
(2017) 01 KL CK 0024
In the High Court Of Kerala
Case No : WPC No. 34731 of 2009

G. Narayanan Nair

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 19-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Lok Ayukta Act, 1999 — Section 8
Payment of Gratuity Act, 1972 — Section 7

Citation : (2017) 2 KerLJ 97 : (2017) 1 KLT 959

Hon'ble Judges : Mr. Dama Seshadri Naidu, J.

Bench : Single Bench

Advocate : R.S. Kalkura, M. Ajay(Irupanam), Harish Gopinath, M.S. Kalesh and V. Vinay Menon, Advocates, for the Petitioners; Sri. Nagaraj Narayanan, SC, K.S. Co-Op Bank, K. Ravikumar, SC, Kerala State Cooperative Bank Ltd. And George Poonthottam, SC Kerala State Co.Op Bank Ltd, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Dama Seshadri Naidu, J.—In Perspective :

A retired employee complains that he is not paid the gratuity in full; first, he receives some amount, later complains he must be paid more amount; then, the employer pays some more. Yet, the employee gripes that still some more remains. In this process about four years lapses. Finally, he petitions the Lok Ayukta. Both the Payment of Gratuity Act and the Lok Ayukta Act provide remedies, but in different time frames. The petitioner does not invoke the Payment of Gratuity Act, for it seems to have been barred by time. So he stakes his claim under the Kerala Lok Ayukta Act, which seems to have not shut the doors. In this context, the issues are these:

(1) Are these two enactments mutually exclusive or, differently put, does the Payment of Gratuity Act, a special act, prevail over the Kerala Lok Ayukat Act, a general one, given a conflict?

(2) Is there an element of repugnancy between the Payment of Gratuity Act, a central enactment, and the Kerala Lok Ayukta Act, the state enactment?

(3) Has the petitioner's claim, as held by the Lok Ayukta, barred by limitation?

Facts in Brief:

2. The petitioner, after serving the second respondent Bank for 32 years, retired on 30.6.2001. Though he received the terminal benefits, he claims that the respondent bank paid only a part of the gratuity, in two instalments-on 26.7.2001 and 26.7.2004. He thus claims that the respondent bank still owes him Rs. 43,878 and interest at 10% amounting to Rs. 27801-the total coming to Rs. 71,679.

3. Ventilating his grievance that the respondent Bank, his former employer, should pay the balance gratuity amount along with interest, the petitioner applied before the Lok Ayukta, the second respondent. Later, the Lok Ayukta rendered the Ext.P11 order in which certain other retired employees' claims were also considered. The learned Lok Ayukta, in fact, dismissed the petitioner's claim because it was said to have been barred by limitation. Aggrieved, the petitioner has filed this writ petition.

4. The learned counsel for the petitioner has submitted that the respondent bank initially paid part of the gratuity amount in 2001 and, later, the balance in 2004-to be precise on 26.7.2004. Only then did the petitioner realise that the respondent bank had not intended to pay, what the petitioner feels, the full amount. In other words, the employer did not consider the petitioner's entire service of 32 years. He has also submitted that the total number of days to be reckoned was 480 days, and the petitioner's last drawn pay was Rs. 40,626. So the petitioner would be entitled to Rs. 2,68,268/-, rather than Rs. 2,19,319/-, the amount the bank paid.

5. On limitation, the learned counsel contends that the Lok Ayukta having decided other cases in a common order may have been influenced by the inordinate delay in those cases. In this case, since the delay, if any, was well within five years, the petitioner's application before the Lok Ayukta, according to him, was eminently maintainable. And Ext.P11 order, therefore, suffers from a jurisdictional error which needs to be interfered with and rectified by this Court under Article 226 of the Constitution of India.

6. Per contra, the learned counsel for the respondent bank submitted that the petitioner has an efficacious remedy available under the Payment of Gratuity Act, 1972. Taking me through the Act, the learned counsel would contend that clauses (a) (b) and (c) of Section 7(4) delineate the procedure and the authority to be approached if any employee has a grievance about the gratuity to be paid to him. In elaboration, he has also submitted that under Rule 10(3) of the Payment of Gratuity (Central Rules) 1972, the applicant ought to have approached the authority concerned within 90 days.

7. The learned counsel for the respondent bank strenuously contends that the petitioner had approached the Lok Ayukta only because his remedy under the Payment of Gratuity Act, a special enactment, stood hopelessly barred by limitation, it suffered from laches, too.

8. In the alternative, the learned counsel has also contended that the petitioner having retired in 2001, the cause of action concerning the non-payment or insufficient payment of gratuity begins in that year, despite the subsequent intermittent payments by the bank. He, therefore, prays this Court to dismiss the writ petition.

9. Heard Sri Kalkura, the learned counsel appearing for the petitioner, the learned Government Pleader, and Sri George Poonthottam, the learned standing counsel appearing for the respondents.

Issues:

As set out above.

Discussion:

Issue No.1:

Are these two enactments-The Payment of Gratuity Act 1972 and the Kerala Lok Ayukta Act 1999-mutually exclusive or, differently put, does the former, a special act, prevail over the latter, a general one, given a conflict?

Statutory Scope:

10. To begin with, we may have to examine the relative scope of the Payment of Gratuity Act 1972 and the Kerala Lok Ayukta Act on the redressal mechanism a retired employee can adopt concerning, for example, gratuity. Indeed, the Payment of Gratuity Act 1972 ("Gratuity Act") provides for, among other things, payment of gratuity to persons employed in factories, mines, oilfields, plantations, and so forth, employing ten or more persons. Kerala Lok Ayukta Act 1999, on the other hand, provides for making enquiries into certain actions taken by or on behalf of the Government of Kerala or certain public authorities in the State of Kerala. Confining to the issue on hand-an employee remedially electing either of the statutes- we may examine Section 7 of the Gratuity Act:

7. Determination of the amount of gratuity.-(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) . . .

[(3) . . .

(3-A) . . .

(4) (a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

Explanation.- [***]

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit-

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the [nominee or, as the case may be, the guardian of such nominee or] heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

11. Rule 10 (1) of the Payment of Gratuity (Central) Rules 1972 prescribes the time limit, within which an employee needs to approach the authority: if an employer issues a notice under sub-rule (1) of Rule 8, either specifying an amount of gratuity which the employee considers to be less than what is payable or objecting to the employee's eligibility to payment of gratuity, the claimant-employee may within ninety days thereafter apply to the controlling authority for a direction under sub-section (4) of Section 7. Even if the controlling authority altogether ignores the employee's application, the same remedial mechanism is available. The controlling authority, in fact, may accept the application beyond ninety days if the employee shows sufficient cause.

12. Granted, the petitioner could have eminently invoked the Gratuity Act. But does this remedy shut the doors on the petitioner to every other remedy if available?

13. Section 7 of the Lok Ayukta Act enlists the matters that can be investigated by the Lok Ayukta; on the other had, Section 8 enlists the matters beyond the Lok Ayukta's investigative purview. Section 8, to the extent relevant, reads as

follows:

8. Matters not subject to investigation.-

(1) Except as hereinafter provided, the Lok Ayukta or an Upa- Lok Ayukta shall not conduct any investigation under this Act, in the case of a complaint involving a grievance in respect of any action, if such action relates to any matter specified in the Second Schedule.

. . .

14. As seen, Clause (d) of the Second Schedule excludes from the Lok Ayukta's jurisdiction administrative measures taken regarding appointment, removal, pay, discipline, superannuation, or other matters relating to public servants' service conditions. But the Schedule expressly saves "actions relating to claims for pension, gratuity, provident fund, or to any claims which arise on retirement, removal, or termination of service."

Probing further, we may see the definitional dynamics of a couple of expressions employed in Section 8: Section 2 (a) tautologically defines "action" to mean any "action" including administrative "action" taken by way of decision, recommendation, or finding or in any other manner and includes wilful failure or omission to act, and all other expressions relating to such action shall be construed so.

15. "Grievance", as defined in Section 2 (h), means a claim by a person that he sustained injustice or undue hardship in consequence of mal-administration. Further, "mal-administration", according to Section 2 (k), means action taken or purported to have been taken in exercising administrative functions where (i) "such action or the administrative procedure or practise adopted in such action is unreasonable, unjust, oppressive, or improperly discriminatory" or (ii) "there has been wilful negligence or undue delay in taking such action or the administrative procedure or practise adopted in such action involves undue delay." Here the petitioner does have a grievance, and he needs a remedy.

Inter-Play:

16. Given the common sphere-to a limited extent, though- both the Payment of Gratuity Act and the Lok Ayukta Act occupy, we can hardly hesitate to hold that if ever there was an occasion to invoke the canon of harmonious construction, it must be this. So we must conclude that one act bars no suitor's access to the other; they coexist.

Issue No.2:

Is there an element of repugnancy between the Payment of Gratuity Act, a central enactment, and the Kerala Lok Ayukta Act, the state enactment?

17. With little cogitation, we can conclude, given our answer to the first issue, that this question needs no answer. Nor has the respondent, going by the

pleadings, raised a plea of repugnancy. So let it remain in the academic realms.

Issue No.3:

18. Indisputably, the learned Lok Ayukta has jurisdiction to adjudicate on the issue about payment of gratuity to an employee. The jurisdiction manifests itself from section 7 of the Act and Second Schedule appended to it. The only bone of contention, as I could see, is whether limitation bars the petitioner's application.

Limitation:

19. As for limitation, Section 8(2)(c) of the Kerala Lok Ayukta Act 1999 mandates that Lok Ayukta shall investigate no complaint involving an allegation "made after the expiry of five years from the date on which the action complained against is alleged to have taken place."

20. Here we need to consider whether the limitation ran from 2001, when the petitioner retired from service; or in 2004, when the bank paid to the petitioner the second and last instalment of gratuity. True, the bank's counsel has contended that it ought to be reckoned from the year of retirement-2001.

21. Soon after his retirement, the petitioner applied for gratuity. The bank paid some amount in the same year. Dissatisfied, the petitioner further claimed what is said to be the balance amount. The respondent bank did act on the petitioner's complaint and pay some more in 2004. Therefore, it cannot be said that the petitioner had known till 2004 that the bank "finally" rejected his claim. So it cannot be said that his action suffers from any laches.

22. Any laches or delay on employer's part in considering an employee's legitimate claim cannot be to the employee's prejudice. So the delay, if any, could not be attributed to the employee. I reckon that the petitioner had his cause of action in 2004. Even otherwise, it is trite to observe that the "cause of action" as such has not been defined either in any substantive or in any procedural legislations. It is a bundle of facts that gives an affected person recourse to judicial remedy. In a series of events-all cumulatively giving rise to a cause of action-the last one will be the determining factor for reckoning the limitation.

23. As seen from the record, the petitioner approached the Lok Ayukta well within five years from 2004. He, in fact, applied in November 2007. So, by any reasoning, it cannot be said that the petitioner's application before the Lok Ayukta is barred by limitation.

24. On the different time-frames provided for in the payment of Gratuity Act and in the Kerala Lok Ayukta Act, I may observe that the former is a central legislation and the latter, that of the state. The respondent bank has never advanced a claim that there is any provision in the latter Act which suffers on the constitutional count of repugnancy. Therefore, I need not go into that aspect.

25. Indisputably, both the enactments have provided for elaborate mechanisms

to aid an aggrieved employee on, say, gratuity. True, the Payment of Gratuity Act is a special enactment, whereas the Lok Ayukta Act is a general one, an off-shoot of a beneficial remedial mechanism; viz., Alternative Dispute Resolution. But both enactments, potent in their own spears, have laid down distinct, different procedural parameters. It is for the party concerned to choose either. It is not unknown or unusual that more than one enactment operates in the same sphere, thereby providing the luxury of choice to a litigant. I may, illustratively, observe that an injured workman can stake his claim either under the Motor Vehicles Act or under Workmen's Compensation Act subject to the limitation in either of those legislations.

26. In the facts and circumstances, I hold that the petitioner's claim before the Lok Ayukta is not barred by limitation and, therefore, the impugned order, i.e. Ext.P11, suffers from an error which needs to be interfered with in the interest of justice.

27. So, this Court sets aside Ext.P11 to the extent it concerns the petitioner and remands the matter to the fourth respondent to have the petitioner's claim adjudicated afresh.