

(1998) 04 MP CK 0039

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4598 of 1997

District Co-operative Central Bank Ltd.

APPELLANT

Vs

Controlling Authority under Payment of Gratuity Act and
Others

RESPONDENT

Date of Decision : 23-04-1998

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4

Citation : (1999) 2 LLJ 1275 : (1999) 2 MPLJ 139

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : R.K. Gupta, for the Appellant; S. Paul, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

Invoking the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, the petitioner, District Co-operative Central Bank Limited, has assailed the order dated April 30, 1994 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as "the Act") in case No. 28/94 whereby the said Authority held that the respondent No. 2 is entitled to the gratuity amounting to Rs. 66,450.

The facts as have been uncurtained in the petition are that the provisions of Payment of Gratuity Act are applicable to the establishment of the petitioner. As per Section 4 of the Act, an employee is entitled to the gratuity to the maximum limit of Rs. 50,000. Later on, an amendment was brought on the Statute Book on April 24, 1994 enhancing the maximum limit to Rs. 1 lakh. Keeping in view the aforesaid amendment the Apex Bank, namely, M.P. State Co-operative Bank Limited, Bhopal issued a circular on April 13, 1994 to all the Branch Managers/ Managing Directors and General Managers of the District Co-operative Bank of the State stipulating therein, that in view of the amended provision the persons

who are employed in the Bank to whom the unamended provisions are applicable, would be entitled for the amount of gratuity to the maximum limit of Rs. 1 lakh instead of Rs. 50,000. It has also been envisaged therein that the employees who are getting monthly salary of Rs. 2,500 would also be entitled to gratuity. The said circular has been brought on record as Annexure P-2. The respondent No. 2, an employee of the Bank, retired on October 31, 1993 before the amendment dated May 24, 1994 had come into force and accordingly the petitioner bank calculated the gratuity and paid him Rs. 50,000 keeping in view that the maximum amount of gratuity payable was Rs. 50,000. The respondent No. 2 being dissatisfied raised a dispute before the Controlling Authority under the Act, claiming that he was entitled for payment of entire amount of gratuity. It has been stated in the petition that the petitioner had put in 30 years of service and gratuity payable to him was Rs. 66,450 and he has already been paid the maximum i.e. Rs. 50,000 and, therefore, nothing remained to be paid.

The Controlling Authority took into consideration a Government memorandum No. FB-6-(I)(XX)(90)R-II/II BPL dated March 21, 1990 to hold that the maximum amount of gratuity payable is Rs. 1 lakh and, therefore, the petitioner was entitled to get the whole sum. The said order is the cause of grievance of the present petitioner.

A preliminary objection has been raised by the respondent No. 2 indicating that the petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India though a statutory appeal is provided u/s 7(7) of the Act and there being an effective and efficacious alternative remedy, the petitioner could not have straightaway come before this Court. Apart from stating in the preliminary objection, the conclusions arrived at by the Controlling Authority have been supported by the respondent No. 2.

Assailing the impugned order Mr. R.K. Gupta, learned counsel for the petitioner has submitted that the amendment of Payment of Gratuity Act was brought in w.e.f. May 24, 1994 whereby Rs. 50,000 as provided u/s 4 of the Act was substituted by Rs. 1 lakh, and the petitioner having been retired much before the said date, would not be entitled to get the benefit of the said provision. It is also canvassed by him that the circular relied upon by the Controlling Authority relates to gratuity admissible to a Government servant whereas the respondent No. 2 is an employee under the Co-operative Society, and hence the said circular is not applicable to the case of the petitioner. It is also argued by Mr. Gupta that as a pure question of law arises relating to interpretation of a statutory provision and there being no factual controversy, this Court should consider the grievance of the petitioner.

Mr. S. Paul learned counsel appearing for the respondent No. 2, in his turn, while highlighting the preliminary objection with regard to alternative remedy, has also contended that the provision which has been brought by way of an amendment is retrospective and, therefore, the petitioner is entitled to the benefit of the amended provision. The learned counsel however, has clearly submitted that the

circular which has been placed reliance upon by the Controlling Authority unless made specifically applicable to an employee of a Co-operative Society or Bank the same "ipso facto" would not be applicable.

Before I deal with the respective contentions raised by the learned counsel for the parties, I shall advert to deal with the preliminary objection raised by the learned counsel for the respondent No. 2, Mr. S.P. Paul in support of his contention has placed reliance on the decision rendered in the case of Swetambar Sthanakwasi Jain Samiti and another Vs. The Alleged Committee of Management, Sri R.J.I. College, Agra and others, . In the aforesaid case an order of injunction was passed in the civil suit and the application of a rival society for impleadment in the suit was rejected. Challenging the aforesaid orders a writ petition was filed before the High Court invoking the jurisdiction of the Court under Article 226 of the Constitution and the High Court allowed the prayer by quashing the interim injunction and permitted for impleadment with a further direction for consideration of the interim relief afresh. In that context their Lordships observed as follows:

"Though the jurisdiction of the High Court under Article 226 of the Constitution is not confined to issuing the prerogative writs, there is a consensus of opinion that the High Court will not permit this extraordinary jurisdiction to be converted into a civil Court under the ordinary law. When a suit is pending between the two parties the interim and miscellaneous orders passed by the trial Court - against which the remedy of appeal or revision is available cannot be challenged by way of a writ petition under Article 226 of the Constitution of India. Where the Civil Court has the jurisdiction to try a suit, the High Court cannot convert itself into an appellate or revisional Court and interfere with the interim/miscellaneous orders of the Civil Court. The writ jurisdiction is meant for doing justice between the parties where it cannot be done in any other forum."

The present factual matrix is absolutely different. In the case at hand, the only question that really arises is the interpretation of the amended provision of the Act whether the same would be retrospective or prospective. It is admitted by both the parties that no question of Act is involved. The factual position being indisputable and what arises is being a pure question of law, I am of the humble view that the preliminary objection that the alternative remedy should have been availed of, does not merit consideration.

The question that arises for determination is the effect, impact and import of the amendment brought to the provision of the Act. In Sub-section (3) of Section 4 of the Principal Act the words "Fifty Thousand" has been substituted by the words "One Lakh".

The aforesaid amendment has been brought into force on May 24, 1994. Submission of Mr. Paul is that the aforesaid provision should be regarded as retrospective and the petitioner should be conferred the benefit of the amended provision. On a perusal of the amended provision it is noticeable that nothing has

been mentioned therein that the said provision should be retrospective. In absence of any specific stipulation and there being nothing to suggest the language employed in the amended provision that it would be retrospective the date of publication in the official gazette has to be given due weightage. In this context I may refer to the decision rendered in the case of Bhagat Ram Sharma Vs. Union of India (UOI) and Others, wherein their Lordships of the Apex Court while integrating Regulation 8(3) of Punjab State Public Service Commission (Conditions of Service) Regulations, 1958, came to hold that there use of word substitution does not imply that Regulation 8(3) relates back to November 1, 1956, the appointed day.

In this regard I may usefully refer to the decision rendered in the case of K.S. Paripooranan v. State of Kerala and Ors. AIR 1995 SCW 1004 wherein their Lordships expressed thus:

"As statute dealing with substantive rights differs from a statute which relates to procedure or evidence or is declaratory in nature inasmuch as while a statute dealing with substantive rights is prima facie prospective unless it is expressly or by necessary implication made to have retrospective effect, a statute concerned mainly with matters of procedure or evidence or which is declaratory in nature has to be construed as retrospective unless there is a clear indication that such was not the intention of the legislature. A statute is regarded as retrospective if it operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. By virtue of presumption against retrospective applicability of laws dealing with substantive rights transactions are neither invalidated by reasons of their failure to comply with formal requirements subsequently imposed, nor open to attack under powers of avoidance subsequently conferred. They are also not rendered valid by subsequent relaxations of the law, whether relating to form or to substance. Similarly, provisions in which a contrary intention does not appear neither impose new liabilities in respect of events taking place before their commencement, nor relieve persons from liabilities then existing, and the view that the existing obligations were not intended to be affected has been taken in varying degrees even of provisions expressly prohibiting proceedings."

In this context, I may refer to the decision rendered in the case of R. Rajgopal Reddy (dead) by L. Rs and Ors. v. Padmini Chandrashekar (dead) by L.Rs AIR 1995 SCW 1422 wherein a three-Judge Bench over-ruled the decision rendered in the case of Mithilesh Kumar and Another Vs. Prem Behari Khare, and while doing so their Lordships referred to the case of Garikapatti Veeraya Vs. N. Subbiah Choudhury, wherein paragraph 25 of the report Chief Justice S.R. Das speaking for the Court addressed thus:

"The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in

litigation at the time when the Act was passed."

From the aforesaid it is manifest that a provision is to be treated as prospective unless it is expressly or by implication made to have retrospective operation. Retrospective operation of a statute is not to be so regarded unless the intention in that aspect is expressed in clear-cut terms or in an implied manner. In the absence of an intention in the amended provision or such an intention gatherable from the scheme of the Act, I am of the considered view that the aforesaid amendment is prospective in nature, and hence would not be applicable to the cases of the likes of the petitioner who had already attained the age of superannuation before the amended provision had come into force.

In view of the preceding analysis, the order passed by the Controlling Authority under Annexure P-3, does not stand close scrutiny and is hereby quashed. Resultantly, the writ application is allowed without any order as to costs.