(2020) 09 DEL CK 0074

In the Delhi High Court

Case No : Civil Writ Petition No. 3147 Of 2020, Civil Miscellaneous No. 20958 Of 2020

B. S. Rawat APPELLANT

Vs

Shyam Lal College And Anr RESPONDENT

Date of Decision : 14-09-2020

Acts Referred:
Constitution Of India, 1950 — Article 14
Payment Of Gratuity Act, 1972 — Section 2(e), 4, 4(1)(b), 4(5), 5, 7(3A), 14

Citation : (2020) 09 DEL CK 0074

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Sidhant Tripathi, Mohinder J.S. Rupal, Hardik Rupal

Final Decision : Disposed Of

Judgement

V. Kameswar Rao, J

1. This petition has been filed by the petitioner with the following prayers:

"In the premises aforesaid, it is most humbly prayed that this Hon'ble Court may be pleased to issue:-

(a) Writ of mandamus in the nature of direction to respondents to provide 'Gratuity' along with interest of 12% p.a.

(b) A 'Duplicate service book' to petitioner.

(c) A writ of Mandamus commanding the respondents to pay the cost of this petition to the petitioner.

(d) Any other writ, order or direction, which may be deemed fit and proper on the facts and circumstances of the case."

2. It is the case of the petitioner so contended by him that he joined respondent no.1 / College on March 6, 2002 as a Laboratory Attendant. On January 7, 2008,

upon tendering resignation, the petitioner was relieved from the services of respondent no.1 / College. The petitioner was only given GPF as terminal benefit. It is his case that gratuity with interest was denied to him. Between December, 2008 to June, 2009 the petitioner had requested the respondents for gratuity and duplicate service book. The request for gratuity was however refused. In so far as the service book is concerned, he was given a photocopy of the same. Between 2010 and 2020, the petitioner has been making representations to the authorities to pay him the gratuity and also provide him with the duplicate service book. Even the legal notices sent to the respondents have not been replied to. He submitted that in terms of the provisions of the Payment of Gratuity Act, 1972 (Act of 1972) the petitioner is entitled to gratuity even on resignation. He contended that the stand of the University in terms of the Statute 28A of the Statutes, which states that an employee is only entitled to gratuity on retirement / death is totally untenable. According to him, in terms of Section 4 of the Act of 1972, which clearly stipulates payment of gratuity on resignation, provided that, an employee has completed 5 years of service, he is entitled to the benefit. According to him, gratuity is not a bounty, but rather a statutory right of the petitioner and as such the petitioner cannot be denied the said benefit. In support of his submissions, petitioner has relied upon the following Judgments:

i. Som Prakash Rekhi vs. Union of India (1981)1 SCC 449

ii. Sudhir Chandra Sarkar vs. Tata Iron and Steel Co. Ltd (1984) 3 SCC 369

iii. Allahabad Bank & Ors. vs. All India Allahabad Bank Retired Employees Association & Ors (2010) 2 SCC 44

iv. Rajasthan State Road Transport Corporation Ltd. vs. Smt. Mohani Devi C.A. No. 2236/2020 decided on April 15, 2020 by the Supreme Court

v. The Punjab Water Supply and Sewerage Board vs. Smt. Kamla Sharma and Anr. LPA No. 351/2009 (O&M) decided on August 30, 2010 by the Punjab and Haryana High Court

vi. Jagdish Prasad Sharma vs. State of Rajasthan and Ors. WP(C) 1634/2008 decided on February 17, 2009 by the Rajasthan High Court

3. On the other hand, learned counsel appearing for respondent no.1 College would submit that the petitioner is not entitled to gratuity. His submission after drawing my attention to the counter-affidavit filed by the College is that on various occasions, the petitioner has been proceeded against for certain misconducts. He submitted, the charges against the petitioner were very serious and the benefit of gratuity cannot be given to such a person. He conceded to the fact that the petitioner had tendered his resignation which has been accepted by the respondent no.1 / College, which itself according to him was done to evade consequences of his misconduct. That apart, he also stated that a copy of the service book has already been given to the petitioner.

4. Mr. Mohinder J.S. Rupal, learned counsel appearing for the respondent no.2 / University made similar submissions and also stated that in terms of the Statute 28A of the Statutes, which contemplates Gratuity can be given only in the case of retirement or death of an employee, which is not the case herein and on resignation, the employee forfeits the past service, the petitioner is not entitled to the benefit as sought for.

5. In rejoinder submission, the petitioner had relied upon the Judgment of the Coordinate Bench of this Court in the case of University of Delhi v. Ram Prakash and Ors. 2015 SCC Online Del 8634 to contend that this Court has settled the law inasmuch as Section 14 of the Act of 1972 shall override the provisions of the Delhi University Act, 1922 including statutes made thereunder and in fact the request of the University for grant of exemption from the applicability of the provisions of the Act of 1972 was even rejected by the Ministry of Labour, Government of India on January 21, 2015. In other words, it is his submission that the Act of 1972 being applicable, the employee even having resigned shall not forfeit the service rendered by him and shall be entitled to the gratuity.

6. Having heard the petitioner and the learned counsel for the parties, the only issue which arises for consideration is whether the petitioner is entitled to the gratuity even if the petitioner has resigned. At this stage, I may reproduce the relevant portion of the Appendix A to Statute 28A of the Statues framed under the Delhi University Act, 1922 as relied upon by the respondent as under:

"18. (i) In addition to the pension/gratuity as provided in the foregoing provisions of Appendix 'A' to Statute 28-A an employee who has completed five years of qualifying service at the University may be granted an additional (Death-cum-Retirement) Gratuity in accordance with the scale indicated in Clause 19. This gratuity shall be payable on his retirement from the service of the University. In the event of his demise, the gratuity shall be payable to the nominee of the deceased in the manner prescribed"

7. The plea as made by the counsel for the respondents is that the petitioner on resignation has forfeited his past service between the year 2002-2008. The plea of respondents is appealing on a first blush that petitioner having tendered resignation, shall not be entitled to gratuity, but on a deeper consideration the fact that the Act of 1972 which holds the field with regard to Gratuity and Section 14, thereof which is reproduced in Para 8 below clearly stipulates, that the same shall have an overriding effect over other enactments etc. The said enactments surely would include the Delhi University Act 1922 and the Statutes made thereunder. There is no dispute in terms of Section 4 of the Act of 1972, an employee shall be entitled to gratuity even if he had resigned. So, payment of Gratuity being not a bar, on resignation, the resignation has to be read as part of the Statute 28A under Gratuity. So, it follows that an employee shall be entitled to gratuity on resignation and he shall not forfeit his service as put in by him in that organization. It goes without saying this is subject to the employee fulfilling the other requirements as contemplated. In fact, I find that the aforesaid

position of law is no more res integra inasmuch as the Supreme Court in the case of Allahabad Bank v. All India Allahabad Bank Retired Employees Association (2010) 2 SCC 44 in Para 14, 31 and 32 has stated as under:

"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.

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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 enactment or instrument or contract 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."

(emphasis supplied)

8. In fact in Y.K. Singla v. Punjab National Bank (2013) 3 SCC 472, the Supreme Court in Para 22 has stated as under:

"22. In order to determine which of the two provisions (the Gratuity Act, or the 1995, Regulations) would be applicable for determining the claim of the appellant, it is also essential to refer to Section 14 of the Gratuity Act, which is being extracted hereunder

"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."

A perusal of Section 14 leaves no room for any doubt that a superior status has been vested in the provisions of the Gratuity Act vis-à-vis any other enactment (including any other instrument or contract) inconsistent therewith. Therefore, insofar as the entitlement of an employee to gratuity is concerned, it is apparent that in cases where gratuity of an employee is not regulated under the provisions of the Gratuity Act, the legislature having vested superiority to the provisions of the Gratuity Act over all other provisions/enactments (including any instrument or contract having the force of law), the provisions of the Gratuity Act cannot be ignored. The term "instrument" and the phrase "instrument or contract having the force of law" shall most definitely be deemed to include the 1995 Regulations, which regulate the payment of gratuity to the appellant.

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24. Furthermore, from the mandate of Section 14 of the Gratuity Act, it is imperative to further conclude, that the provisions of the Gratuity Act would have overriding effect, with reference to any inconsistency therewith in any other provision or instrument. Thus viewed, even if the provisions of the 1995, Regulations, had debarred payment of interest on account of delayed payment of gratuity, the same would have been inconsequential. The benefit of interest enuring to an employee, as has been contemplated under section 7(3A) of the Gratuity Act, cannot be denied to an employee, whose gratuity is regulated by some provision/instrument other than the Gratuity Act. This is so because, the terms of payment of gratuity under the alternative instrument has to ensure better terms, than the ones provided under the Gratuity Act. The effect would be the same, when the concerned provision is silent on the issue. This is so, because the instant situation is not worse than the one discussed above, where there is a provision expressly debarring payment of interest in the manner contemplated under Section 7(3A) of the Gratuity Act. Therefore, even though the 1995, Regulations, are silent on the issue of payment of interest, the appellant would still be entitled to the benefit of Section 7(3A) of the Gratuity Act. If such benefit is not extended to the appellant, the protection contemplated under section 4(5) of the Gratuity Act would stand defeated. Likewise, even the mandate contained in section 14 of the Gratuity Act, deliberated in detail hereinabove, would stand negated.

(emphasis supplied)

9. The Coordinate Bench of this Court in the case of University of Delhi v. Sharwan Kumar Gupta, W.P.(Civil) No. 5138/2014 as in Para 16 & 18 to 21 has held as under:

"16. The Payment of Gratuity Act, 1972 is a complete code in itself. It is clear from the law and the judgments mentioned above that Provisions of Payment of Gratuity Act, 1972 shall have overriding effect on all other provisions relating to Gratuity.

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18. If the contention of the petitioner is accepted that Delhi University Act, 1922 and State ordinances are statutory in nature, however, Section 14 of Payment of Gratuity Act, 1972, has overriding effect over the other Acts, Statutes and Regulations.

19. Admittedly, the petitioner has taken up the case for exemption under Section 5, which is pending with the Central Government, however, not granted to the petitioner till date. Therefore, in my considered opinion, till this exemption is not granted, the petitioner is governed by the provisions of this Act.

20. It is also admitted fact that the petitioner granted gratuity to some of its employees, after the order was passed by the Controlling Authority. If the plea of the petitioner is accepted that the respondent no. 1 in all the petitions are not

entitled for gratuity under the Payment of Gratuity Act, 1972, then it tantamount to discrimination and inequality before Law, which violates Article 14 of the Constitution.

21. The Petitioner is an educational institution and employing more than 10 persons. The exemption under Section 5 of the Payment of Gratuity Act, 1972, has not yet been granted to it. The payment has already been made to some employees of the petitioner under the Payment of Gratuity Act, 1972".

(emphasis supplied)

10. The petitioner is also justified on relying upon the Judgment of the Coordinate Bench of this Court in the case of University of Delhi v. Rattan Mala Ahuja and Ors. 2015 SCC OnLine Del 6382, wherein this Court applying the aforesaid position of law has dismissed the petition filed by the University of Delhi challenging the order of the Controlling Authority under the Act of 1972. That apart, I find that even the request made by the respondent University seeking exemption from the provisions of the Act of 1972 has been rejected by the Ministry of Labour, Government of India.

11. The opinion of the Hon'ble Supreme Court in the case of Municipal Corporation of Delhi vs. Dharam Prakash Sharma and Anr. (1998) 7 SCC 221 also covers this issue and the relevant portion is reproduced as under: -

"2. The short question that arises for consideration is whether an employee of the MCD would be entitled to payment of gratuity under the Payment of Gratuity Act when the MCD itself has adopted the provisions of the CCS (Pension) Rules, 1972 (hereinafter referred to as "the Pension Rules"), whereunder there is a provision both for payment of pension as well as of gratuity. The contention of the learned counsel appearing for the appellant in this Court is that the payment of pension and gratuity under the Pension Rules is a package by itself and once that package is made applicable to the employees of the MCD, the provisions of payment of gratuity under the Payment of Gratuity Act cannot be held applicable. We have examined carefully the provisions of the Pension Rules as well as the provisions of the Payment of Gratuity Act. The Payment of Gratuity Act being a special provision for payment of gratuity, unless there is any provision therein which excludes its applicability to an employee who is otherwise governed by the provisions of the Pension Rules, it is not possible for us to hold that the respondent is not entitled to the gratuity under the Payment of Gratuity Act. The only provision which was pointed out is the definition of "employee" in Section 2(e) which excludes the employees of the Central Government and State Governments receiving pension and gratuity under the Pension Rules but not an employee of the MCD. The MCD employee, therefore, would be entitled to the payment of gratuity under the Payment of Gratuity Act. The mere fact that the gratuity is provided for under the Pension Rules will not disentitle him to get the payment of gratuity under the Payment of Gratuity Act. In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect. Possibly for this reason, Section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act, if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. Admittedly MCD has not taken any steps to invoke the power of the Central Government under Section 5 of the Payment of Gratuity Act. In the aforesaid premises, we are of the considered opinion that the employees of the MCD would be entitled to the payment of gratuity under the Payment of Gratuity Act notwithstanding the fact that the provisions of the Pension Rules have been made applicable to them for the purpose of determining the pension. Needless to mention that the employees cannot claim gratuity available under the Pension Rules."

12. Similarly, the Hon'ble Supreme Court in the case of Rajasthan State Road Transport Corporation Ltd. vs. Smt. Mohani Devi (supra) granted the benefit of Gratuity to the wife of an employee in RSRTC who had resigned from service on account of illness by stating as under:

"13. The learned counsel for the respondent would submit that even if it is a case of resignation the deceased husband of the respondent was entitled to the payment of gratuity as he had put in the qualifying service. The learned counsel for the appellant would contend that the gratuity amount had been paid. In that regard, the reference made to para 9 of the writ appeal filed before the High Court would however indicate that though reference is made to the payment disbursed to the respondent's husband while accepting the resignation, the same does not disclose that the gratuity amount has been paid. Further, in the appeal filed before this Court the appellants have sought to justify the non-payment of the gratuity as the husband of the respondent had resigned from service. As rightly pointed out by the learned counsel for the respondents, Section 4(1)(b) of the Payment of Gratuity Act, 1972 provides that the gratuity shall be payable if the termination of employment is after 5 years of continuous service and such termination would include resignation as well. In that view, if the gratuity amount has not been paid to the respondent's husband, the liability to pay the same would subsist and the respondent No.1 will be entitled to receive the same in accordance with the provisions of the Act. In that regard it is directed that the appellants shall accordingly calculate the gratuity and pay the same to the respondent No.1, if already not paid. Such payment shall be made within four weeks from this date."

13. There is no dispute that the Petitioner has put in 5 years of service. Accordingly, this petition needs to be allowed. Respondent no.1 College is directed to pay the gratuity to the petitioner for the service rendered by him between the years 2002-2008 with interest computed @ 9% per annum within a period of six weeks from the receipt of the copy of this order.

14. In so far as the second prayer in the petition is concerned, since the

petitioner has already been given the photocopy of the service book, I do not see any reason to grant that prayer.

15. The petition is disposed of but with a cost of Rs.10,000/- to be paid to the Petitioner by the respondent no.1 College.

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Dismissed as infructuous.

