
(1999) 10 KL CK 0069

In the High Court Of Kerala

Case No : W.A. No. 884 of 1992 and connected cases

Cashew Development Corporation

APPELLANT

Vs

Saroji Amma and Others

RESPONDENT

Date of Decision : 25-10-1999

Acts Referred:

Kerala Cashew Factories (Acquisition) Act, 1974 — Section 10(4), 4

Citation : (2000) 2 KLJ 26 : (2000) 3 LLJ 1611

Hon'ble Judges : T.M. Hassan Pillai, J;K. Narayana Kurup, J

Bench : Division Bench

Judgement

K. Narayana Kurup, J.—In all these original petitions the Kerala State Cashew Development Corporation (for short "the Corporation") figures as the petitioner(s). Brief facts necessary for the disposal of the original petitions are as follows:

2. A number of cashew factories originally, owned by various persons were taken over by the State of Kerala and handed over to the Corporation from July 6, 1988 by a notification issued u/s 4 of the Kerala Cashew Factories (Acquisition) Act, 1974. Along with the factories, the workers therein were taken over by the Corporation. After such taking over, the workers have been retiring from time to time on attaining the age of superannuation. The question arose as to who is to pay the gratuity due to the workers under the Payment of Gratuity Act, 1972 (Act 39 of 1972) and the Rules. The Corporation took the stand that they are liable to pay only that portion of the gratuity as is relatable to the period subsequent to July 6, 1988, whereas the case set up by the workers is that inasmuch as the Corporation has taken over the factory along with the workers, the liability to pay the entire gratuity is that of the Corporation. The owners of the factory supported the aforesaid stand of the workers which has been upheld by the Controlling Authority and the Appellate Authority under the Act which was affirmed by a learned single Judge and later by the Division Bench of this Court. Aggrieved by the judgment of this Court, the Corporation moved the Hon'ble

Supreme Court in Civil Appeal Nos. 8115 and 8365-66 of 1995 arising out of S.L.P.(C) Nos. 6036/1993, 7509/1994 and 8203/1994. The Hon''ble Supreme Court disposed of the matter in the following terms:

"Even so, question arises now that the factories have been delivered back into the possession of the erstwhile owners on the ground that the very notification taking them over is invalid and ineffective in law, who is liable to pay the gratuity to the workers who have retired after the date of take-over and before the date of delivery of factories back to their owners. Since this aspect raises new questions and issues which were not before the High Court, we are of the opinion that this is a proper case where the matter should go back to the High Court for consideration of the issues so arising. Accordingly, these appeals are allowed, the impugned order is set aside and the matter remitted to the High Court. Within six weeks from today it shall be open to the Writ Petitioners in the High Court to amend their petitions raising such new pleas as are open to them in law. Within six weeks therefrom, the respondents in the writ petitions shall file their counters. The matter will be heard thereafter. No costs."

After making the order of remit in the aforesaid terms the Hon''ble Supreme Court went on to issue the following directions:

"The Hon''ble Chief Justice of Kerala High Court may consider whether it would not be appropriate that this matter is heard by a Division Bench, with a view to put an early end to the dispute."

It is under the above facts and circumstances that these original petitions were posted before us for hearing. Pursuant to the direction issued by the Hon''ble Supreme Court the petitioners have amended their original petitions incorporating new pleas in support of their contentions. Pending disposal of the Civil Appeals before the Hon''ble Supreme Court the owners of the factories had challenged the validity of the notification of taking over their factories by way of Writ Petitions before the Hon''ble Supreme Court By judgment dated May 12, 1994 the Hon''ble Supreme Court held that the show cause notice and the order of taking over the factories is null and void on account of violation of the principle of natural justice.

3. The question that falls for consideration is whether the Corporation is liable to pay only that portion of the gratuity as is relatable to the period between July 6, 1988, the date of taking over and May 12, 1994, the date on which the Supreme Court declared the take over as null and void, or whether the Corporation is liable to pay the entire gratuity regardless of the length of service rendered by the workers under them. According to the Corporation, the employees are entitled to get the gratuity only for the period they worked under the Corporation. If this argument is accepted, the Corporation will have no liability to pay gratuity in respect of workers who have put long years of service and retired during the take over period, since the liability of the Corporation will be confined only for the limited period under which they were in control of the factories. The

Corporation has a further case that they ought not to have been burdened with the liability for payment of gratuity to the workers for the services rendered by them under the owners. It was also submitted that the Corporation does not legally come within the definition of the term "employees" and therefore the orders passed by the Controlling Authority and the Appellate Authority under the Act fastening them with the liability to pay gratuity to the workers is unsustainable. Yet another contention advanced by the Corporation is that having regard to the unequivocal declaration of the Hon"ble Supreme Court that the taking over of the factories by the Government and management by the Corporation as null and void, the liability of the Corporation was only in respect of the recurring labour dues while the factories were in its custody and not to pay any gratuity. According to the Corporation, the gratuity is to be fixed depending on the duration of the employment under them. In that view, they would contend that it has no liability to pay gratuity to the workers for their past services rendered under the respective owners. The specific case pleaded by the Corporation is that since the liability for payment of gratuity arises only once when the employee is superannuated taking into account the entire service of the employees, the major part of which was under the owners in which case their liability can be restricted to the period during which the employee worked under it. In the aforesaid view, the orders passed by the statutory authorities, fixing the entire liability on the Corporation cannot be legally sustained. Per contra, it was contended by the owners that the factories were acquired as per Section 3 of the Act with effect from July 6, 1988 and that the factories have since been vested with the Corporation u/s 8 of the Act. The owners have ceased to be employees of the factories with effect from the date of vesting viz. July 6, 1988. Reliance is also placed on Section 10 of the Act which stipulates that all workers who come under the rainbow of the Industrial Disputes Act are all statutorily transferred to the Corporation and they continue their employment under the Corporation until their services are duly terminated. According to the owners, as per the definition of the expression "employer" specified in Section 2(f) of the Payment of Gratuity Act as one who has ultimate control of the affairs of the factory at the time when cause of action originated, viz. superannuation, the Corporation was the employer and in that view, by virtue of Section 4(2) of the said Act determination and fixation of liability for payment of gratuity can be legally passed against the Corporation only.

4. Having heard learned counsel on both sides, we are of opinion that these original petitions can be disposed of on a short ground since the field of enquiry is limited to a narrow compass. In our considered opinion, to make the Corporation liable to pay the gratuity to thousands of employees who had long innings of service under the owners of the factories taken over by the Government and entrusted with the Corporation which was later found to be null and void irrespective of the period of service rendered under the Corporation has no sanction of law. In fact, the tone and tenor of the Act is an indication to the contrary which is extracted below:

"Section 10.

1.

2.

3.

4. Where under the terms of any contract for service or otherwise, any person whose service becomes terminated or whose service becomes transferred to the Government or the Corporation, by reasons of the provisions of this Act, is entitled to any payment by way of gratuity or retirement benefits or for any leave not availed of or any other benefits, such persons may enforce their claim against the occupier of the Cashew Factory but not against the Government Corporation."

Section 10(4) of the Act is a special provision by which the Corporation is given protection from liability to pay gratuity for the services rendered prior to the vesting of the factories in the Corporation. However, this is not to say that the Corporation is completely exonerated of all liabilities from paying the gratuity amount. They will certainly be liable for payment of gratuity for the period during which they were in control of the affairs of the factories. In other words, we are of opinion that the liability for payment of gratuity has to be fixed on a pro-rata basis depending upon the duration of service rendered by the workmen under the respective employers. To make it clear, the Corporation will be liable to contribute towards the gratuity in respect of all workers who had worked under them irrespective as to whether they have retired during the period when the Corporation was in control of the affairs of the factory or not. If, as a matter of fact, the Corporation has effected payment of more than what is actually due, on application of the pro-rata principle, the owners will have to make good the loss to the Corporation. If, on the other hand, on computation, the Corporation's contribution falls short of the pro-rata liability, then, they will have to contribute the amount that has fallen short to the owners. Order accordingly. The details of the above arrangement will have to be worked out by the Controlling Authority under the Act, viz; the District Labour Officer, Kollam, with due notice to both parties. Since the entire amount has already been disbursed by the Corporation pursuant to the interim order passed by the Hon"ble Supreme Court, there is no need to serve any notice on the workers concerned. We direct the Controlling Authority viz., the District Labour Officer, Kollam, to work out the pro-rata liability of the parties concerned as indicated above as expeditiously as possible, at any rate, not later than six months from the date of receipt of a copy of this judgment.

5. The original petitions stand disposed of as above.