

(1983) 10 KL CK 0022
In the High Court Of Kerala
Case No : O.P. No. 5327 of 1982-E

K. Jayachandran	Vs	APPELLANT
Canara Bank and Another		RESPONDENT

Date of Decision : 06-10-1983

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 12(2), 19
Canara Bank Officers Service Regulations — Regulation 16(3)
Constitution of India, 1950 — Article 12, 226
Payment of Gratuity Act, 1972 — Section 2, 4, 4(1)

Citation : (1983) 10 KL CK 0022

Hon'ble Judges : Bhaskaran Nambiar, J

Bench : Single Bench

Advocate : Dayananda Prabhu, for the Appellant; T.R.G. Warriar and Sebastian Davis, for the Respondent

Final Decision : Allowed

Judgement

Bhaskaran Nambiar, J.—The short question in this writ petition is whether an employee of a Nationalised Bank who has been dismissed from service is entitled to gratuity. The answer will depend on the concept of gratuity and the impact of the statutory provisions.

2. The Petitioner, a Senior Manager, Canara Bank, was dismissed from service on 29th September 1981. He thereafter applied for disbursement of his terminal benefits. He has received the full provident fund; but was denied the gratuity claimed by him. He was informed as per Ext. P-5 issued by the Personal Administration section thus:

Under Canara Bank Officers' Service Regulations gratuity is payable only on retirement, death, disablement and resignation after completing ten years of service. Hence, the same is not payable in your case.

3. This was reiterated in Ext. P-7. The Petitioner prays for quashing Exts. P-5 and

P-7 and for consequential reliefs.

4. The Canara Bank is now a nationalised Bank, coming within the purview of the Banking Companies (Acquisition and transfer of Undertakings) Act, 1970, Act 5 of 1970. It is not disputed that it is a "State" within the meaning of Article 12 of the Constitution and that it is amenable to the writ jurisdiction under Article 226 of the Constitution.

5. As early as 1965, long before the Bank was nationalised, the Bank constituted, under an irrevocable trust, a gratuity fund, "Canara Bank Employees Gratuity Fund" for the benefit of the employees of the Bank and made rules and regulations for the purpose, binding on the employees and the Bank. The object of the fund is "to provide moneys for payment of gratuities in India to the employees of the Bank in accordance with the provisions of these "rules". The relevant clauses in these rules are these:

10(1) The Gratuity shall become payable:

(a) On the death of an employee whilst in the service of the Bank, the amount of gratuity being payable to the heirs, executors, administrators or assigns of the employee or in case he has executed a nomination paper in the form prescribed under these rules, to the nominee of such employee;

(b) On an employee becoming physically or mentally incapable of further service or on termination of his service as the employee in accordance with the Rules of the Bank.

(c) On the retirement of an employee from the service of the Bank.

(d) On the resignation of the employee after completion of 10 years of continuous service in the Bank.

* * *

...(ii) The Gratuity due to an employee shall be payable during the 12 months next following death, disability, retirement, resignation or termination of service as the case may be.

12. Notwithstanding anything contained in the preceding clauses where an employee has been dismissed for misconduct and such misconduct has caused financial loss to the Bank, he shall not be eligible to receive the gratuity to the extent of the financial loss caused to the Bank.

6. After nationalisation, in 1979 the Board of Directors of the Bank in consultation with the Reserve Bank of India and with the previous sanction of the Central Government made regulations in exercise of the powers conferred by Section 19 read with Section 12(2) of the Central Act 5 of 1970. The relevant provisions reads thus:--

46(1) Every officer shall be eligible for gratuity on:

(a) retirement

(b) death

(c) disablement rendering him unfit for further service as certified by a medical officer approved by the Bank, or

(d) resignation after completing ten years of continuous service.

(2) The amount of gratuity payable to an officer shall be one month's pay for every completed year of service, subject to a maximum of 15 month's pay:

* * * *

7. The Petitioner therefore contends that under the Gratuity Fund Rules of the Bank, the employee was entitled to gratuity "on termination of his service as the employee in accordance with the rules of the Bank" and also "on retirement of an employee from the Bank" and therefore as his services have been terminated, he is entitled to gratuity. Moreover he states that as per the saving clause (extracted earlier) he is not eligible "to receive the gratuity only to the extent of the financial loss caused to the Bank" and as there is no case that he caused any such loss, he is entitled to the full amount as per these rules.

8. Even after the statutory service regulations came into force, the Petitioner is still entitled to gratuity, and under Clause 46, gratuity is payable on "retirement". This expression "retirement" cannot be equated to superannuation; but has to be given an extended meaning. So runs the contention of Shri Dayananda Prabhu, the learned Counsel for the Petitioner.

9. The claim is resisted by the Bank and Shri T.R. Govinda Wariyar, its learned Counsel strongly contends that the Officers' Regulations in 1979 enable payment of gratuity only on retirement i.e. on superannuation on attaining the age of retirement. He says that the expression "retirement" in these regulations has only been understood in that limited and generally accepted sense and he invites me to the following provisions as well.

19(1) The age of retirement of an officer employee shall be as determined by the Board in accordance with the guidelines issued by the Government from time to time.

* * * Explanation.--An officer employee will retire on the last day of the month in which he completes his age of retirement.

* * * 20(1) Subject to Sub-regulation (3) of regulation 16 the bank may terminate the services of any officer by giving him three months' notice in writing or by paying him three months emoluments in lieu thereof.

(2) No officer shall resign from the service of the bank otherwise than on the expiry of three months from the service on the Bank of a notice in writing of such resignation.

* * * 43. On retirement, an officer will be eligible to claim travelling allowance, baggage and other expenses for himself and his family as on transfer from the last station at which he is posted to the place where he proposed to settle down on retirement.

10. It is therefore necessary to understand the exact import of the expression, gratuity. In *The Garment Cleaning Works Vs. Its Workmen*, a clause in a provident fund scheme which provided "that if a workman is dismissed or discharged from misconduct causing financial loss to the works, gratuity to the extent of the loss should not be paid to the workman concerned" was challenged as "inconsistent with the principles on which gratuity claims are generally based. The argument was that gratuity which is in the nature of notional benefit is based on long and meritorious service and if the service of the employee is terminated on the ground of misconduct it would not be open to him on principle to claim gratuity because misconduct puts a blot on the character of his service and that disqualifies him from any claim of gratuity. Repelling this contention, the Supreme Court observed as follows:

On principle if gratuity is earned by an employee for long and meritorious service it is difficult to understand why the benefit thus earned by long and meritorious service should not be available to the employee even though at the end of such service he may have been found guilty of misconduct which entails his dismissal. Gratuity is not paid to the employee gratuitously or merely as a matter of boon. It is paid to him for the service rendered by him to the employer, and when it is once earned it is difficult to understand why it should necessarily be denied to him whatever may be the nature of misconduct for his dismissal.

11. This was reiterated in *Burhanpur Tapti Mills Ltd. Vs. Burhanpur Tapti Mills Mazdoor Sangh*, where it was held thus:

A scheme of gratuity and a scheme of pensions have much in common. Gratuity is a lump sum payment while pension is a periodic payment of a stated sum. They are both "efficiency devices" and are considered necessary for an "orderly and humane elimination" from industry of superannuated or disabled employees who but for such retiring benefits would continue in employment even though they function inefficiently. The voluntary retirement of an inefficient or old or worn out employee on the assurance that he is to get a retiral benefit leads to the avoidance of industrial disputes, promotes contentment among those who look for promotions, draws better kind of employees and improves the tone and morale of the industry. It is beneficial all round. It compensates the employee who as he grows old knows that some compensation for the gradual destruction of his wage earning capacity is being built up. By inducing voluntary retirement of old and worn out workmen it confers on the employer a benefit akin to the replacing of old and worn out machinery. An indirect saving also results when workmen at the top of the wage scales retire and their place is taken by more energetic workmen at lower scales. In this connection we cannot compare compensation for retrenchment and provident fund on the one hand with gratuity

or pension on the other. Compensation for retrenchment is solatium of premature termination of employment. Contribution to the provident fund is designed to induce thrift so that the employee may lay by from his present earnings a portion for a rainy day or for his old age. As the workman cannot be expected to spare very much, regard being had to the gap between what he earns and what he must spend, the employer is expected to make a contribution. Gratuity is a retiral benefit of a very different kind, because it is earned by giving service. The existence of any one of the three schemes, therefore, does not obviously overlap any of the other two. They can all exist together, provided the financial position justifies such a course.

Later in All India Reserve Bank Employees Association Vs. Reserve Bank of India, at 321 it was said thus:

In these cases, it was held by this Court that gratuity is not a gift, but is earned and forfeiture except to recoup a loss occasioned in the establishment is not justified.

Mr. Palkivala undertook in that case to get the rules brought in line with the earlier decision of the Supreme Court.

12. Under the Payment of Gratuity Act, 1972, Central Act 39 of 1972, Section 4 provides thus:

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:

* * *

13. Retirement is denned in Section 2(q) thus:

"retirement" means termination of the service of an employee otherwise than on superannuation;

Of course, there is a definition of "superannuation" also which is as follows:

"Superannuation", in relation to an employee means,--

(i) the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment; and

(ii) in any other case, the attainment by the employee of the age of fifty-eight years;.

14. The expression "retirement" was understood as including retrenchment within Section 4(1) of the Payment of Gratuity Act by the Supreme Court in the decision in State of Punjab Vs. Labour Court Jullunder and Others, The Supreme Court observed as follows:

The second contention on behalf of the Appellant is that retrenchment does not fall within Section 4(1) of the Payment of Gratuity Act, under which gratuity is payable to an employee on the termination of his employment. The termination envisaged occurs either--

(a) on his superannuation, or

(b) on his retirement or resignation, or

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

Having regard to the definition of "superannuation" in Section 2(r) of the Act, it is clear that the case is not one under Clause (a). Nor, admittedly, is it a case which falls under Clause (c). As regards Clause (b) it is not a case of resignation. The only question is whether it can be regarded under Clause (b) as a case of retirement. The expression "retirement" has been defined by Section 2(q) to mean "termination of the service of an employee otherwise than on superannuation". The definition is framed in the widest terms. Except for superannuation, any termination of service would amount to "retirement" for the purposes of the Act. Retrenchment is a termination of service. It is immaterial that the termination is occasioned by the need to discharge surplus labour. That retrenchment implies the discharge of surplus labour was explained in Barsi Light Railway Co. Ltd. v. K.N. Joglkar. Nonetheless, it amounts to "termination of service. We are of opinion that the retrenchment of the employee-Respondents falls within the scope of Section 4(1) of the Payment of Gratuity Act, and the employee-Respondents are therefore entitled to gratuity under that provision.

Gratuity is a terminal benefit earned for past service rendered and paid when services are terminated. Dismissal does not disqualify for gratuity and misconduct does not entail its forfeiture. Gratuity is no functional charity. It is realistic security.

15. With this background of the content of gratuity, the expression "retirement" cannot be contained in the narrow zone of "superannuation". Oxford Dictionary enlightens us where retirement has the following meaning as well:

To withdraw from office or an official position; to give up one business or occupation in order to enjoy more leisure or freedom (especially after having made a competence or earned a pension).

16. A benign provision must receive a benignant consideration and that which further the beneficial object should be preferred.

Dismissal and removal from service also thus fall within the scope of retirement in Clause 46 of the Service Regulations of the Bank.

16. Thus the Petitioner is entitled to gratuity notwithstanding the fact he was dismissed from service. As the alleged misconduct has not caused any loss to the Bank, he is entitled to gratuity at the rates mentioned in the Bank Service Regulations. The reasons for refusal of gratuity being unsustainable, Exts P-5 and P-7 are quashed and a direction is issued to the Respondents to disburse the gratuity due to the Petitioner in accordance with the Bank s Service Regulations and Rules and in the light of the observations contained in this judgment, as early as possible.

The O.P. is allowed with costs.