

(2001) 10 BOM CK 0019

In the Bombay High Court

Case No : L.P.A. No's. 6 and 7 of 2000 and W.P. No's. 3370 and 5589 of 1999

Central Railway Employees Co-operative Society Ltd.

APPELLANT

Vs

Y.M. Patil and Others

RESPONDENT

Date of Decision : 19-10-2001

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 12
Industrial Disputes Act, 1947 — Section 33C(2)
Payment of Gratuity Act, 1972 — Section 14

Citation : (2002) 92 FLR 318 : (2002) 1 LLJ 679

Hon'ble Judges : R.M. Lodha, J; Nishita Mhatre, J

Bench : Division Bench

Advocate : Shekhar Naphade and K.S. Patil, for the Appellant; J.G. Gadkari, for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—These Letters Patent Appeals involve a common issue regarding the payment of special contribution of provident fund to the respondents. When the Letters Patent Appeals were admitted, it was agreed by the parties that the Writ Petitions and the Letters Patent Appeals would be heard together. Hence, by this judgment we are disposing of both the Letters Patent Appeals as well as the writ-petitions.

2. The appellants are a society registered under the Multi-State Co-operative Societies Act, 1984 and have the railway employees as their members. The respondent Nos. 1 to 36 in Letters Patent Appeal No. 7 of 2000 and Respondent No. 1 in Letters Patent Appeal No. 6 of 2000 are their ex-employees (for short, hereinafter referred to as "the respondents"). The appellants had created a fund for provident fund in the year 1943 for the benefit of their employees. The fund was vested in the trustees of the trust which was created to manage the provident fund and was known as the Central Railway Employees' Co-operative Bank. Ltd. Staff Provident Fund (for short, hereinafter referred to as "Staff

Provident Fund"). Every member was required to subscribe and contribute to the fund at the rate of 8% of his salary with a matching contribution payable by the appellants. The contributions were to be held in a separate account, namely, staff provident fund account and were to be invested only in specified securities. Besides this, under the Rule 1209 of the Staff Provident Fund Rules applicable to the provident fund, provided that a special contribution was to be paid to the members on retirement or the termination of service, resignation, etc. Such payment was to be made only if the appellants were satisfied that the service of the member was good, efficient and that the member had been faithful while in service. However special contribution could not be claimed as of right. The rate at which the special contribution was to be paid was also provided under Rule 1209.

3. After the enactment of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the EPF Act"), the employees of the appellants were paid provident fund in accordance with the Rules of the Staff Provident Fund. However, in 1984 the EPF Act was made applicable w. e.f. February 28, 1979. After the enactment of the Payment of Gratuity Act, 1972, employees were paid gratuity in accordance with the Act and not as provided by the Rules governing the service conditions of the employees of the appellants. In July, 1994, the respondents retired and were paid provident fund as accumulated to their credit under the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as "the Scheme") by the Regional Provident Fund Commissioner and gratuity by the appellants under the Payment of Gratuity Act." The special contribution payable under the Staff Provident Fund was not paid to the respondents on retirement. The respondents, therefore, filed separate applications u/s 33-C(2) of the Industrial Disputes Act claiming the additional amount of special contribution. In the written statement filed by the appellants, the appellants took the plea that the special contribution was an additional gratuity which was to be paid only at the discretion of the appellants and, therefore, no claim could be filed u/s 33-C(2) of the Industrial Disputes Act, as all claims for gratuity had to be made under the Payment of Gratuity Act. The Labour Court by its order dated December 29, 1998 held that the benefit, that is, the special contribution is not a gratuity benefit and that the benefit was protected by Section 12 of the EPF Act and, therefore, could be claimed u/s 33-C(2) of the Industrial Disputes Act. The Labour Court, relying on the decision in *Katheeja Bai Vs. Superintending Engineer and Others*, allowed the applications made by the respondents and directed the appellants to pay the amounts, as calculated. Aggrieved by this, the appellants filed Writ Petition No. 3370 of 1999 and No. 5589 of 1999. The writ petitions were admitted, however, the appellants were directed to deposit the entire amount in Court and the respondents were permitted to withdraw 50% of this amount without giving any security and the balance amount after furnishing security. The appellants being aggrieved by this order of the learned single Judge filed the present Letters Patent Appeals.

4. The main contention raised by Mr. Naphade, learned counsel appearing on

behalf of the appellants, is that the respondents are not entitled to a third benefit on retirement besides provident fund and gratuity. He submits that this, amount which was payable under the Staff Provident Fund Rules was in fact a gratuity as could be seen from the manner of its calculation and the terms and conditions under which it was to be paid and, therefore, this amount could not be claimed u/s 33-C(2) of the Industrial Disputes Act. He further submits that assuming that the special contribution payable to the respondents could not be considered as gratuity but as provident fund, this benefit has also been displaced by the Scheme under the EPF Act. He urges that the respondents are not entitled to a benefit under the Staff Provident Fund Rules as well as the statutory scheme. Mr. Naphade also assails the order of the Labour Court which had allowed the claims of the respondents on the basis of the judgment of the Apex Court in the case of Khatheeja Bai's case (supra) by submitting that the facts in that case (supra) are not akin to the facts of the present case and, that therefore, the Labour Court was in error while granting the applications of the respondents.

5. Rule 1203-A of the Staff Provident Fund Rules sets out the object of the fund which is to provide every member with an accumulated amount payable to him at the time of termination of his service or to his heir or nominee in case of his death. Rules 1206 to 1213 provide for the manner in which contributions are made by both the members and the society towards the fund. They also stipulate the terms and conditions on which withdrawals can be made from the fund by a member. The Rules further provide for making nominations and stipulate as to who can be considered as a nominee and a family member. Rule 1229, as already stated, lays down the conditions under which a member is to be paid a special contribution. This special contribution is payable to a member on his retirement, resignation, termination if the Board is satisfied that the service of the member has been good, efficient and faithful. The special contribution to which a member is entitled is half month's pay for each completed year of service, not exceeding 15 months' pay, on the member completing 15 years in service. If the service of the member falls short of 15 years, half month's pay for each completed year of service not exceeding six month's pay is payable to the member. In case of Managers, the rate of contribution is calculated differently.

6. We now advert to the judgment in Khatheeja Bai's case (supra). The Tamil Nadu Electricity Board had constituted a contributory provident fund under which the Regulations provided for the management and administration of the fund by the Board of Trustees. All employees who were eligible for the contributory provident fund scheme and the gratuity scheme of the Government of Tamil Nadu became subscribers to the fund on completion of 3 months' continuous service. Matching contributions were to be made to the Fund by the employees as well as the employers, i.e., Electricity Board by the 15th of every month and this contribution was required to be credited to the individual accounts of the members. Special contribution calculated in a specified manner was also to be credited if the Board was satisfied that the service of the member had been good, efficient and faithful and that the member had not been dismissed from

service or removed in which case sanction of the Board was required to be obtained prior to making any special contribution towards the provident fund. The manner of calculating special contribution was also set out in the Regulations of the Tamil Nadu Electricity Board Contributory Provident Fund Regulations. The Apex Court after considering Section 14 of the Payment of Gratuity Act held that the Electricity Board could not avoid payment of special contribution to provident fund on the pretext that it is akin to or the same as the gratuity payable under the Payment of Gratuity Act.

7. Para 6 of the judgment in Khatheeja Bai's case (supra) reads thus:--

"We are unable to appreciate how the Electricity Board can avoid payment of the special contribution to Provident Fund under their own Provident Fund Regulations on the pretext that it is akin to or the same as Gratuity payable under the Payment of Gratuity Act. In the first place, the Board, in their Regulations, have themselves labelled the special contribution under Regulation 37 as a special contribution to Provident Fund and not as Gratuity. It is not as if they were unaware of the word "Gratuity" and what it meant since we find that there is a reference in Regulation 5 to a Gratuity Scheme of the Tamil Nadu Government which had been adopted by the Board. The Special Contribution under Regulation 37 is part of a well thought out Provident Fund Scheme designed to benefit good, efficient and faithful employee. We borrow the words from the Regulation itself by making annual contributions in addition to the monthly contributions under Regulation 11. This is what appears from Regulation 37 itself. We see no justification for first dubbing it as a gratuity on the ground that it has some of the known characteristics of gratuity and then proceeding to deny the employees the benefit of it on the ground that the Board are paying gratuity under the Payment of Gratuity Act, if the Special Contribution has some common distinctive features which distinguish it from gratuity payable under the Payment of Gratuity Act. For example, one important feature which discriminates the Special Contribution under Regulation 37 from gratuity under the Payment of Gratuity Act is that while the payment of the latter is obligatory and can only be denied if the employee's services have been terminated for his riotous or disorderly conduct or any other act of violence on his part or any act which constitutes an offence involving moral turpitude and can also be denied to the extent of the damage or loss caused by the employee, where the employee's services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, the payment of the former is discretionary and may not be made if the service of the employee has not been good, efficient and faithful. The employer has also the discretion to withhold or reduce the Special Contribution in any particular case. Of course, the employer cannot arbitrarily claim that the employee's service was not good, efficient and faithful, or withhold or reduce the Special Contribution in an arbitrary fashion. Even so, the distinction between the mandate of the Payment of Gratuity Act and the discretion involved in making the Special Contribution under Regulation 37 is intelligibly clear. Another feature which

distinguishes the two is that the benefit of the Payment of Gratuity Act is confined to persons drawing wages not exceeding Rs. 1000/- and does not extend to persons employed in a managerial or administrative capacity whereas the Special Contribution under Regulation 37 is not so confined and extends to every employee of the Board except casual employees, State or Central Government employees employed with the Board on foreign service terms, etc. etc. For the purpose of contribution of Provident Fund under Regulation 11 or Regulation 37 it makes no difference that a 2 person is employed in a managerial or administrative capacity or that he draws wages more than Rs. 1,000/- per month. A third feature which makes the two apart is that the contribution to the Provident fund 2 whether under Regulation 11 or Regulation 37 becomes part of the Fund established by Regulation 3 and is to be managed and administered by trustees under Regulations 3-A to 3-K, whereas the Payment of Gratuity Act does not provide for the constitution of a fund to be managed and administered by trustees. In addition to these broad features, we have the outstanding circumstance that the Boards themselves have described the contribution under Regulation 37 as a contribution to Provident Fund and have chosen to include it in their Provident Fund Scheme. That should conclude the matter."

8. The facts in Khatheer Bai's case (supra) and the present case are similar. Although Mr. Naphade, learned counsel for the appellants, sought to argue that" the decision of the Apex Court was based on the facts of that case, we do not find any reason to depart from the judgment of the Apex Court. As in Khatheer Bai's case (supra), the special contribution under the Staff Provident Fund is payable both to Managers as well as other employees of the appellants at the discretion of the appellants. Similarly, the payment is not confined to members who draw a monthly salary not exceeding Rs. 3,500/-, which is the limit under the Payment of Gratuity Act. The Fund is managed by the Trustees whereas under the Payment of Gratuity Act, gratuity is paid as a matter of right by the employer directly to the concerned employee. Moreover, as in the case before the Supreme Court, the Fund is known as the Staff Provident Fund and the Rules stipulate that the members of Provident Fund account is credited with the special contribution.

9. A perusal of the EPF Act shows that Section 12 of the EPF Act prohibits an employer from reducing whether directly or indirectly the wages of an employee to whom the Scheme under the Act applies or to reduce the total quantum of benefits in the nature of old age pension, gratuity, provident fund or life insurance to which the employee is entitled under the terms of his employment express or implied. This obviously means that merely because an employer is liable to make payment of contribution towards the fund maintained under the Scheme framed under the EPF Act, he cannot be absolved of his liability to pay provident fund to which the employee is entitled under the terms of employment before the Scheme under the EPF Act was made applicable to the establishment. In the present case, the appellants are governed by the EPF Act and the Schemes framed thereunder. The additional provident fund by way of special

contribution which is payable under the Staff Provident Fund Rules is protected u/s 12 of the EPF Act. The appellants have not thought it fit to have their trust exempted from the provisions of the EPF Act and the Scheme framed thereunder u/s 17 of the Act. No application for exemption has been made by the appellants.

10. The Payment of Gratuity Act also provides u/s 14 that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any enactment or contract having effect by virtue of any enactment other than the Payment of Gratuity Act.

11. It will thus be seen that the judgment of the Apex Court which has been considered by (sic) Section 12 of the EPF Act as well as Section 14, of the Payment of Gratuity Act squarely covers the case before us. We are unable to see any distinction as is sought to be drawn by Mr. Naphade, learned counsel for the appellants, between the facts in Khatheeja Bai 's case (supra) and the present case before us.

12. We have, therefore, no hesitation in upholding the judgment and order of the Labour Court granting the amount as calculated by the Labour Court to the respondents. The respondents are at liberty to withdraw the amount deposited in this Court by the appellants towards their claims. In the circumstances of the case, Letters Patent Appeals and the writ petitions are dismissed, however, with no order as to costs.