequently paid to the petitioner no. 1 on 18.05.2010 and to the petitioner no. 2 on 05.05.2010.

17. Admittedly, no interest was paid. Interest is required to be paid under Section 7(3-A) of the Payment of Gratuity Act 1972. For facility, the said provisions is extracted hereunder:-

"7(3-A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground."

18. Accordingly, we are of the opinion that the interest is required to be paid to the petitioners by the respondents.

19. In the light of the aforesaid, the writ petition is allowed. A writ of mandamus is issued directing the respondents to re-calculate the gratuity as per the Explanation to Section 4 (2) of the Payment of Gratuity Act and also pay the interest as per Section 7 (3-A) of the said Act. The said exercise shall be carried out within six weeks from the date of presentation of a certified copy of this order.

20. No order as to costs.

