(1976) 01 MAD CK 0008

In the Madras High Court

E.I.D. Parry Ltd. APPELLANT

Vs

Industrial Tribunal and Another RESPONDENT

Date of Decision : 07-01-1976

Acts Referred:
Industrial Disputes Act, 1947 — Section 10, 19
Payment of Gratuity Act, 1972 — Section 14, 4, 5

Citation : (1977) 1 LLJ 276

Hon'ble Judges : Mohan, J

Bench : Single Bench

Judgement

Mohan, J.—This writ petition is for certiorari to quash the award of the 1st defendant-Industrial Tribunal, made in Industrial Dispute 29 of

1972, dated 11th December, 1972. The snort facts are as follows :

2. By G.O. Rt. No. 1508 dated 17th June, 1972, the Government of Tamil Nadu referred for adjudication two issues between the workmen and

the management of H.I.D. Parry Ltd., Ranipet. Those two issues are:

1. Whether the demand for extension of accident benefit applicable to the workers who joined service before 1961, to those who joined thereafter

is justified and to what relief they would be entitled ; und

2. Whether the demand that the work-men who have completed 20 years of service should be given the option of pension instead of gratuity is

justified and if so, to formulate a scheme.

On receipt of this reference, the Industrial Tribunal took up the matter for adjudication and answered issue No. 1 in favour of the management und

as regards issue No 2 it held that the workmen who had completed 20 years of service would be eligible for a monthly pensil at the rate of 25 per cent of their monthly basic salary and 50 per cent of their average monthly dearness allowance drawn during the 12 months preceding retirement. It

further held that a sum of Re. 1 for every year of service will be further added on to the pension for service in excess of 20 years and that the

workmen who had completed 20 years of service would be given the option as above instead of gratuity. It is this award that is attacked.

3. Before me Thiru M.R. Narayana-swami, appearing for the writ petitionerï¿½the management E.I D. Parry Ltd., would contend as follows:

Reference by the Government itself is incompetent because the matters relating to gratuity were covered by three settlementsï¿½M 3 to M 5 which

came into effect on 1st April, 1968, and was to be operative for a period of five years and that as the matter was covered by these settlements it

would not be open to the workmen to opt or to come out of the settlement and ask for pension instead of gratuity. Properly speaking it is that

scheme under the settlement which should govern the rights of the parties. In support of this, the learned Counsel relies on the decisions in

Bangalore Wonlen, Cotton & Silk Mills Co. Ltd. V. Their Workmen, (1967) 33 F.J.R. 254 and Tungahhadra Industries Ltd. v. Their Workman,

(1973) 43 F.J.R. 543. The next contention is the Payment of Gratuity Act (Central Act No. 39 of 1972), which came into effect on 16th

September, 1972, and by reason of Sections 4, 5 and 14 it would not be possible for the workmen to ask for gratuity other than what is provided

for under the Act Even Section 5 mentions gratuity or pen sionary benefits. If it was the case of the workmen that the gratuity that was available

under the settlements M 3 to M 5 were not in accordance with the provisions of the Act, in view of the over-riding effect of S 14, it should be by

way of a separate dispute. But this is not the case here. The third contention is that merely because for the clerical staff pensionary benefits were

available under Ext. M 7, it would not straightaway mean the workmen concerned in the writ petition would also be entitled to such claim. Even

assuming that they would be entitled to such benefits, the Tribunal instead of framing a scheme in accordance with M 7 has chosen to frame a

scheme in an arbitrary fashion while at the same time purporting to base its conclusion on M 7.

4. Thiru N.G.R. Prasad, the learned Counsel for the respondent-workmen, in meeting these contentions would submit that the pensionary benefits

are not the subject-matter of the settlemants M 3 to M 5. Therefore, there is no bar in their opting for the pensionary benefits of course, the

workmen might not be entitled to more gratuity but where what is asked for is a totally different retirement benefit, certainly the reference is

competent. In order to hold that the reference is competent the test which is applied is whether there is identity or whether the settlement would

directly answer the subject-matter of reference. It was so laid down in Indian Bank Ltd. v. Industrial Tribunel [1963 II L.L. J. 1951 .

5. Section 5 of Central Act 39 of 1972 does not in any manner affect or take away the jurisdiction of the Tribunal. It merely says that it will be

open to the management concerned to ask for exemption at the hands of the Government. Under more or less identical circumstances, the

Supreme Court had held concerning a case relating to provident fund that gratuity could also be asked for in addition to provident fund: The

Bharatkhand Textile Mfg. Co. Ltd. and Others Vs. The Textile Labour Association, Ahmedabad, . Concerning the merits about the scheme

framed by the Industrial Tribunal, the submission of the learned Counsel is that M 7 merely formed the basis but if pensionary benefits were to be

awarded on that basis it would be an illusory one and therefore sufficient variation was done by the Tribunal in order to afford real benefit

concerning pensionary benefits to the workmen. Even otherwise, according to the learned Counsel, this Court exercising writ jurisdiction cannot

interfere concerning merits.

6. Thiru M.R. Narayanaswami, in reply submits that certainly as long as the scheme is pending and in force the workmen cannot ask for additional

gratuity. What is contended now is in lieu of gratuity, whether option could be exercised for pensionary benefits. In Sanghvi Jeevraj Ghewar Chand

v. Madras Chillies Grains & Kirana Merchants Workers'' Union (1968) 35 F.J.R. 162, relating to Bonus Act it has been held, for such of those

industries not covered by the Bonus Act the Tribunal cannot award bonus under the formulae which existed prior to the passing of the Act. The

same principle would apply in the instant case also in that after the passing of the Act if really the grievance of the workmen was that the gratuity as

awarded under the there settlements was not in accordance with the provisions of the Central Act 39 of 1972, even then the scope of the reference should be totally different and not a the one that is done.

7. Before I proceed to examine the merits of these contentions, 1 may refer to the award of the Tribunal in issue No. 2. The Tribunal has held :

The settlements do not cover any pension which also is a retirement benefit. That being so, the settle ments cannot be a bar to a claim for a pension

scheme. The claim does not affect the gratuity scheme now in existence. Tee settlements only prevent the workers from asking more as gratuity I

do not think that they debar them from claiming a separate retirtmem scheme. The management has filed an additional counter statement

subsequent to the date on which the Payment of Gratuity Act, 1972, came into force contending that this Tribunal would have no jurisdiction to

formulate any pension scheme instead of gratuity This contention, in my opinion, has no substance.

I am constrained to remark that the approach of the Tribunal seems to be rather lay than legal. I am afraid, the argument of the management has

not been properly appreciated. There is no gam saying that gratuity is a retirement benefit. It has been so laid down in Delhi Cloth & General Mills

Co. Ltd. V. Their Workmen. (1968) 36 F.J.R 247. In fact, their Lordships of the Supreme Court said, ï¿½gratuity paid to workmen is intended to

help them after retirement on superannuation, death, retirement, physical incapacity, disability or otherwise. The object of providing gratuity scheme

is to provide a retiring benefit to the workmen who have rendered long and unblemished service to the employer and thereby contribute to the

prosperity of the employer"". If. therefore, gratuity is a retirement benefit what then is the effect of the settlements M 2 to M 5 As seen above, those

settlements were to be operative from 1st April, 1968, for a period of five years. The reference itself under issue No. 2 is, whether the demand

that the workmen who have completed 20 years of service should be given the opt on of pension instead of gratuity is justified and if so to

formulate a scheme. These settlements undoubtedly are binding and operative and they have the same effect as an award of tae Tribunal. If that be

the true legal position, is it open to the workmen to wriggle out of these settlements by an ingenious device of seeking an option of pension and

thereby by-pass the settlement My answer to that would be ""no"". It is here, the two cases cited by Thiru M.R. Narayanaswami are of great assistance to him. It was held in Bangalore Woollen, Cotton & Silk Mills Co. Ltd v. Their Work-men (1968) 33 F.J.R. 254, that ""From this it will

follow that when there is a subsisting award binding on :he parties, the Tribunal will have no jurisdiction to consider the same points in this

reference"". Again in Tungabhrdra Industries Ltd v. Their Workman (1973) 43 F.J.R. 543, it was held, where the subject-matter of the reference

was almost identical with the matters covered by the prior award which had not been properly terminated u/s 19(6) of the Industrial Disputes Act,

the second reference was invalid.

8. From this it will follow that the reference itself is incompetent. I am unable to appreciate the argument of Thiru N.G.R. Prasad that pensionary

benefits were not covered by settlement. It was this approach of the Tribunal which T have earlier characterised as rather lay then legal. This

argument ignores the fact that the subject-matter of the reference is whether the workmen could opt for pensionary benefits. There being no

question of option, so long as the settlements are binding and operative, it is not correct on the part of the learned Counsel for the respondent to

contend that pensionary benefits are not covered by the settlement.

9. In The Indian Bank Ltd. Vs. The Industrial Tribunal and Others, , a question arose before the Bench of this Court as to when the jurisdiction of

the local Tribunal would be ousted. In that connection, it was held, an adjudication contemplated by Section 10 is of a dispute and it follows that

for the purpose of applying Clause (6) of Section 10, the dispute pending before the Industrial Tribunal and that before the National Tribunal

should be the same so that the concerned workers may obtain the relief sought in the local Tribunal from the National Tribunal. Unless there is

therefore an identity between the two references one cannot replace or supersede the other.

10. The question in this case is somewhat different, namely, in view of the binding nature of the settlement, whether the work-men could seek an

option for pensionary benefits and, therefore, this decision does not lend support to the contention of Thiru N.G.R. Prasad. Even otherwise, I find

gratuity"" is the subject of settlements M 3 to M 5 and, therefore, by reference to those schemes the Tribunal would be in a position to had that the

workmen would be governed by those scheme. So, looked at from any point of view, I have little hesitation in coming to the conclusion that the

reference is totally incompetent.

11. Central Act 39 of 1972 came into force on 16th September, 1972 The reference in this case was on 17th June, 1972. Section 4 of that Act

says gratuity shall be payable to an employee on the termination of his employment Section 5 enables the Government to exempt any

establishment, factory, mine, etc., by notification where the rummy or pensionary benefits are not less favourable than the benefits conferred under

this Act, Section 14 con.;, ins the overriding provision that reads

The provisions of (his Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment

other than this Act or in any instrument or contract having etch: by virtue of any enactment other than this Act.

By reading this section it follows if the grievance of the workmen is that thegraumy benefits obtainable under the settlements M 3 to M 5 are in any

way inconsistent with the provisions of the Act, that would be a different dispute altogether and even then it would not enable them to seek for an

option of pension barefoot. This is where the disjunctive clause u/s 5 of the Act, namely, ""gratuity or pensionary benefits"" requiies lobe noted. No-

doubt. Section 5 is only a provision relating to exemption which could be done by the Government by appropriate; notification. Nevertheless, it the

Tribunal has no jurisdiction in view of my finding that the reference itself was incompetent the question whether by reason of Act. 39 of 1972 the

jurisdiction of the Tribunal would be barred is again a matter which ought to have been decided independently, but instead all that the Tribunal said

was there is nothing in the Payment of Gratuity Act which says that gratuity is the only retirement benefit which an employee to whom, the Act. will

apply is entitled to receive. Where the management is obliged to pay pratuity by reason of the Act (more so in view of the settlements covered by

M 3 to M 5 which are undoubtedly binding and operative between the management and the workmen it is the provisions of the Act that will

govern. From this point of view also I hold that the award of the Tribunal is illegal.

12. The decision in The Bharatkhand Textile Mfg. Co. Ltd. and Others Vs. The Textile Labour Association, Ahmedabad, , relied on by the

learned Counsel for the respondent deals with a different situation altogether.

That arose under the Employees'' Provident Funds Act, it was held at

page 209:

...These provisions clearly indicate that the statutory benefits which, in the opinion of the Legislature, are the minimum to which the employees are

entitled, cannot create a bar against the employees'' claim for additional benefits from their employers.

The question here is not additional benefits. At the risk of repetition, I say it is to opt for a pensionary scheme while the settlements under M 3 to

M 5 are still binding and valid between the parties. Therefore, this decision has no application to the facts of the present case.

13. Lastly, turning to the merits, inasmuch as I have already held that the reference itself is incompetent and the award of the Tribunal is illegal, I do

not think it necessary to go into the merits. It is needs less for me to mention that it will be certainly open to the workmen to terminate the

settlements in accordance with the terms of the settlements or in accordance with the provisions of law and thereafter seek for the pensionary

benefits, if so advised.

14. In the result, the rule nisi is made absolute. There will be no order as to costs.

