

(1982) 09 MAD CK 0042

In the Madras High Court

Case No : Writ Appeal No. 107 of 1981

Cauvery Spinning and Weaving Mills Ltd.

APPELLANT

Vs

The Appellate Authority Under The Payment of Gratuity Act
Tiruchirappalli and Others

RESPONDENT

Date of Decision : 24-09-1982

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C, 33C(2)
Industries (Development and Regulation) Act, 1951 — Section 18AA(1), 18B, 18FB,
18FB(1), 25F
Payment of Gratuity (Central) Rules, 1972 — Rule 17
Payment of Gratuity Act, 1972 — Section 2, 4, 7
Payment of Wages Act, 1936 — Section 2
Tamil Nadu Relief Undertakings (Special Provisions) Act, 1969 — Section 4

Citation : (1985) ILR (Mad) 316

Hon'ble Judges : Sengottuvelan, J;Ramanujam, J

Bench : Division Bench

Advocate : P. Chidambaram, for the Appellant; P. Ibrahim Kalifullah, for the Respondent

Final Decision : Dismissed

Judgement

Ramanujam, J.—This appeal is directed against the decision of Mohan, J., in Writ Petition No. 5534 of 1980 holding that Payment of Gratuity Act being statutory, it can be enforced as against the successors-in-interest of the undertaking notwithstanding the provisions of the Tamil Nadu Relief Undertaking (Special Provisions) Act XXI of 1969.

2. The circumstances under which the writ petition came to be filed can briefly be stated. The Appellant herein is an industrial undertaking. The management of the said undertaking was taken over by the Tamil Nadu Textile Corporation in exercise of the powers conferred by Section 18-AA(1) of the Industries Development and Regulation) Act, 1951 by a notification issued by the Central Government in S.O. 825 (E) 18AA-IDRA/76, dated 23rd December, 1976 subject

to certain terms and conditions for a period of five years from the date of notification subsequently, the State Government by a notification in G.O. Ms. No. 41, Industries, dated, 11th January, 1977 declared the said undertaking as a relief undertaking under the provisions of the Tamil Nadu Relief Undertaking (Special Provisions) Act for a period of one year with effect from 4th January, 1977. As per Section 4 of the said Act, the Governor of Tamil Nadu has directed that all contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force, to which the said relief undertaking is a party, of which may be applicable to the said relief undertaking, immediately before the 4th January, 1977 shall be suspended in operation and that all the rights, privileges obligations and liabilities accruing or arising there under before the said date shall be suspended, for one year with effect on and from the said, date, Provided that nothing in this notification shall apply to contracts, assurances of property and agreements entered into, by the said relief undertaking with any banks. In the same notification, the Government of Tamil Nadu has also directed u/s 4(a) of the Act that in relation to the said relief undertaking the provisions of Chapter V-A and Section 33-C of the Industrial Disputes Act, (XIV of 1947) shall not apply. Before the taking over, the undertaking has incurred a statutory liability to pay gratuity under the Payment of Gratuity Act, 1972. Subsequent to the taking over, one A.K.L. Narasimhan, who is an employee of the undertaking, filed an application u/s 7 of the Payment of Gratuity Act before the Controlling Authority against the undertaking claiming gratuity for 24 years. In his petition, the employee has claimed that he has served the under taking from June, 1953 to April, 1976 and that therefore he is entitled to get gratuity for the said period. The undertaking opposed the said claim on the ground that in view of the provisions of the Tamil Nadu Relief Undertaking (Special Provisions Act, 1969 as also Section 29-C of the Industries (Development, and Regulations) Act, 1951 which is only a protective clause, usually provided in all enactments for action done in good faith and this does not preclude the Controlling Authority from acting under the Payment of Gratuity Act, 1972, and that the Payment of Gratuity Act, 1972 not having been included in the Schedule u/s 4(a) of the Tamil Nadu Relief Undertaking (Special Provisions) Act, 1969, the undertaking cannot claim immunity from the payment of the gratuity on the basis of the provisions in Section 4 of that Act. In that view, the Controlling Authority quantified the gratuity payable to the applicant-employee at Rs. 7,998.84 P. and issued a direction for payment of the same under Rule 17 of the Payment of Gratuity Rules 1972. The undertaking took the matter in appeal to the Appellate Authority under the Payment of Gratuity Act but without success. Therefore, the undertaking has filed the said writ petition seeking to quash the order of the Appellate Authority, dated 30th June, 1980 confirming the order of the Controlling Authority, dated 13th September, 1979 directing the undertaking to pay gratuity to the employee on the following grounds: (1) In view of the declaration that the undertaking is a relief undertaking with effect from 4th January, 1977, all liabilities of the company before taking over or before the declaration that it is a relief undertaking cannot be enforced against the

company so long as it continuous to be a relief undertaking- Therefore, the order of the Controlling Authority determining the gratuity and directing its payment is invalid and unenforceable. (2) That the employee having submitted his resignation on 18th April 1976, and the company having been taken over on 4th January, 1977, the claim for payment of gratuity was a liability that arose before the taking over, and therefore, it cannot be enforced against the company in view of the said provisions. (3) In any, event, the claim for gratuity is barred by limitation as the same has been made nearly three years after the amount has fallen due. Mohan, J., held that the Payment of gratuity to the employee is a statutory liability which could be enforced against the successor-in-interest of the under-taking, and the provisions of the Relief Act will not stand in the way. In that view, be dismissed the writ petition. Aggrieved by the decision of Mohan, J., the present writ appeal has been filed by the undertaking mainly on the ground that the liability to pay gratuity is a pre-existing liability and it cannot be enforced against the undertaking so long as the declaration that it is a relief Undertaking continues to be in force.

3. The learned Counsel for the Appellant refers to Section 4 of the Tamil Nadu Act XXI of 1969 and the notification issued by the State Government in G.O. Ms. No. 41, industries, 11th January, 1977 and submits that all contracts, agreements, settlements, awards, standing orders and other instruments in force to which the relief undertakings is a party will stand suspended in operation from 4th January, 1977, and that all rights, privileges, obligations and liabilities accruing or arising there under before that date have been suspended with effect on and from that date, and that the learned Judge is not right in saying that the statutory liabilities will not stand suspended. According to the learned Counsel for the Appellant, irrespective of the fact whether the liabilities are statutory or contractual, all of them will stand suspended under the notification, dated 11th January, 1977. According to the Appellant's learned Counsel, the expression other instruments in force occurring in the notification, dated 11th January, 1977 will take in an enactment, and therefore, the liability arising out of a statute should also be taken to the a liability covered by the notification u/s 4 of the Act 21 of 1969. In support of this submission, the learned Counsel refers to the decision in M.K. Sinha v. Labour Court, Patna [1978] Lab.I.C. 115 where while construing a similar legislation provision the Patna High Court has held that the expression other instruments in force will include an Act of the Legislature. In that case also, an industrial under taking was taken over by the Government u/s 18-FB of the Industries (Development and Regulation) Act, 1951 and a notification suspending the contracts and other instruments and liabilities arising there under for one year had been issued. A retrenched employee made a claim u/s 33-C(2) of the Industrial Disputes Act claiming retrenchment compensation u/s 25-F against the undertaking. The question arose whether the said claim could be enforced during the said period of one year. A Division Bench of the Patna High Court held that though a right arising or accruing under contracts or other instruments is not specifically mentioned in Section 18-FB(1)(b) of the Act, the expression

Instruments occurring in the notification suspending the enforcement of the liabilities should be taken to have a wide-connotation, wide enough to include within its ambit a legislative enactment. When a distinction was sought to be drawn by the employee in that case between Clause (a) and Clause (b) of Section 18-B the court pointed out that Clause (a) details with the position after the issue of the notified order while Clause (b) deals with the position as it obtained immediately before the issue of the notified order, that, therefore, the two powers are, distinct and separate and have different objects, that the existence of the first power in relation to certain enactments does not, therefore, negative the existence of the second power, namely, the power to suspend the operation of certain enactments and of the rights accrued there under. Reference also has been made to the decision of the Supreme Court in *Purshotam H. Jadye and Others Vs. V.B. Potdar*, In that case, a question arose as to whether a workman is entitled to apply to the Authority appointed under the Payment of Wages Act, 1936 for the recovery of the amount of gratuity due to him under an award passed between him and his employer. The Bombay High Court having answered that question in the negative, the matter was taken before the Supreme Court. The Supreme Court after considering the scope of the definition Wages, u/s 2(vi) of the Payment of Wages Act, 1936, proceeded to construe the question as to whether an award can be appropriately described as an instrument which provided for the payment of gratuity so as to bring the gratuity payment within Section 2(vi)(d). The Supreme Court observed that it is well-established that awards have, on many occasions the effect of altering or modifying the contractual terms of employment between an industrial employer and his employees, and it is difficult to hold that the award as such is a contract, and that the terms prescribed by industrial awards are treated as terms of a statutory contract which govern the relationship between the employer and the employees, and therefore, it is not reasonably, possible to hold that the award which frames a scheme for payment of gratuity can be said to amount to a contract within the meaning of Section 2(vi)(d). The Supreme Court then proceeded to say:

It is true that an instrument normally indicates a document executed as between the parties to it. But if the intention of the Legislature was to confine the word "instrument" to such documents alone, it would have said "under any law, contract or other instrument". The use of the word, "other" would have justified the contentions that the instrument should be of the same category as a contract, and cannot take in a document which evidence adjudication by an Industrial Court. The scope of the denotation of the word "instrument" has to be judged in the light of the general object which the amended definition of "wages" is intended to achieve. As we have already indicated, when the Legislature amended the definition of "wages" in 1957 it obviously intended to widen the scope of that expression- Remunerations payable under the awards have been included within the definition; bonus payable under the awards also falls within the definition; and some categories of gratuity also fall within Sub-clause (d).

4. The learned Counsel for the Respondents contends that the decision of the Patna High Court cannot be taken to lay down the correct law when it construed the expression instruments as including a Legislative enactment, that the Court, in that case, has not given due weight to the clause following the expression instruments to which the said Relief Undertaking is a party, and that the decision of the Supreme Court does not support the Appellant's interpretation of the word instruments as including a legislative enactment and that the Supreme Court's view is only to the limited extent that the word wages will include an award made by a Labour or Industrial Court, and it does not equate the term instruments as giving a wide meaning so as to include a legislative enactment. The learned Counsel would state "that if the expression instruments is interpreted as including a legislative enactments then Clause (a) of Section 4 will be meaningless, and further, the provision itself will be liable to the constitutional attack, that the State legislation cannot curtail or take away the right given by the Payment of Wages Act which is a Central Act.

5. In the view we are inclined to take regarding the scope of the expression instruments occurring in Section 4(b) of the Tamil Nadu Act XXI of 1969, it is unnecessary to go into the question as to whether Section 4 of the Tamil Nadu Act is repugnant to the provisions of the Payment of Gratuity Act. We are of the view that having regard to the setting in which the expression instruments occurs in Section 4(b), it cannot be understood as including a legislative enactment. It is no doubt true that while construing a similar provision, the Patna High Court took the view that the expression instruments will include a legislative enactment. With respect, we are not inclined to agree with the view taken by the Court in that case. Section 4(b) says that contracts assurances of property, agreements, settlements, awards, standing orders or other instruments in force in which the said relief undertaking is a party or which may be applicable to the said Relief Undertaking immediately before 4th January, 1977 shall be suspended in operation. The use of the expression other instruments in force should normally be read as ejusdemgeneris with the earlier clauses. All the earlier expressions can not admittedly take in a legislative enactment. Even assuming that the expression instruments should receive wider incorporation, we are not inclined to construe that expression as including a legislative enactment especially when Section 4(a) specifically refers to certain legislative enactments and provides for their exclusion. Thus, it is seen that wherever the legislature wanted to exclude the operation of any enactments, it has specifically mentioned the enactments in Section 4(a). If the expressions instruments occurring in Section 4(b) is taken to include legislative enactments, then the provision under Sections 4(a) is unnecessary or redundant. It is no doubt true that the Judges of the Patna High Court has stated that the purposes of Sections 4(a) and 4(b) are entirely different. Even so, we are not in a position to say that the expression instruments will take in a legislative enactment. We are not inclined to accept the reasoning given by the Patna High Court that Sections 4(a) and 4(b) are independent and therefore, the fact that Section 4(a) refers to certain

enactments will not stand in the way of the Court construing the expression instruments as including a legislative enactment. We are of the view that if Section 4(b) is construed as including a legislative enactment, then all the legislative enactments will be instruments in force, and they will automatically stand suspended by the provision in Section 4(b), and there is no necessity to specifically exclude the operation of any of the statutes referred to in Section 4(b).

6. The decision of the Supreme Court relied on by the Learned Counsel for the Petitioner does not go to the extent of construing the expression instruments as including a legislative enactment. In that case, the expression instruments occurring in the definition of wages in Section 2(iv) of the Payment of Wages Act has been construed as including an award passed by a Labour Court or Industrial Tribunal, and that decision will not support the case of the Appellant that the expression instruments occurring in Section 4 will take in all the legislative enactments. When u/s 4(a) reference has been made to the enforceability or otherwise of certain enactments, the express a instruments occurring in Section 4(b) cannot not be understood as including legislative enactments. In this view of the matter, we are inclined to hold that a liability arising under the Payment of Gratuity Act cam to be taken to have been suspended by the relevant notification in this case, Therefore, the liability to pay the gratuity under the Payment of Gratuity Act can be enforced notwithstanding the relevant notification. The writ appeal is, therefore, dismissed. There will, however, be no order as to costs.