

(2014) 01 AHC CK 0146

In the Allahabad High Court

Case No : Special Appeal No"s. 906 and 910 of 2010

Jagjeevan Singh

APPELLANT

Vs

Fatehpur District Co-operative Bank Ltd.
Vishambhar
Nath Dhawan Vs Fatehpur District Co-operative Bank Ltd. and
Others

RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Constitution of India, 1950 — Article 254(2)
Industrial Disputes Act, 1947 — Section 19 19(2) 4(5) 9A 9A(b)
Payment of Gratuity Act, 1972 — Section 14 4 4(5)

Citation : (2014) 2 LLN 63

Hon'ble Judges : Sunil Ambwani, J;Dinesh Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The petitioners-appellants retired serving in Fatehpur District Cooperative Bank Ltd.-a Cooperative Society registered under the U.P. Cooperative Societies Act, engaged in the business of banking, under the Banking Regulation Act, 1954, (the Bank) with its area of operation in the State of U.P. In these Special Appeals they have assailed the judgement delivered by learned Single Judge on 5.7.2005, by which he dismissed the writ petitions filed by them challenging the orders passed by the Prescribed Authority, under the Payment of Gratuity Act, rejecting their applications for payment of gratuity calculated at one month's salary (inclusive of dearness allowance) for every completed year of service and interest thereon @ 18% on account of delay in payment of the total amount. All the appellants retired sometimes in the year 1995 on attaining the age of superannuation. The Bank sent letters to them accepting its liability to pay gratuity to them calculated at the rate of 15 days wages per completed year of service rendered by them for the Bank. The petitioners addressed their replies to the bank making a grievance that the details of the amounts have not been mentioned, with a protest that the gratuity should be calculated at the rate of

one month's wages per completed year of service. The bank did not accept the request and credited the gratuity calculated at 15 days' wages per year of service to the bank accounts of the petitioners, giving rise to their representation and applications before the Prescribed Authority, Payment of Gratuity Act, which were rejected. Some of the appellants filed writ petitions, which were dismissed giving rise to these intra-court appeals.

2. It was submitted before learned Single Judge that the respondent-bank had entered into an agreement with its employees and had passed a resolution that the amount of gratuity will be paid at the rate of one month's wage inclusive dearness allowance per year of service to the workmen. The payment of the lesser amount amounts to an unfair labour practice. The bank decided to negotiate the matter with the union of the employees and sent a letter on 11.1.1996 convening a meeting. Since nothing happened in the meeting on 27.1.1996, the union of the employees of the bank sent a letter on 27.1.1996 reminding the bank of an agreement, which was reached in the year 1966. The settlement was made part of the award of the Industrial Tribunal known as "Joshi Award" which remained operative for three years with effect from the date of award and continued thereafter as it was not superseded by any subsequent settlement or award.

3. It is submitted that though the Payment of Gratuity Act, 1972 provides in sub-section (2) of Section 4 that the employer would pay gratuity to an employee at the rate of 15 days' wages per year of service last drawn by the employee concerned, the provisions of Section 4 of the Act, are subject to any agreement between the employer and the employee. Since the Joshi award continues to operate the employees of the Bank covered under the award are entitled to gratuity to be calculated at the rate of thirty days of wages per completed year of service.

4. The State Government notified U.P. Cooperative Employees Service Regulations 1995 under the U.P. Cooperative Societies Act, 1965 regulating the service conditions of its employees including Cooperative Banks. Regulation 95 provides for payment of gratuity to the employees of the cooperative societies governed by the Regulations of 1975, payable at the rate of 15 days' wages of every completed year of service.

5. Learned Single Judge, relying upon Patiala Central Cooperative Bank Ltd. Vs. Patiala Central Cooperative Bank Employees' Union and Another, , held that after expiry of the agreement between the employer and employee, the dearness allowance formerly covered under the agreement cannot be allowed to remain intact specially after notification of the express provisions of law is passed after the agreement is arrived at. The agreement cannot be enforced without following the law and cannot prevail over the law.

6. Learned Single Judge did not accept the argument that a notice was required to be given by the employer to the employees u/s 9A of the Industrial Disputes

Act for change of the service conditions. He held that proviso to Section 9A(b) carves out an exception that no notice shall be required for effecting any change where the workman or the person to whom rules or regulations, that may be notified in this behalf by the appropriate government in the official gazette applied. In the present case, since the Regulations of 1975 have been notified in the Official Gazette with the approval of the State Government, Section 9A of the Industrial Disputes Act will have no application.

7. Learned Single Judge further held that since the provisions of Regulation 95 of the Regulations of 1975, are not inconsistent with the provisions of the Payment of Gratuity Act, 1972 and the controversy involved is only to the effect as to whether any previous settlement regarding gratuity can be legally enforced, the question of Payment of Gratuity Act, overriding the Regulations of 1975 does not arise.

8. Learned Single Judge further held that the agreement executed between the parties recognized by the Joshi award entitled the employees for payment of gratuity at the rate of one months wages inclusive of dearness allowance only when the employee had completed 15 years" of service in the employment of the bank. The agreement provided that under Resolution No. 2 dated September 14, 1965 the settlement is for a period of three years subject to any change by the department or the pay commission. The agreement was thus operative only for a period of three years. He also held that the Payment of Gratuity Act, 1972 was enforced after the Joshi award was published, and thereafter statutory service Regulations of 1975 were notified and were made applicable to the employees of all notified cooperative societies in the State of U.P. including the District Cooperative Banks. Chapter VIII provided for the benefits like provident fund, gratuity, security, honorarium, and pay advance. All these provisions were made applicable and the benefits were drawn by the petitioners and thus they cannot fall back upon the agreement, which was executed in the year 1965. All the employees impliedly opted the Service Regulations of 1975 and having received various benefits provided under the regulations they cannot claim gratuity with reference to any agreement with the employer entered in the year 1966. They are estopped from raising any dispute or to claim that they are entitled to get the benefit of payment of gratuity in accordance with any award/agreement, which was executed between the parties.

9. We have heard Ms. Sumati Rani Gupta, learned counsel appearing for the petitioners-appellants. Shri D.K. Singh appears for the respondent-bank.

10. Learned counsel appearing for the petitioners would submit that learned Single Judge failed to appreciate that the Payment of Gratuity Act 1972, being a special Act enacted for the purpose of payment of gratuity would prevail over the U.P. Cooperative Societies Act 1965, for consolidating and amending the law relating to cooperative societies made u/s 122 of the U.P. Cooperative Societies Act, 1963. Section 4(5) and Section 14 of the Payment of Gratuity Act save the agreements, which were entered into or any award made by the Industrial

Tribunal for payment of gratuity. In the present case, the agreement dated 12.10.1966 and the award dated 28.1.1971 protected the petitioners' right for claiming gratuity under the settlement at the rate of one month's salary per completed years of service. She submits that in view of Regulation 103 of the U.P. Cooperative Societies Employees Service Regulations 1975, the Regulations of 1999 would not have been any effect and thus the agreement and the award read with Section 4(5) of the Payment of Gratuity Act would prevail making the petitioners entitled to payment of gratuity at the rate of 30 days salary per completed years of service.

11. Learned counsel appearing for the appellants submits that in view of Article 254(2) of Constitution of India, the Industrial Disputes Act will not apply to the State of U.P. There is no provision analogous to Section 19 of the Industrial Disputes Act in the U.P. Industrial Disputes Act. The period of the settlement agreement dated 12.10.1966 being an unregistered agreement cannot be said to have been expired in view of Section 6-B(2) of the U.P. Industrial Disputes Act, which clearly states that registration of an agreement settlement is not mandatory and in view of Section 6B and 6B(4) only registered agreements would come to an end after a period of one year. The agreement dated 12.10.1966 could not have been superseded without issuing a notice of change as provided under Section 4-I of the U.P. Industrial Disputes Act. The bank could not have changed the service conditions merely by passing a resolution dated 15.6.1995. She relies upon *Life Insurance Corporation of India Vs. D.J. Bahadur and Others*, in support of her submission that the award or settlement would continue to operate even after the notice proposing change in the conditions of service u/s 9A of the Industrial Disputes Act, which is analogous to Section 4-I of the U.P. Industrial Disputes Act and in any case Regulation 103 of the Regulations of 1975 provided that the regulations would not be applicable in case of beneficial labour legislation is available to the workmen. She has also relied upon *Lalappa Lingappa and Others Vs. Laxmi Vishnu Textile Mills Ltd.*, ; *Vikramaditya Pandey Vs. Industrial Tribunal and Another*, ; 1978 (37) FLR 280 (SC); *Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others*, ; *Basti Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Another*, and *H.L. Trehan and Others Vs. Union of India (UOI) and Others*, . All these judgments have interpreted Section 4(5) of the Payment of Gratuity Act which saves the agreement between the employer and the employee providing:- "(5) Nothing in this section shall effect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer."

12. Learned counsel appearing for the appellants further submits that the ratio of the judgment in *Patiala Central Cooperative Bank Ltd. v. Patiala Central Cooperative Bank Employees Union* (supra) is not applicable to the facts of the present case. In that case the question was whether a settlement/agreement between the workmen would invalidate any legislation altering the terms of the agreement. She submits that the agreement dated 12.10.1966 had not expired and was very much in existence and that the terms were not changed by the

Regulations 95 of the Regulations of 1975. The agreement dated 12.10.1966 arrived at between the parties in view of Regulation No. 2 dated 14.9.1965 of the respondent bank providing in the period of agreement to three years, would not defeat the right of the workmen covered by the agreement. The agreement was an open ended settlement with no fixed terms. Regulation 102 of the Regulations of 1975 gave an option to the employees to opt to be governed by the existing service rules, if any, in the society in respect of their emoluments and benefits or to opt for new service rules. Regulation 102 did not mention about any agreement, which may have been arrived at between the respondent bank and its employees. The agreement dated 12.10.1966 was not superseded, to take away the benefits.

13. Shri D.P. Singh, appearing for the respondent-bank has defended the reasons, given by learned Single Judge to dismiss the writ petitions.

14. The petitioners-appellants had first approached the Supreme Court against the judgement of learned Single Judge. The Civil Appeal Nos. 6189 of 2009 and the connected Civil Appeal Nos. 6190-6195 were disposed of on 9.9.2009 with directions to avail the alternative remedy of approaching the Division Bench of the High Court in Special Appeals with a request that the High Court will dispose of the Special Appeals expeditiously.

15. We do not find that learned Single Judge has committed any error of law in the reasons adopted by him, and in following the view taken in *Patiala Central Cooperative Bank Ltd. v. Patiala Central Cooperative Bank Employees Union* (supra) in holding that after the enforcement of Regulations of 1975 under which the petitioners and other similarly situate employees have received all the benefits, the agreement entered into in the year 1966 would still be applicable. The payment of gratuity for all the employees of the notified Societies in the State of U.P. including the District Cooperative Banks will be governed by the provisions of Chapter VIII, which provides for benefits like provident fund, gratuity, security, honorarium and pay advance. Regulation 95 providing for gratuity will be applicable to all the employees providing for not more than 15 days" salary for every completed year of service (part of the year, if less than six months to be ignored), if he has attained the age of superannuation or has been declared invalid for service, and has been retrenched or dies while in service. Regulation 95 is quoted as below:--

95. Gratuity- (i) A cooperative society may be a resolution of its committee of management allow to its employees gratuity equivalent to not more than 15 days" salary for every complete year or service (part of the year if less than six months, to be ignored), if he has attained the age of superannuation or has been declared invalid far service by the Civil Surgeon or has been retrenched or dies while in service:

Provided he has put in ten years of continuous service immediately preceding retirement, invalidation, or retrenchment or five years" continuous service in

case of death, as the case may be. In case of death gratuity shall be payable to the nominee of the employee and in the absence of nomination, to his legal heir.

16. The argument, that the agreement dated 12.10.1966 and the award dated 28.1.1971 would continue to apply despite the enforcement of the Payment of Gratuity Act, 1972 and the notification of the U.P. Cooperative Employees Service Regulations, 1975 u/s 122 of the U.P. Cooperative Societies Act, 1963 unless the agreement is terminated u/s 19(2) of the Industrial Disputes Act, overlooks the language and object of Section 4(5) of the Payment of Gratuity Act, 1972, and ratio of the judgement in *Patiala Central Cooperative Bank Ltd. v. Patiala Central Cooperative Bank Employees Union* (supra). It para-28 of the judgment, the Supreme Court held that if after the agreement has been entered into, any law is passed and the agreement cannot be enforced without violating that law, then clearly the agreement cannot be enforced. The law will prevail. Para-28 of the judgment is quoted as below:--

28. The provisions of Section 19(2) make an agreement between the employers and the employees binding. It also lays down the period during which it shall be binding. It also provides the manner in which the agreement can be terminated inter parts. It does not follow from this provision that a competent legislature cannot legislate on any matter which forms part of the agreement. Nor does Section 19 have the effect of validating any infirmity in the agreement. If the agreement is contrary to any law or if the agreement cannot be implemented without violating any provision of law, then the agreement cannot be enforced at all. There is nothing in sub-section (2) of Section 19 to suggest that even such an agreement will continue to be binding upon the employers and the employees and enforceable against express provision of law. If after the agreement has been entered into, any law is passed and the agreement cannot be enforced without violating that law, then clearly the agreement cannot be enforced. The law will prevail.

17. The agreement entered into in the year 1966 was not only for the purpose of fixing the amount of gratuity to be paid to the employee superannuating from service, it provided for other service conditions as well, which have long undergone change with the enforcement of Chapter VIII of Regulations of 1975.

18. In the *Workmen of Metro Theatre, Bombay Vs. Metro Theatre Ltd., Bombay*, the Supreme Court held that Section 4(5) of the Payment of Gratuity Act, 1972, covers future awards, agreement or contracts with the employer providing better terms of gratuity. In this case the settlement was prior to the enforcement of the Act of 1972. It did not survive beyond three years and in any case after the enforcement of the Act of 1972 gratuity was payable in accordance with sub-section (2) of Section 4 of the Act of 1972.

19. It is not denied that all the employees had accepted the terms and conditions of employment under Chapter VIII of Service Regulations of 1975, which provide for provident fund, gratuity, security, honorarium and pay advance. With the

enforcement of the Regulations of 1975 made u/s 122 of the U.P. Cooperative Societies Act, 1963 to the employees of the notified societies, the agreement/award of which the term has come to an end will cease to have any effect. Regulation 102 protects the remedies, which are available under the legislations governing the industrial disputes and other legislations. The provisions of Regulation 102 do not protect any agreements/awards of which the term has come into force.

20. We do not find that learned Single Judge has erred in law in holding that Section 19(2) of Industrial Disputes Act is not applicable to the present case and that the issue, whether the U.P. Industrial Disputes Act will be applicable has any relevance inasmuch where the agreement has been superseded by operation of law, which have been made applicable to all the employees of the Bank without any discrimination. The Regulations of 1975 as the law governing the field will be applicable to all the employees. They cannot seek protection under any clause of the agreement to continue even after the period of agreement has expired and even if no notice has been given u/s 19(2) of the Act, if the service conditions have undergone change by operation of law. In the present case a notification of the service Regulations of 1975 regulate the service conditions of the employees of the notified Cooperative Societies, in respect of the service conditions including gratuity, have been made applicable to all the employees.

21. We also do not find any substance in the contention of Sumati Rani Gupta that the award dated 25.6.1971 notified on 21.8.1971 of the Industrial Tribunal-III U.P. given in the industrial dispute between the concerned known as M/s. District Cooperative Bank Limited, Aligarh and 49 others Cooperative Bank of U.P. and its workmen (Adjudication Case No. 53/1963, which was received by the State Government on July 1, 1971) would be applicable so far as gratuity is concerned inasmuch as the rate on which the gratuity will be applicable, was not a matter of dispute under the award. The award given by Shri B.P. Joshi on 25.6.1971 did not refer to rate on which the gratuity is payable in any of the eight matters of disputes, which were decided by him. The award further provided that the existing benefits, which are at present allowed to the employees by the Bank, will no respect be curtailed or that no employee governed by the award will be a loser in respect of any benefits or emoluments which he may be getting before the award becomes enforceable and thus will be personal to such employees is of no benefit to the petitioners on the ground that the petitioners have not given the dates of their employment. There are no pleadings to the effect that the petitioners were serving on the day when the Joshi award was notified on 21.8.1971 and further that the provisions of U.P. Cooperative Societies Employees Regulations, 1975 being the law, will override the service conditions of all the employees of the cooperative societies including the petitioners, who retired serving as employees of the District Cooperative Bank, Fatehpur.

22. For the aforesaid reasons we do not find any good ground to interfere with

the judgment of learned Single Judge dismissing all the writ petitions. All the Special Appeals are dismissed.