(2008) 05 GAU CK 0024

In the Gauhati High Court

Director, Goodricke Group Ltd. APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 15-05-2008

Acts Referred:
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10
Payment of Gratuity Act, 1972 — Section 4, 4(1), 4(2), 4(3), 4(5)

Citation : (2009) 6 GLR 475

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—The challenge in the present writ petition is against an order dated 7th of March 2001 passed by the Deputy Secretary to the Government of Assam, Labour and Employment Department. By the said order the management of the two Tea Estates, i.e.; Nonoipara and Orangajuli owned by the petitioner company have been exempted from the provisions of the Payment of Gratuity Act, 1972 with effect from 1.1.1987, in exercise of powers vested in the State Government by Section 5(1) of the Act.

2. The relevant facts may be noticed at the outset.

The petitioner company is the owner of 17 tea gardens, 15 of which are located in the State of West Bengal. The two tea estates owned by the petitioner in the State of Assam are doing business under the name and style of Nonoipara Tea Estate and Oraigajuli Tea Estate, both of which are located in the erstwhile Darrang District of the State of Assam. According to the petitioner company, at the relevant point of time, the workmen of the two tea estates were enjoying all statutory benefits including gratuity under the Payment of Gratuity Act, 1972. However, the clerical, medical and artisan staffs of the two tea estates raised a demand for pension. Accordingly, the petitioner, company formulated a draft pension/retirement scheme which, however, was not accepted by the workmen who insisted on certain further benefits. As according to the petitioner company the said demands of the workmen were not justified a conciliation proceeding under the provisions of the Industrial Disputes Act, 1947 was held which, however, failed. Thereafter by notification No. GLR.594/86/8 dated 21.1.1987 the State Government, in exercise of powers u/s 10 of the Industrial Disputes Act, 1947 made a reference of the dispute between the parties to the Industrial Tribunal at Guwahati. On the basis of the said reference made reference Case No. 16 of 1987 was registered by the office of the learned Industrial Tribunal, Guwahati.

3. The questions/issues referred for adjudication by the learned Industrial Tribunal, Guwahati may now be noticed as below.

(1) Whether the union is justified in espousing introduction of pension scheme of clerical, medical and artisan staff of Nonoipara and Orongajuli Tea Estate?

(b) If not, are the staff members of the above named tea estates entitled to any other relief in lieu thereof?

2 (a) Whether the management of M/s. Goodricke Group Ltd., Calcutta is justified in not introducing pension scheme to the staff members of their gardens located in Assam ?

(b) If not, what relief are these staff members entitled to in lieu thereof?

4. Reference case No. 16/1987 was decided by the learned Tribunal by its award dated 17.4.1995. While adjudicating the said reference the learned Tribunal came to a categorical finding that the pension scheme in dispute between the parties was in lieu of gratuity which was being enjoyed by the workmen of the two Tea Estate as per the provisions of the Act. The learned Tribunal, on a consideration of the issues involved in the reference made and the materials adduced before it, came to the conclusion that the clerical, medical and artisan staff of the two tea estates are entitled to enjoy the pension scheme in lieu of gratuity as the same is a better scheme. Accordingly, the learned Tribunal took the view that he petitioner company was not justified in not introducing the said scheme and by the award dated 17.4.1995 directions were issued for introduction of the pension scheme with effect from 1.1.1987.

5. Aggrieved by the award dated 17.4.1995 passed by the learned Tribunal, the petitioner company approached this Court by instituting a proceeding under Article 226 of the Constitution. The writ petition registered and numbered as civil rule No. 4013 of 1995 was disposed of by this Court on 7.3.2000 by taking the view that the award dated 17.4.1995 passed by the learned Industrial Tribunal would not require the court''s interference. However, implementation of the said award passed by the learned Tribunal by the petitioner company was directed subject to grant of necessary exemption u/s 5 of the Payment of Gratuity Act, 1972 by the State Government. Pursuant to the said order passed by the court the State Government in exercise of powers u/s 5 of the Payment of Gratuity Act,

1972 had passed the impugned order dated 7th of March, 2001. In the said order it has beenMentioned that exemption has been granted with effect from 1.1.1987 to enable the petitioner company to introduce a better pension scheme in accordance with the award dated 17.4.1995 passed by the learned Industrial Tribunal in reference case No. 16/1987.

6. Sri K. Goswami, Learned Counsel for the petitioner, has strenuously argued that the power u/s 5(1) of the Payment of Gratuity Act, 1972 can be exercised by the State Government only upon due satisfaction that the employees in the establishment which is sought to be exempted are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under the Act. Sri Goswami has contended that the aforesaid requirement is a condition precedent to the exercise of power u/s 5(1) of the Act. However in the present case a reading of the impugned order dated 7th March, 2001 and the materials placed before the court do not indicate any satisfaction on the part of the State Government that the condition precedent prescribed by the statute was present. Sri Goswami has contended that no finding has been recorded nor any materials have been placed before the court to show that the employees of the two tea estates, at the relevant point of time, were in receipt of gratuity or pensionary benefits not less favourable than the benefits contemplated by the Act. In such a situation the exercise of power u/s 5(1) of the Payment of Gratuity Act, 1972 is non est in law requiring the court''s interference with the impugned order dated 7th of March, 2001. Sri Goswami has further contended that the order dated 7.3.2000 passed in civil rule No. 4013/1995 has attained finality in law. Therefore, in accordance with the said order the introduction of the pension scheme is squarely dependent on an exemption, from t-he provisions of the Act, being granted by the State Government. Consequently, according to the Learned Counsel , though the award of the learned Tribunal dated 17.4.1995 passed in reference Case No. 16/1987 has been upheld by the court the implementation of the same cannot take effect unless the direction of this Court as aforesaid is complied with. Sri Goswami has additionally argued that the exemption granted with retrospective effect with effect from 1.1.1987 is uncalled for as the same has the effect of causing serious imbalances in the functioning of the petitioner company.

7. Controverting the submissions advanced on behalf of the petitioner, Sri N. Dutta, learned senior Counsel appearing for the respondent No. 3 i.e., Assam Chah Karmachari Sangha, has submitted that it would be evident from a reading of this Court''s order dated 7.3.2000 passed in civil rule No. 4013/1995 that both the parties to the aforesaid writ petition had virtually consented to the order/ direction with regard to exemption. Exemption having been granted by the impugned order it is not open for the petitioner company to challenge the same, it is argued. Learned Counsel for the respondent has further argued that a reading of the award dated 17.4.1995 passed by the learned Industrial Tribunal amply demonstrates that the bone of contention between the parties before the learned Tribunal was basically with regard to the date of implementation of the

award and particularly as to whether such implementation should be with retrospective effect. In this regard, Learned Counsel has further argued that the number of retirements that will be covered by the retrospective date of the effect of the pension scheme is minimum and no question of upsetting the financial position of the company can and does arise. Sri Dutta Learned Counsel by referring to a decision of the Apex Court Workmen of Metro Theatre, Bombay Vs. Metro Theatre Ltd., Bombay, has argued that there is no prohibition or restriction under the Act for the workmen of any establishment from getting better benefits on account of gratuity or pension. In fact, the provisions of the Act contemplate enjoyment of such better benefits by the workmen which in the present case having been directed by the award dated 17.4.1995, which has also attained finality in law, such benefits cannot be denied.

8. The rival submissions advanced on behalf of the parties have received the due and anxious consideration of the court. The argument advanced on behalf of the petitioner that in the present case the conditions precedent stipulated by Section 5(1) of the Payment of Gratuity Act, i.e., that the concerned employees are in receipt of gratuity or pensionary benefits at par to what have been provided by the Act, is not present is self defeating inasmuch as it is admitted case of the petitioner that, at the relevant point of time the workmen of the two tea estates were covered by the Payment of Gratuity Act, 1972. The aforesaid categorical statement made in paragraph 2 of the affidavit makes it wholly unnecessary for the court to go any further into the arguments advanced by the Learned Counsel for the petitioner. In any case, if a power has been conferred on the State Government which is required to be exercised upon existence of certain facts, there will be a presumption in law that power has been exercised validly and such presumption will hold the field until the contrary is proved. The burden of proving the contrary, naturally, would be on the person who is asserting the same. In the present case, the petitioner company who had asserted the above fact in the course of the oral arguments has, however, clearly admitted in its pleadings that at the relevant point of time the employees of the two tea estates were in receipt of gratuity under the provisions of the Act.

9. Section 4(1) of the Act enumerates the situations in which gratuity will become payable. Section 4(2) of the Act provides that for every completed year of service or part thereof in excess of six months the employer shall pay gratuity to an employee at the rate of 15 days wages based on the wages last drawn. Section 4(3) of the Act provides that the amount of gratuity payable to an employee shall not exceed the amount stipulated. Sub-section (5) of Section 4 makes it clear that the other provisions of Section 4 will not affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

10. Interpreting the aforesaid provision of the Act, i.e., Section 4(5) of the Act, the Apex Court in The Workmen of the Metro Theatre Ltd., Bombay (supra) took the view that the expression award does not mean an existing award and that

the same would include a future award made under the provisions of the Industrial Disputes Act. The Apex Court took the further view that it cannot be said that u/s 4(5) of the Act an existing agreement or contract providing gratuity cannot be improved by a fresh agreement or fresh contract between the employer and the employee. In the above decision the Apex Court also took the view that the aforesaid situation is made amply clear by the provisions for exemption contained in Section 5 of the Act.

11. In the present case the clerical medical and artisan staff of the two tea estates were receiving gratuity under the Act. The pension scheme which was contemplated in lieu of gratuity contained better benefits for the workmen. By the Award dated 17.4.1995 the management was directed to introduce the said pension scheme with effect from 1.1.1987. The aforesaid direction of the learned Tribunal was affirmed by this Court in civil rule No. 4013/1995 subject to grant of exemption by the State Government u/s 5 of the Act. As the pension scheme in lieu of gratuity contained better benefits than what was enjoyed by the workmen under the provision of the Act the State Government by the impugned order granted exemption with effect from 1.1.1987 to enable implementation of the award dated 17.4.1995. In the aforesaid facts and in view of the law enunciated by the Apex Court in The Workmen of the Metro Theatre Ltd., Bombay (supra) it is difficult to see as to how interference as prayed for in the writ petition can be made by the court with the order of exemption dated 7th March, 2001.

12. The writ petition, consequently, has to fail. It is accordingly dismissed. However, in the facts and circumstances of the case, parties are left to their own costs.