(2016) 01 JH CK 0062

In the Jharkhand High Court

Case No : W.P.(C) No. 876 of 2013

Heavy Engineering Corporation Limited — APPELLANT

Vs

Surendra Kumar Sinha — RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Payment of Gratuity Act, 1972 — Section 13, Section 14, Section 4, Section 4(6), Section 7(3), Section 7(3)(a)

Citation : (2016) 01 JH CK 0062

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : Shresth Gautam, Advocate, for the Appellant;

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—1. Seeking quashing of order dated 13.04.2012 in PGA (04)/2011-Dy. CLC passed by the Appellate Authority under the Payment of Gratuity Act, 1972, the present writ petition has been filed.

2. The brief facts of the case are that, the respondent who was appointed in the service of the petitioner-company on 20.07.1973, attained the age of superannuation on 30.11.2007 and thereafter, he was engaged as Advisor, Material Management Division of Foundry Forge Plant (FFP) on retainership basis. He was provided accommodation facility and his retainership continued till 30.09.2008. The amount of gratuity payable to the respondent was determined and accordingly, notice dated 16.01.2008 was issued to him. However, the amount of gratuity was not paid to him due to non-payment of outstanding dues of Rs. 4,02,377/- on account of occupation of the company''s quarter. The respondent was required to vacate the quarter within three months from the date of disengagement that is, on or before 31.12.2008 and on his request, the management permitted him to retain the said quarter for a further period of two months that is, upto 28.02.2009 however, the respondent did not vacate the company''s quarter and therefore, a proceeding under the Public Premises

(Eviction of Unauthorised Occupants) Act, 1971 was initiated vide Case No. 01 of 2009. The Estate Officer passed order dated 15.01.2010 declaring the respondent an unauthorised occupant. Against the said order the respondent preferred Misc. Appeal No. 05 of 2010 which was dismissed on 03.05.2010. Vide letter dated 06.04.2010 the respondent was directed to collect the amount of gratuity after clearing the outstanding dues of Rs. 4,02,377/- however, the respondent did not clear the outstanding dues and he filed a petition before the Controlling Authority under the Payment of Gratuity Act, 1972.

3. Heard the learned counsel for the petitioner and perused the documents on record.

4. Mr. Rajiv Ranjan, the learned Senior counsel for the petitioner referring to the decision in "Wazir Chand v. Union of India & Ors." reported in , (2001) 6 SCC 596 and the decision of this Court in "Gauri Chakraborty v. M/s. Tata Iron and Steel Company Limited & Ors." reported in , 2007 (4) JLJR 58 contends that the employer-M/s. HEC Ltd. can insist upon payment of outstanding dues for unauthorized retention of the official quarter as a condition for payment of the gratuity amount.

5. Section 4 of the Payment of Gratuity Act, 1972 reads as under :

"4. Payment of Gratuity - (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

[Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.]

Explanation.- For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) 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 fifteen days'' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days'' wages for each season.

[Explanation.- In the case of a monthly rated employee, the fifteen days'' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.]

(3) The amount of gratuity payable to an employee shall not exceed [ten lakh rupees].

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(5) Nothing in this Section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (1) -

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee [may be wholly or partially forfeited]-

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

6. In "State of Punjab v. Labour Court, Jullundur & Ors." , (1980) 1 SCC 4, the Hon''ble Supreme Court has held that the Payment of Gratuity Act is a complete code containing detailed provisions for payment of gratuity. For enforcement of the provisions of the Act, the Controlling Authority is entrusted with the task of administering the Act. The Act also provides that any error committed by the Controlling Authority can be corrected in appeal by the Appropriate Government or the Appellate Authority. Section 4(6) of the Payment of Gratuity Act, 1972 is an exception to the main provision under which payment of gratuity can be withheld as a measure of punishment. The present is not a case covered under

Section 4(6). It is the mandate under Section 7(3) that the employer shall arrange payment of gratuity amount within 30 days from the date it becomes payable to the employee. Section 7(3)(a) provides that if the amount of gratuity payable under sub-section (3) is not paid within the period specified therein, the employer is liable to pay simple interest on the gratuity amount from the date on which the gratuity becomes payable. It is not in dispute that the employer-M/s. HEC Ltd. did not obtain permission in writing from the Controlling Authority for the delay in payment of gratuity. Section 13 makes the amount of gratuity payable to an employee immune from attachment in execution of any decree or order of a Civil Court, Revenue Court or Criminal Court and section 14 confers overriding effect to the provisions of the Payment of Gratuity Act, 1972 on any other enactment.

7. A perusal of the order passed by the Controlling Authority discloses that the only plea taken by M/s. HEC Ltd. for retention of the gratuity, was non-payment of outstanding dues by the respondent. The Controlling Authority noticed that there is no dispute in so far as, the date of appointment, length of service, the last wage drawn and the amount of gratuity payable to the respondent are concerned. The respondent worked for 34 years 04 months and 10 days between 20.07.1973 and 30.11.2007 and the last wage drawn by him was Rs. 19,790/-. Accordingly, the gratuity amount was determined at Rs. 3.5 lakhs and the respondent was held entitled for simple interest @ 10% per annum. It is a matter of record that a proceeding under the Public Premises (Eviction & Unauthorised Occupants) Act, 1971 was initiated for eviction of the respondent from Qr. No. F-37, Sector-3 and vide order dated 09.01.2010, the Estate Office directed the respondent to vacate the quarter by 31.03.2009. The respondent was also directed to pay penal rent w.e.f 01.03.2009. The appeal preferred by the respondent vide Misc. Appeal No. 05/2010 stood dismissed on 03.05.2010. From the scheme of the 1972 Act, it becomes apparent that for executing the order passed by the Estate Officer, the amount of gratuity payable to the respondent cannot be withheld. In "Jaswant Singh Gill v. Bharat Coking Coal Ltd." , (2007) 1 SCC 663, it has been held that the payment under Gratuity Act lays down the conditions on which the workman may be denied payment of gratuity and therefore, if accrued or vested right is sought to be taken away, the conditions laid down in the Act must be fulfilled. In "Garment Cleaning Works v. Workmen" , (1962) 1 SCR 711, it was observed that the gratuity is not paid to the employee gratuitously or merely as a matter of boon rather, it is paid to him for long and meritorious service rendered by him to the employer. In "Allahabad Bank & Anr. v. All India Allahabad Bank Retired Employees Association" , (2010) 2 SCC 44, it has been held that gratuity being a statutory right cannot be taken away except, in accordance with the provisions of the Act.

8. In the present case, the Controlling Authority as well as the Appellate Authority, both have ruled in favour of the employee. It is not in dispute that M/s. HEC Ltd. has not framed statutory rules or regulation. This is also not a case in which the employee on his own free volition agreed for retention of the gratuity

amount in lieu of retention of the official accommodation, which could have been adjusted by the employer in case of default. In "R. Kapur v. Director of Inspection (Painting and Publication) Income Tax and Anr." , (1994) 6 SCC 589, gratuity was withheld for not vacating the government accommodation. The employee had also failed to pay damages for over-stay. The Hon''ble Supreme Court held that the right of such an employee to receive gratuity is not dependent on vacating the government accommodation. In Secretary, O.N.G.C. Ltd. & Anr. v. V.U. Warrier reported in , (2005) 5 SCC 245, the Hon''ble Supreme Court sanctioned the action of the employer appropriating Rs. 53,632/- from the gratuity amount payable to the employee on account of unauthorized occupation charges of official accommodation mainly for the reason that the ONGC has framed the Oil and Natural Gas Commission (Death Retirement and Terminal Gratuity) Regulations, 1969, and the regulations framed by the Commission were statutory in nature. Considering the conduct of the employee, the Hon''ble Supreme Court held that the High Court was wholly unjustified in exercising extra-ordinary and equitable jurisdiction in favour of the employee.

9. The facts in "Wazir Chand" and "Gauri Chakraborty" are entirely different from the facts of the present case. A judgment has to be read in the context of the facts of the case and the ratio laid down therein cannot be read as a statute. In "Ambica Quarry Works v. State of Gujarat" , (1987) 1 SCC 213, it has been held that a decision must be understood in the background of the facts of that case. In "Amrendra Pratap Singh v. Tej Bahadur Prajapati & Ors." , (2004) 10 SCC 65, the Hon''ble Supreme Court has observed thus,

28. "........... A judicial decision is an authority for what it actually decides and not for what can be read into it by implication or by assigning an assumed intention to the judges, and inferring from it a proposition of law which the judges have not specifically laid down in the pronouncement.......... "

10. The Appellate Authority, noticing that the appellant-HEC Ltd. admitted that the respondent was permitted to stay till 28.02.2009, modified the order passed by the Controlling Authority holding that the respondent is entitled for interest on the amount of gratuity from the date of his superannuation i.e. 30.11.2007 to 28.02.2009. The respondent-employee has not challenged the Appellate order, in so far as, award of interest is concerned.

11. I find no merit in the writ petition, and accordingly, it is dismissed.

