
(1991) 07 DEL CK 0009
In the Delhi High Court
Case No : C.W. No. 299 of 1983

Bennett, Coleman and Co. Ltd. and others	APPELLANT
Vs	
Union of India and another	RESPONDENT

Date of Decision : 31-07-1991

Acts Referred:

Citation : (1991) 07 DEL CK 0009

Hon'ble Judges : Sunanda Bhandare, J;Chander Mohan Nayar, J

Bench : Division Bench

Advocate : K.K. Jain, for the Appellant; S.K. Mahajan, for the Respondent

Judgement

C.M. Nayar, J.—The present petition under article 226 of the Constitution of India is filed mainly to impugn the action of the respondent contained in letter dated December 28, 1981, wherein the representation of petitioner No. 1 was rejected with regard to the company's contribution 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 per month 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 has 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 the Companies Act, 1956, hereinafter referred as "the Act" carrying on the 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. Even though petitioner No. 2 was acting as general manager of the petitioner-company from

September 1, 1976, he was not appointed as manager of the petitioner-company within the meaning of the Act. However, the board of directors of the petitioner-company at a meeting held on August 23, 1978, passed a resolution to the effect that application be made to the Central Government for approval of the appointment of 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, 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 per month. The said resolution proposed to give petitioner No. 2 a salary of Rs. 6,500 and various other perquisites as mentioned in the said resolution dated August 23, 1978. Thereafter, the petitioner-company applied to the Central Government under sections 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. 1/41/78-CLX/IX, dated February 24, 1979, respondent No. 2 approved the appointment of 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 petitioner No. 2 as manager. It provided for a salary of Rs. 5,000 including dearness allowance, if any, payable under the company's rules. It also provided for the payment of 1% commission to petitioner No. 2 in the manner laid down in section 309(5) of the Act subject to a ceiling of Rs. 12,000 per annum, including bonus, if any, payable under the company's 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 the Explanation to section 198 of the Act. Thereafter, at a meeting of the board of directors of the petitioner-company held on April 6, 1979, the 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 Government's approval dated February 24, 1979, subject to his reservation that in the event of the Central Government revising the guidelines more favorably 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 recorded that with regard to the payment of provident fund, gratuity and superannuation benefits, the board felt that the benefits availed by 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 the Times Officers' Superannuation Fund Deeds and Rules.

4. The petitioner-company wrote to respondent No. 2 enclosing the aforesaid resolution dated April 6, 1979. By the said letter, the petitioner-company pointed

out to the respondents that petitioner No. 2 has been drawing a salary of Rs. 6,000 per month effective from January 1, 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, petitioner No. 2 is entitled only for a salary of Rs. 5,000 per month and commission of Rs. 12,000 per annum inclusive of bonus. It was stressed that petitioner No. 2 is insisting on continuance of the benefits of provident fund, gratuity and superannuation benefits on the basis of a salary of Rs. 6,000 per month. In view of this, the petitioner-company sought approval of the Central Government with regard to payments of contributory provident fund, 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 dated November 17, 1979, replied to the petitioner-company and granted approval for the protection of the manager's remuneration of petitioner No. 2 at Rs. 4,500 per month and further stipulated that the perquisites would be restricted to an amount equivalent to the annual substantive salary in terms of the department's letter dated February 24, 1979, or Rs. 60,000 per annum, whichever is less. Thereafter, there was some correspondence between the petitioner-company and the respondents and it may only be relevant No. 2 rejected the company's 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 November 11, 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 dated December 28, 1981.

6. The respondents did not allow the petitioner company's application dated October 31, 1979, for allowing perquisites on the basis of monthly salary of Rs. 5,000 and commission at 1% as allowed by letter dated February 24, 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 Income Tax 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 petitioners filed the present petition for the purposes of challenging the approval given by letter dated February 24, 1979, and rejection order dated December 28, 1981, whereby the respondents have sought to limit the contribution of provident fund, gratuity and superannuation fund by reference to the salary of Rs. 60,000, per annum as against Rs. 72,000 granted by the respondent 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 per annum by way of commission. The respondents by rejecting the application of the petitioner-company seeking approval for including the commission for the purposes of calculating the percentage of provident fund, gratuity and superannuation benefits, etc., has

deprived 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 of the respondents as communicated on December 28, 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 company's contribution. He contends that salary includes commission and the law is well-settled by the judgment of the Supreme Court in *Gestetner Duplicators Pvt. Ltd. Vs. Commissioner of Income Tax, West Bengal*, 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 Income Tax 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 can not be treated as such. He has sought reliance from the definition of "basic wages" as defined in the 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 of 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. Vs. Commissioner of Income Tax, West Bengal*, . The Supreme Court held (headnote) "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 rule 2(h) of Part A of the Schedule IV to the Act and the proportionate contributions appertaining to the commission paid by the appellant to its salesmen were deductible u/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 Income Tax Commissioner had been obtained. In these circumstances, it was not open to the respondents to reject the contention of the petitioner-company. The company's 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 a ceiling on commission of Rs. 12,000 per annum.

10. The respondents in their own guidelines fixed the company's contribution towards provident fund, as not exceeding 10% of the salary as laid down under the Income Tax Rules. It may be relevant to refer to clauses (a), (b) and (i) of guidelines 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 per annum.

(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 overall ceiling that salary plus commission would not exceed Rs. 72,000 per annum (bonus will be treated as part of commission) :

(i) The company's contribution towards provident fund not exceeding 10% of the salary as laid down under the Income Tax Rules, 1962."

11. The respondents on their own have accepted the application of the Income Tax Rules for determining the company's contribution towards provident fund account and now take the stand that the salary would only be determinable by excluding commission in terms of the Provident Funds Act. There is no force in this contention and the law is fairly well settled by the Supreme Court.

12. There is another aspect of the matter. The impugned order dated December 28, 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. v. Union of India* [1980] 50 Comp Cas 437. The following passage may be referred to in this regard (at page 454) :

"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 as to 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 officer the court may not exercise that power but the court has certainly a 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 judicial 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 were pretence of compliance with it would not satisfy the requirements of law."

13. The impugned order in our opinion, can also be set aside on the grounds of arbitrariness and violation of principles of natural justice.

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