
(2016) 09 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7128 of 2015

Electronics Corporation of India Limited

APPELLANT

Vs

Controlling Authority

RESPONDENT

Date of Decision : 30-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 6 ALT 471 : (2017) 1 AndhLD 603 : (2017) 1 CLR 710 : (2017) 153 FLR 632

Hon'ble Judges : Sri A. Ramalingeswara Rao, J.

Bench : Single Bench

Advocate : GP for Labour (TG), for the Respondent No. 1; Sri G. Vidya Sagar, Senior Counsel for Smt. K. Udaya Sri, Advocate, for the Petitioner; Sri A.K. Jaya Prakash Rao and V. Hari Haran, Advocates, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Sri A. Ramalingeswara Rao, J. - Heard learned Senior Counsel, Sri G. Vidyasagar for the petitioner, learned Counsel Sri A.K. Jaya Prakash Rao and Sri V. Hari Haran for the respondents.

2. The second respondent herein retired as Deputy General Manager on 31.07.2008 on attaining the age of superannuation while working in the petitioner Company. The second respondent is governed by "ECIL Employees Gratuity Fund Rules" (for short, the Rules). On retirement he was paid an amount of Rs. 3,50,000/- as per the said Rules. The Rules were made in tune with the provisions of the Payment of Gratuity Act and the amount payable as on the date of retirement was Rs. 3,50,000/- even as per the provisions of the Payment of Gratuity Act. Payment of Gratuity Act was amended in 2010 enhancing the limit of Rs. 3,50,000/- to Rs. 10,00,000/-. It came into force with effect from 24.05.2010. The same was adopted by the Company in the Board of Directors meeting held on 29.06.2010 and 13.08.2010 and Rule 8.1 and 8.3 of the Rules was accordingly amended. A Personnel Circular No. 2068/2010-11,

dated 12.11.2010, was issued. The payment of an amount of Rs. 3,50,000/- was made to the second respondent as he retired prior to the said amendment.

3. It appears that the Department of Public Enterprises issued Office Memorandum No. 2(70)/08-DPE(WC), dated 26.11.2008, notifying the revision of scales of pay with effect from 01.01.2007 to the board level and below board level executives and non unionised supervisors in Central Public Sector Enterprises (CPSEs). In clause 13 of the said guidelines relating to the payment of gratuity, it was stated that the ceiling of gratuity of the executives and non-unionised supervisors of the Central Public Sector Enterprises would be raised to Rs. 10,00,000/- with effect from 01.01.2007. The Government of India issued another Office Memorandum on 02.04.2009 clarifying that the benefits of Memorandum dated 26.11.2008 and 09.02.2009 are to be viewed as a total package and they are the maximum permissible limits. After issuance of the said Memos, the Board of Directors of the petitioner Company held a meeting on 21.04.2009 taking up the issue of revision of pay scales and it was proposed that the ceiling unit of gratuity of Rs. 3,50,000/- will be maintained till the Gratuity Act was amended. Though the Department of Public Enterprises and the Central Government issued Memos, they were not approved by the Board of Directors of the petitioner Company and it continued to pay the amount of Rs. 3,50,000/- to the employees who retired prior to the amendment made to the Payment of Gratuity Act in 2010.

4. Taking advantage of Memorandums issued as above on 26.11.2008, 09.02.2009 and 02.04.2009, the second respondent and 317 other retired employees of the petitioner Company appear to have filed individual applications before the first respondent claiming the difference of gratuity amount of Rs. 6,50,000/- on the ground that they retired from service after 01.01.2007. Since the application to be filed before the first respondent does not contain a provision for giving reasons for the claim and the prescribed proforma has to be filled up, the first respondent has no occasion to consider the tenability of the claim and accordingly, he registered the claims made by the second respondent and similarly situated persons. When a notice was issued by the first respondent to the petitioner to appear and answer the claims, the petitioner appeared before the authority and submitted two written submissions, one for the officer cadre and another for workman cadre. A common rejoinder was filed by the applicants. The company filed a Memo on 09.03.2015 seeking adjournment, but the first respondent recorded the evidence of some workmen and officers and adjourned the matter for further evidence. At that stage, the present Writ Petition was filed stating that the applications filed before the first respondent were not maintainable, registration of the claim by the first respondent without condoning the delay was illegal and the procedure adopted by the first respondent in entertaining the applications was contrary to law.

5. This Court, by order dated 18.03.2015, while admitting the Writ Petition, passed an order restraining the first respondent from entertaining any claim and

granted stay of all further proceedings. Seeking vacation of the same, W.V.M.P. Nos. 1464 of 2015 and 638 of 2016 were filed by persons who are not parties to the present Writ Petition but who filed claim petitions before the first respondent.

6. In view of the undisputed facts available in the documentary evidence, the averments made in the counter affidavits are not stated in the present order.

7. Learned Senior Counsel, Sri G. Vidyasagar appearing for the petitioner submitted that in view of the Rules, the retired employees who are similarly placed like the second respondent are not entitled to maintain the applications when they were paid an amount of Rs. 3,50,000/- as per the Rules in existence as on the date of their retirement and the enhancement made in the gratuity amount to Rs. 10,00,000/- with effect from 24.05.2010 cannot be extended to such retired employees.

8. Learned Counsel Sri A.K. Jaya Prakash Rao and Sri V. Hari Haran submitted that in view of the Office Memorandum issued by the Department of Public Enterprises, the petitioner Company, which is a public sector enterprise is bound and they cannot avoid the payment of enhanced amount for the employees who retired after 01.01.2007 on the ground that the Rules were not amended.

9. When a specific question was put to them to show whether any employee who retired prior to 24.05.2010 was paid the enhanced amount of Rs. 10,00,000/-, they were unable to show.

10. The Office Memorandum dated 26.11.2008 was issued by the Government of India, Ministry of Heavy Industries & Public Enterprises, Department of Public Enterprises, revising the pay scales with effect from 01.01.2007 in respect of board level and below board level executives and non unionised supervisors in CPSEs. Para 13 of the said Memorandum deals with gratuity and it states that the ceiling of gratuity of the executives and non-unionised supervisors of the CPSEs would be raised to Rs. 10,00,000/- with effect from 01.01.2007. Thereafter, a Committee of Ministers was constituted to look into the demands raised by CPSE executives of Oil and Power Sectors, and another Memorandum dated 02.04.2009 was issued. It was stated therein that the Office Memorandums dated 26.11.2008 and 09.02.2009 have to be viewed as a total package. It was also stated that the said package would be applicable to all the CPSEs. It was made clear that the ceilings mentioned therein are the maximum permissible limits. Though the said Memorandums were considered by the Board of Directors of the petitioner company in its 226th meeting, they were accepted with effect from 01.01.2007. However, while dealing with the arrears for the period from 01.01.2007 to 31.03.2009 due to pay revision, the total financial impact was considered and different dates were mentioned. With regard to leave encashment and perks and other allowances, it was made applicable from 26.11.2008. PRP was stated to be implemented as per the recommendations of the Remuneration Committee being constituted and the impact, if any, would be within the limits of affordability criteria and with regard to gratuity it was decided

to maintain the ceiling limit at Rs. 3,50,000/- till the Gratuity Act is amended. The said decision was taken by considering the overall impact on the finances of the company. Thereafter, the Payment of Gratuity Act was amended in the year 2010 and the Board took note of the said fact in its 234th meeting held on 13.08.2010 and a resolution was passed enhancing the ceiling limit from Rs. 3.5 lakhs to Rs. 10.00 lakhs in Term Assurance under Group Gratuity Cash Accumulation Policy with LIC and it was also made applicable to include cases of death-in-harness in settlement of gratuity amount. A consequential amendment was made to Rules and a circular was issued on 12.11.2010 enhancing the ceiling limit with effect from 24.05.2010 by amending the Rule 8.1 and 8.3 of the said Rules.

11. Thus, it is clear that though the Government of India applied revision of pay scales to the employees of the Public Sector Enterprises with effect from 01.01.2007, including gratuity, such decision was not accepted by the petitioner taking into consideration the overall financial position. A decision was taken by the Board of Directors of the petitioner Company to extend the benefit only after amendment of the Payment of Gratuity Act, which was done in 2010. Accordingly, amendments were made to the Rules with effect from 24.05.2010. The applicants before the first respondent retired on superannuation before the said amendment to the Rules and received the gratuity amount. After five years of the said amendment, the retired persons like the second respondent filed applications before the first respondent which were entertained. If the retired employees had any grievance with regard to the non-implementation of the directive of the Union of India with respect to gratuity by the petitioner, they should have taken independent proceedings, but they cannot claim the difference in gratuity on the basis of the Office Memorandums issued by the Government of India in the face of the resolution of the Board of Directors and amendment to Rules. The resolution of the Board of Directors is binding on all the employees and in the absence of any challenge to the said resolution and Rules, it cannot be held that the retired employees are entitled to approach the first respondent claiming application of the Office Memorandums issued by the Government of India de hors the resolution of the Board of Directors and Rules.

12. This issue was considered by a Division Bench of the Madras High Court in *Srinivasan v. Government of India*, (1999) 1 LLJ 986 Mad and it was clearly held that the scheme formulated by the Department of Public Enterprises will come into effect in any public sector undertaking only on the approval of the Board of Directors and the Board of Directors can specify the terms and conditions of the implementation of the scheme including the date of commencement of the scheme. The issue before the Madras High Court was with regard to a scheme called "Death-cum-Retirement Gratuity Scheme for the Employees of Public Sector Enterprises". The Scheme was made effective with effect from January 1, 1986. But the scheme was implemented by the management with effect from 01.07.1993. One employee opted for voluntary retirement on 01.04.1993 and was relieved on 30.06.1993. He made a representation for the consideration of

the management on 20.08.1993 stating that he was relieved on 30.06.1993 and he shall not be deprived of the enhanced benefits granted by the management with effect from 01.07.1993. The Writ Petition was dismissed by the learned single Judge when a direction was sought for extending the benefit. The matter was taken before the Division Bench by the employee and the Division Bench held as follows:

"We see much force in the contention of the learned counsel for the 2nd respondent. We have carefully perused the scheme. We are of the view that the employees of the second respondent management are under total misconception that the guidelines contained in the communication of the DPE in regard to the payment of gratuity will automatically apply to the second respondent, even if there being no resolution of the Board of Directors of the 2nd respondent. As directed by the Court, the 2nd respondent management has produced the original minutes of the Board of Directors. We have perused the relevant resolution. The 2nd respondent has accepted the guidelines contained in the letter of the DPE and has introduced the gratuity scheme to the employees with effect from July 1, 1993. Therefore, the scheme formulated by DPE will come into effect in any public sector undertaking only on the approval of the Board of Directors and therefore, it is well within the powers of the Board of Directors to specify the terms and conditions of the implementation of the scheme including the date of commencement of the scheme. We are also of the view that the plea of the writ petitioner that the 2nd respondent management is obliged to pay gratuity to its employees who retired after January 1, 1986 is untenable. As already noticed, the DPE only issues guidelines with regard to the introduction of gratuity scheme for the employees who were outside the purview of the Payment of Gratuity Act, 1972. It is not therefore open to the petitioners to state that the second respondent should introduce the gratuity scheme with effect from January 1, 1986. For the above reasons the 2nd respondent management has decided to introduce the scheme with effect from July 1, 1993 on the lines indicated by D.P.E....

....almost all petitioners have retired and one has resigned from service before the introduction of the scheme. All the petitioners have settled their accounts with the 2nd respondent consequent upon their retirement of service and have also received all the terminal benefits due to them. For the first time, the petitioners have come forward with a hollow claim they are entitled to gratuity on the lines indicated by DPE. It is only during September 9 to November 18, 1993, the petitioners made request for payment of gratuity to them as per the memorandum of DPE and the second respondent has sent suitable replies to them during October 8 to December 3, 1993. We are of the opinion that it is well open to the second respondent take a policy decision to introduce gratuity scheme to those employees who were outside the purview of Payment of Gratuity Act with effect from July 1, 1993 on the lines indicated by DPE. Such fixation of date for the purpose of introducing gratuity scheme does not affect any of the constitutional or other rights of the petitioners. Consequent upon the

superannuation from service the petitioners have received terminal benefits as in Annexure II at the enhanced rate of 10%. Whereas the contribution is 6% towards superannuation and 4% towards gratuity for the covered employees, in the case of uncovered employees the contribution for superannuation was 10% and 15%. Therefore, the petitioners cannot claim their gratuity benefits."

13. Another case came up for consideration before the High Court of Delhi in *State Farms Corporation of India v. P.S. Gupta*, (2014) 213 DLT 95 . When the claim of the employee was considered for payment of the difference of gratuity amount consequent to enhancement even after payment of the amount of Rs. 3.5 lakhs after his retirement, the issue was taken to the High Court of Delhi. The same Office Memorandums were considered by the Delhi High Court and it was held that the discretion is left to the concerned CPSE and in the facts of that case it was relegated to the Board of the Organisation for considering the affordability in terms of the Office Memorandum.

14. As already held above, in the instant case, the Board has taken a conscious decision to implement the enhanced gratuity only after amendment of the Payment of Gratuity Act and accordingly it passed a resolution. It also amended the relevant Rules. In view of the same, unless the amendment of the Rules is held invalid in the proceedings initiated by the retired employees, it cannot be held that they are automatically entitled to the enhanced gratuity on the basis of the Office Memorandums issued by the Government of India.

15. Normally in cases like this, this Court will not undertake the exercise of deciding the maintainability of the claims at the threshold, unless the applicants can be non-suited on valid grounds. The first respondent cannot decide upon the validity of the Rules applicable to the Company and he has no jurisdiction. In the face of the Rules applicable to them as on their date of retirement, the retired employees like the second respondent cannot maintain the applications before the first respondent based on the memorandums issued by the Government of India. The petitioner cannot be asked to submit to the jurisdiction of the first respondent. It is an unnecessary exercise. In view of the same, the Writ Petition is allowed by holding that the application filed by the second respondent before the first respondent is not maintainable. The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.