(1998) 09 KAR CK 0021

In the Karnataka High Court

Case No : Writ Petition No. 35513 of 1993

Bhalachandra Krishnaji Kale — APPELLANT

Vs

The Karnataka State Road Transport Corporation, Bangalore and Others — RESPONDENT

Date of Decision : 16-09-1998

Acts Referred:
Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 4, 5, 6, 7

Citation : (1999) 81 FLR 330 : (1999) ILR (Kar) 178 : (1998) 6 KarLJ 207 : (1999) 1 LLJ 932

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : Sri P.S. Manjunath, for the Appellant; Smt. Sharada for Sri P.R. Ramesh and Sri K.L.N. Rao, for the Respondent

Judgement

1. Facts lie in a narrow compass and are not in serious dispute. Petitioner was an employee officer of the Karnataka State Road Transport Corporation, herein after referred to as the respondent-Corporation. After attaining the age of superannuation, he retired from service on 28-2-1993. It is not in dispute the applicability of gratuity laws to the respondent-Corporation. On the respondent''s own showing, there was no disciplinary enquiry held against the petitioner or was pending at the time of petitioner''s retirement from service.

2. It is also not in dispute that prior to petitioner''s retirement from service, respondents had not permitted the petitioner to avail the leave standing to his credit and therefore in terms of the circular issued by the Corporation dated 12-11-1980, he is entitled to receive the cash benefit of the earned leave.

3. It is asserted in the petition that petitioner was paid all the retirement benefits except the amounts payable under the head gratuity and encashment of leave salary amounting to Rs. 57,675.15. It appears that the aforesaid amounts were not settled on the date of retirement of the petitioner only on the ground that the

sanction had not yet been obtained for such payment. It is only after repeated correspondence and beseeching, petitioner was paid a sum of Rs. 99,426/- by a cheque dated 7-5-1993, stating to the amounts payable towards gratuity amount due to the petitioner. On a request made by letter dated 10.06.1993, to furnish the reasons for non-payment of balance of gratuity amount, he was informed by second respondent by his letter dated 9-7-1993, that a sum of Rs. 25,833.25 has been recovered as per the instructions of the Chief Accounts Officer of the respondent-Corporation and that the payment of encashment of earned leave will be made as soon as clearance certificate is received from central office. It appears on 27-8-1993, the second respondent has paid a sum of Rs. 40,991.70 only towards leave encashment though the sanctioned amount was Rs. 57,675.15 and the balance amount has been withheld in view of the letter dated 7-5-1993. Since the respondents have not settled the entire monetary claims of the petitioner due to him after his retirement from service in spite of repeated requests and representation, frustrated by whimsical attitude and action of the respondent-Corporation, petitioner is before this Court in a petition filed under Article 226 of the Constitution inter alia seeking the following reliefs. They are:

(a) For a direction to the respondents for payment of interest at 14% on Rs. 1,45,666.65 from the date of retirement till 6-5-1993.

(b) To advise the respondents to pay the balance amount of gratuity in a sum of Rs. 25,833/- with interest at 14% from the date of non-payment till the date of payment.

(c) To command the respondents for payment of interest at the rate of 14% on Rs. 57,675.15 from 1-3-1993 till 27-8-1993.

(d) Lastly, for a direction to the respondents for payment of sum of Rs. 16,681.45 with interest at 14% from 27-8-1993 till the date of payment.

4. Respondents have filed a detailed statement of objections resisting the reliefs sought in the petition. In that they have stated "that on account of the negligence and dereliction of duty on the part of the petitioner in not furnishing the opinion immediately in one of the accident cases referred to him, the Corporation had to suffer the pecuniary loss by paying penal interest on the compensation amount paid to the workmen, which could have been avoided, if only petitioner had given clear opinion or had suitably advised in time without any delay. It is for this reason, they contend that the petitioner is not entitled to balance of gratuity amount and encashment of earned leave.

5. At this stage, I can only pity the ignorance of the advisors of the Corporation, who have advised them to withhold the gratuity amounts payable to the petitioner for the reasons stated by them in their objection statement. Be that as it may, let me now advert to claims and the reasons for denial of the claims made by the parties to the lis. It is apt and indeed necessary to commence the discussion by first noticing the approach of Apex Court with regard to pensionary claims and other retiral benefits of an employee who retires from service. The

Supreme Court in State of Kerala and Others Vs. M. Padmanabhan Nair, , was pleased to observe :

"Pension and gratuity are no longer any bounty to be distributed by the Government employees on their retirement, but have become under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment".

6. The Payment of Gratuity Act, 1972 is enacted to introduce a scheme for payment of gratuity for certain industrial and commercial establishments as a measure of social security. There is no gainsaying of the fact that this statute is a beneficent piece of social legislation expressly drafted in the interest of the employees for the payment of statutory gratuity to them. As its preamble indicates, it is made applicable to all employees engaged in factories, mines, oil fields, plantations, ports etc. It also provides for all matters connected therewith or incidental thereto including the expeditious payment of gratuity when it becomes payable. Section 4 of the Act prescribes the statutory liability of the employer to pay gratuity and corresponding right of the employee to receive it whenever it becomes payable. Section 4 of the Act is as 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".

7. A reading of the section makes it clear that the employee acquires a right to receive gratuity on the termination of his employment after he has rendered continuous service for not less than 5 years and the provisions make it abundantly clear that this amount becomes payable on the date of retirement from service, on his superannuation, or his retirement or resignation, or on the death or disablement due to accident or disease.

8. Then we have Section 7 of the Act, which speaks of procedure for determination of the amount of gratuity. A reading of this provision clearly indicates that the employer is under mandatory obligation to determine and pay gratuity amount and the same is not dependent on the claim or application of the employee for such gratuity and consequential interest.

9. The Act also provides for recovery of gratuity amounts from the employer by the employee. Section 8 of the Act provides for grant of interest on delayed

payment of gratuity amount and also on the rate of which it has to be calculated. Section 8 specifically envisages if the gratuity amount payable under the Act is not paid by the employer, within the prescribed time, the amount can be recovered with compound interest at such rate as the Central Government may, by notification specify.

10. Having briefly noticed the provisions of the Act and its implication, let me now first advert to the claim of the petitioner for a direction for payment of balance of gratuity amount. Petitioner retired from service of respondent-Corporation on 28-2-1993 as Deputy Law Officer after attaining the age of superannuation. In view of Section 4 of the Act, he was eligible for payment of gratuity on the termination of his employment on attaining the age of superannuation. The employer was obliged to pay a sum of Rs. 1,45,666.65 in terms of sub-section (1) of Section 4 on his superannuation, if he ceases to be an employee thereafter. The respondents instead of paying the entire amounts either on the date of retirement or on subsequent day paid only a sum of Rs. 99,425.40 on 7-5-1993 stating to be amounts payable towards gratuity due to the petitioner and the balance is adjusted towards the pecuniary loss caused by the petitioner while in service as per the directions issued by the Chief Accounts Officer of the respondent-Corporation. The question which requires to be considered and decided is whether the respondent-Corporation could have withheld the balance of gratuity amount payable to the petitioner and whether the petitioner is entitled for payment of interest on the delayed payment of gratuity amount and the balance amounts? In view of Section 4 of the Gratuity Act, if the employee satisfies the requisite) conditions, the gratuity amount becomes mandatorily payable to him except in cases falling under sub-section (6) of Section 4 of the Act. The provision also makes it very clear that this amount is mandatorily payable by the employer to the employee on the very date the employee retires from service after attaining the age of superannuation or retirement or resignation or death or disablement as the case may be. In the present case as already noticed, petitioner''s services were not terminated by the respondent-Corporation for any act, wilful omission or causing any loss or destruction of property belonging to the Corporation and his services had not been terminated for any act which would constitute any offence involving turpitude committed by him in the course of employment. The only reason for not settling the entire gratuity amount payable to the employee was for the reason that sanction had not yet been obtained for the said payment. Therefore for the first time, part of the gratuity amount came to be paid by the employer to the petitioner only on 7-5-1993, though the petitioner retired from service on 28-2-1993 and in view of Section 8 of the Gratuity Act, which confers statutory right on the employee to receive the amount with interest thereon at the rate prescribed by the Central Government from the date of expiry of the prescribed time. Therefore in my view petitioner is entitled for interest at the rate of 14% as claimed by him in his petition from the date of actual payment payable to the petitioner on a sum of Rs. 1,45,666.65 till part of the amount paid on 6-5-1993.

11. Insofar as the balance amount payable, the respondents only contend that Corporation has forfeited the balance amount of gratuity payable to the petitioner only for the reason the Corporation has suffered pecuniary loss on account of negligence and dereliction of duty on the part of the petitioner in not furnishing the opinion sought for by the Corporation immediately. This could hardly be the reason or a tenable ground to forfeit the gratuity amount payable to an employee after his retirement from service. To reiterate what is already said, that during the course of his employment, the respondent-Corporation had not initiated any action much less enquiry proceedings for wilful omission or negligence against the petitioner and further his services were not terminated on those grounds. Petitioner in fact honourably retired from service after attaining the age of superannuation after serving his employer for nearly three decades. Under the provisions of the Act, the gratuity amount payable to an employee can be wholly or partially forfeited only on two grounds; one is if the services of an employee has been terminated for his riotous or disorderly conduct or any other act of violence. Secondly, if the services of an employee has been terminated for any act which constitutes an offence involving moral turpitude, if such act is committed in the course of his employment. In view of this the action of the respondents in forfeiting part of the gratuity amount for the reasons assigned by them is wholly improper, arbitrary and illegal and the same requires to be declared illegal and a direction re- quires to be issued to the respondents to make payment of the balance of gratuity amount with interest.

12. It remains now to consider whether respondents are justified in withholding the earned leave encashment of Rs. 57,675.15 only, from 1-3-1993 till 27-8-1993 and the balance amount of Rs. 16,681.45 from 27-8-1993 till today and whether petitioner is entitled to interest on delayed payment of the aforesaid amounts. It is not in dispute nor can it be disputed that the petitioner is entitled to receive the cash benefit of the leave equivalent to 232 days. This amount was not immediately paid to the petitioner only on the ground that the sanction had not yet been obtained. After repeated requests and demands, part of the amount was paid only on 27-8-1993 after withholding a sum of Rs. 16,681.45. In the statement of objections filed by the respondents, they do not even refer to this aspect of the matter. In my view there is no reason or any justification for the respondents to withhold this amount from the date petitioner retired from service till 27-8-1993 and also to forfeit a part of the amount for all these years. This action of the respondents has no basis whatsoever. It is nothing but exercise of brutal power by the responsible people in responsible positions. The action of the respondents requires and deserves to be condemned by this Court. In my opinion since petitioner was deprived of this amount for nearly five months from the date of his retirement from service, he is entitled to interest on that amount, since the employer had the benefit and advantage of the use of the money which was rightfully due to the employee. Further since the respondents have not assigned any reasons whatsoever for forfeiting the balance amount of Rs. 16,681.45 only from the amounts payable under the head ''leave encashment'',

their action requires to be declared as illegal and arbitrary and further a direction requires to be issued to the respondents to make payment of the balance amount of Rs. 16,681.45 with interest as claimed by the petitioner in his petition which is far too less when compared to prevailing interest rate in the market as well as the interest charged by financial and other banking institutions.

13. In the result, petition is allowed and rule made absolute and further following directions are issued to the respondent-Corporation to comply with the same within two months from the date of receipt of certified copy of this Court''s order.

(a) Respondent-Corporation is directed to calculate and pay interest at the rate of 14% on Rs. 1,45,666.65 from the date of retirement till 6-5-1993.

(b) Respondent-Corporation is directed to pay the balance amount of gratuity in a sum of Rs. 25,833/- with interest at 14% from the date of non-payment till the date of payment.

(c) Respondent-Corporation is directed to pay the interest at the rate of 14% on Rs. 57,675.15 from 1-3-1993 till 27-8-1993.

(d) Respondent-Corporation is directed to pay a sum of Rs. 16,681.45 with interest at 14% from 17-8-1993 till the date of payment.

14. With these observations and directions petition is disposed off. Ordered accordingly.

