
(1991) 03 DEL CK 0065
In the Delhi High Court
Case No : CW No. 299 of 1983

BENNETT, COLEMAN and CO. LTD. and Others APPELLANT
Vs
UNION OF INDIA and Another RESPONDENT

Date of Decision : 31-03-1991

Acts Referred:

Citation : (1991) 99 CTR 261

Hon'ble Judges : C. M. NAYAR, J

Bench : Division Bench

Judgement

C. M. NAYAR, J. :

The present petition under Art. 226 of the Constitution of India is filed mainly to impugn the action of the respondents contained the letter dt. 28th December, 1981 Wherein representation of the petitioner No. 1 was rejected with regard to the companys contributions to the perquisites such as provident fund, superannuation benefits and gratuity relatable to salary plus commission. It was contended that petitioner No. 2 was already recipient of a salary of Rs. 6,000 p.m. prior to his becoming Manager under the Companies Act, he should not be denied benefits of provident fund, etc., on the said salary although it had been split up by the Government as salary and commission. The respondents stated that the said benefits are relatable to salary only and not salary plus commission.

2. The brief facts of the case are that the petitioner company is an existing public limited company within the meaning of Companies Act, 1956, hereinafter referred as Act carrying on business of printing and publishing various newspapers, weeklies and magazines in Hindi, English and Marathi. Petitioner No. 2 is the Managing Director of the Company and petitioner No. 3 is the Chairman and shareholder of the petitioner company. Petitioner No. 2 is a highly qualified person in the field of Personnel and Company Management and has gained wide experience during his long years of career in different capacities. The petitioner No. 2, even though, was acting as General Manager of the petitioner company from 1st September, 1976, he was not appointed as manager of the petitioner

company within the meaning of the meaning of the Act. However, the Board of Directors of the petitioner company at a meeting held on 23rd August, 1978 passed a resolution to the effect that application be made to the Central Government for approval of the appointment of the petitioner No. 2 as Manager under the Act for a period of five years from the date on which he assumes charge as Manager after necessary approval of the Central Government. At the time of passing of the said resolution, the petitioner No. 2 was drawing a monthly salary of Rs. 6,000 and he was entitled to receive various perquisites including provident fund, gratuity, pension, etc., on the basis of salary of Rs. 6,000 p.m. The said resolution proposed to give the petitioner No. 2 a salary of Rs. 6,500 and various other perquisites as mentioned in the said resolution dt. 23rd August, 1978. Thereafter the petitioner company applied to the Central Government under ss. 269 and 388 of the Act for approval of the appointment of petitioner No. 2 as Manager of the petitioner company.

3. By letter No. 1/14/78-CLX/IX dt. 24th February, 1979, respondent No. 2 approved the appointment of the petitioner No. 2 as Manager of the petitioner company with effect from the date of the said letter for a period of five years. The said letter prescribed various conditions for appointment of the petitioner No. 2 as Manager. It provided for a salary of Rs. 5,000 including dearness allowance, if any, payable under the Companys Rules. It also provided for the payment of 1% commission to the petitioner No. 2 in the manner laid down in s. 309(5) of the Act subject to a ceiling of Rs. 12000 p.a., including bonus, if any, payable under the Companys rules. However, the said letter restricted the perquisites to an amount equivalent to the annual salary subject to the maximum of Rs. 60,000 per annum to be reckoned on the basis of the actual expenditure or liability incurred by the company as provided under Explanation to s. 198 of the Act. Thereafter, at a meeting of the Board of Directors of the petitioner company held on 6th April, 1979, aforesaid approval of the Central Government was placed before the Board for consideration. It was resolved and recorded that petitioner No. 2 was agreeable to the revised terms of remuneration as mentioned in the Central Governments approval dt. 24th February, 1979 subject to his reservation that in the event of the Central Government revising the guidelines more favorable to the appointee or in the event of the impugned guidelines being challenged successfully in a Court of Law, the matter of his remuneration should be kept open. The said resolution further accorded that with regard to the payment of provident fund, gratuity and superannuation benefits, the Board felt that the benefits availed by the petitioner No. 2 on the basis of salary of Rs. 6,000 per annum should be protected and necessary steps be taken to carry out changes in the Rules and Regulations of the Times of India Provident Fund, the Times Gratuity and Retirement Fund and Times Officers Superannuation Fund Deeds and Rules.

4. The petitioner company wrote to respondent No. 2 enclosing the aforesaid out to the respondents that the petitioner No. 2 had been drawing a salary of Rs. 6,000 p.m. effective from 1st January, 1978 and provident fund, gratuity and

superannuation benefits have been calculated on the basis of the said salary. As per the approval of the Central Government the petitioner No. 2 is entitled only for a salary of Rs. 5,000 p.m. and commission of Rs. 12,000 p.a. inclusive of bonus. It was stressed that the petitioner No. 2 is insisting to continue the benefits of provident fund, gratuity and superannuation benefits on the basis of a salary of Rs. 6,000 p.m. In view of this, the petitioner company sought approval of the Central Government with regard to payments of contributory provident funds, gratuity and superannuation benefits on the sum of Rs. 5,000 plus whatever commission was payable to petitioner No. 2 subject to the ceiling of Rs. 12,000.

5. Respondent No. 2 by letter dt. 17th November, 1979 replied to the petitioner company and granted approval for the protection of the Managers remuneration of petitioner No. 2 at Rs. 4,500 p.m. and further stipulated that the perquisites would be restricted to an amount equivalent to the annual substantive salary in terms of departments letter dt. 24th February, 1979 or Rs. 60,000 p.a. whichever is less. Thereafter, there was some correspondence between the petitioner company and the respondents and it may only be relevant to refer to the communication of 5th November, 1981 when respondent No. 2 rejected the Companys request for inclusion of commission for the purposes of calculation of the provident fund, gratuity and superannuation benefit, etc. The petitioner company through a letter written by its Executive Director and Secretary, to the then Minister of Law, Justice and Company Affairs on 11th November, 1981, requested the respondents to consider its decision with regard to the matter in issue. The said representation was also turned down by the respondents by letter dt. 28th December, 1981.

6. The respondents did not allow the petitioner companys application dt. 31st October, 1979 for allowing perquisites on the basis of monthly salary of Rs. 5,000 and commission @ 1% as allowed by letter dt. 24th February, 1979 which comes to Rs. 1,000 per month. The petitioner company pointed out that even under the guidelines the contributions have to be made in accordance with the provisions of the IT Act, 1961. Reliance was placed on the Judgment of the Supreme Court in Gestetner Duplicators Pvt. Ltd. Vs. Commissioner of Income Tax, West Bengal, . The petitioner filed the present petition for the purposes of challenging the approval given by letter dt. 24th February, 1979 and rejection order dt. 28th December, 1981 whereby the respondents have sought so limit the contribution of provident fund, gratuity and superannuation fund by reference to the salary of Rs. 60,000 p.a. as against Rs. 72,000 granted by respondent No. 2 himself. It was averred that while granting approval, the respondents bifurcated the salary into a fixed amount of Rs. 60,000 and a payment to the maximum of Rs. 12,000 p.a. by way of commission. The respondents by rejecting application of the petitioner company seeking approval for including the commission for the purposes of calculating percenting of provident fund, gratuity and superannuation benefits, etc., has deprived the petitioner No. 2 of a considerable portion of the benefit which he was otherwise entitled to receive prior to his

appointment as Manager of the Company. It was further submitted that petitioner No. 2 has been deprived of his right to receive the said benefits which have been unreasonably restricted and he has been discriminated against Managerial (Personnel) of Public limited companies and Managerial (Personnel) employed by firms or other limited companies.

7. Learned counsel for the petitioner challenges the action the respondents as communicated on 28th December, 1981 wherein the representation was rejected for inclusion of perquisites such as provident fund, gratuity and superannuation relatable to salary plus commission relating to the Companys contribution. He contends that salary includes commission and the law is well settled in the judgment of the Hon"ble Supreme Court in Gestetner Duplicators Pvt. Ltd. vs. CIT (supra) and as well as on the basis of the guidelines which clearly state that the contribution has to be made in accordance with the provisions of the IT Act, 1961. Learned counsel for the respondents on the other hand states that the commission does not form part of the salary, and, Therefore, the same cannot be treated as such. He has sought reliance from the definition of "Basic Wages" as defined in Employees Provident Fund and Miscellaneous Provisions Act, 1952 and has stressed that salary and wages are emoluments payable to an employee by way of recompense for his labour and they would only partake the character of emoluments which are earned by an employee while on duty or on leave with wages and the concept of commission cannot be introduced in the definition of salary.

8. We are inclined to accept the submission of learned counsel for the petitioners that salary would include commission as the law is well settled in the case of Gestetner Duplicators Pvt. Ltd. v. CIT (supra). The Hon"ble Supreme Court held that the entire remuneration determined partly by reference to time and partly by reference to the volume of work done, partook of the character of salary and, Therefore, the commission paid by the company to its salesmen clearly fell within the expression salary as defined in r. 2(h) of Part A of Schedule IV to the Act and the proportionate contribution appertaining to the commission paid by the appellant to its salesman were deductible under s. 36(1)(iv).

9. We may also refer to the fact that the petitioner company made necessary amendments to their provident fund, gratuity and superannuation fund rules and the approval of the Provident Fund Commissioner and the CIT had been obtained. In these circumstances, it was not open for the respondents to reject the contention of the petitioner company. Companys contribution to perquisites such as provident fund, gratuity, superannuation benefits, etc. must relate to salary plus commission, particularly, in view of the fact that there was ceiling on commission to Rs. 12,000 per annum.

10. The respondents in their own guidelines fixed companys contribution towards provident fund, not exceeding 10% of the salary as laid down under the IT Rules. It may be relevant to refer to cls. (a), (b) and (i) of guideline 5.1 which may be reproduced as follows :

(a) The salary inclusive of dearness allowance and all other fixed allowances should not exceed Rs. 60,000 p.a.

(b) A commission on net profits up to 1% of the net profits may be allowed in addition to the salary as an incentive for efficient and sound management, but this should be at least 20% of salary subject to an over ceiling that salary plus commission would not exceed Rs. 72,000 p.a. (Bonus will be treated as part of commission);

(i) Companys contribution towards provident fund not exceeding 10% of the salary as laid down under the IT Rules, 1962.

The respondents on their own have accepted the application of the IT Rules for determining Companys contribution towards provident fund account now take the stand that the salary would only be determinable by excluding commission in terms of the Provident Fund Act. There is no force in this contention and the law is fairly well settled by the Hon"ble Supreme Court.

11. There is another aspect of the matter. The impugned order dt. 28th December, 1981 wherein the representation of the petitioner company was rejected does not indicate any reasons in support thereof. It only says that "in the light of submissions made therein, but having regard to the facts and circumstances of the case including the current policy of the Government, there is no scope for any relaxation". Reference has been made in this connection to the Division Bench judgment of the Gujarat High Court in Cibatul Ltd. and Others Vs. Union of India, The following passage may be referred in this regard :

"It is well settled that when any person passes an order in a quasi-judicial matter without stating the reasoning by which he had come to that particular finding the order itself is arbitrary on the face of it. Such an order can never be sustained in a State where the citizens are governed by law. The person against whom the order is passed is entitled to know as of right under what circumstances and for what reasons his prayer was being rejected. It is quite likely that another person may take a different view. That is entirely a different matter. If the Court has no power of appeal over a quasi-judicial order the Court may not exercise that power to examine whether the person had a power, whether the person exercised the power judicially, whether the power was not exercised arbitrarily and it was exercised in a judicial manner, in the sense, it was made known that all relevant factors were considered and irrelevant facts were never considered. A quasi-judicial or authority is under an obligation to give reasons in support of its conclusions, because it is the reasons which rule out the element of arbitrariness in a decision. The rule requiring the reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirements of law."

The impugned order, in our opinion, can also be set aside on the grounds of

arbitrariness and violation of principles of natural justice.

12. In view of the above, we allow the writ petition and make the rule absolute. The impugned order dt. 28th December, 1981 is quashed and a writ in the nature of mandamus is issued to the respondents directing them to treat the petitioner companys contribution to provident fund, gratuity and superannuation benefits as relatable to salary plus commission subject to a ceiling on commission of Rs. 12,000 p.a. inclusive of bonus. There shall be no order as to costs.