(1986) 02 RAJ CK 0041

In the Rajasthan High Court

Case No : Civil Writ Petition No''s. 2558 and 2705 of 1985

Kalyan Mal Bhandari APPELLANT

Vs

Rajasthan State Road Transport Corporation and Another RESPONDENT

Date of Decision : 17-02-1986

Acts Referred:

Payment of Wages Act, 1936 — Section 14, 5

Citation : (1986) WLN 78

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ashok Kumar Mathur, J.—The facts of both these writ petitions are common, therefore, they are disposed of by one common order.

2. In S.B. Civil Writ Petition No. 2558 of 1985 the petitioner has challenged the order of the appellate authority under the Payment of Wages Act, 1972 dated 20th April, 1985 (Annx. 5).

3. The petitioner joined the services on 22nd September, 1945 of the erstwhile State of Jodhpur and thereafter absorbed in the services of the Government of Rajasthan. The petitioner thereafter gave his option for joining the Rajasthan State Road Transport Corporation (here in after referred as the Corporation) on deputation on 1st October, 1964. Thereafter he continued to serve the Corporation and retired from service of the Corporation with effect from 31st December, 1981. The petitioner filed a claim petition before the Authority under the Payment of Gratuity Act, 1972 (here in after referred as the Act of 1972) against the Corporation. The Corporation submitted a reply that he is not entitled to any gratuity amount over and above already paid. When the petitioner was sent on deputation he was asked to give option whether he would like to opt for the service conditions of the Corporation and would like to subscribe to the Provident Fund Scheme or he would like to have the benefit of Death-cum-

Retirement Gratuity. The petitioner gave option for Death-cum-retirement Gratuity and opted for the benefits of pension of Government of Rajasthan. It was further contemplated that in the event of the incumbent opting for the post retiring benefits of the Government of Rajasthan and D.G.R. benefits, the amount of the incumbent will be credited to the account of the Corporation on retirement of the incumbent. The Authority under the Payment of Gratuity Act after hearing both the parties held that the petitioner is entitled to a sum of Rs. 19,624.60 according to the Act of 1972 and a sum Rs. 14,190/- have already been paid to the petitioner, therefore, the Corporation should pay a sum of Rs. 5,43.60 paise towards gratuity. Aggrieved against this order an appeal was preferred by the Corporation before the appellate authority under the Act of 1972 and the petitioner also preferred an appeal against the order of the authority under the Payment of Gratuity Act because he was aggrieved to the extent that the authorities are taking the period from 9-5-1980 whereas he was retired on 31-12-1981. Both the appeals were connected together and heard by the appellate authority. The appellate authority dismissed both the appeals holding that since the petitioner has been paid Gratuity according to the Rajasthan Rules he cannot claim any benefit under the Act of 1972. Thus he found that the petitioner is not entitled to any benefit under the Act of 1972. In the result he dismissed both the appeals. Aggrieved against the order of dismissal the petitioner preferred these two writ petitions.

4. Mr. Parihar, learned Counsel for the petitioner has submitted that in view of Sections 5 and 14 of the Act of 1972 the petitioner is entitled to the gratuity from 1972 under the Act of 1972, as the Corporation has not sought any exemption u/ s 5 from the operation of the Act of 1972. In order to appreciate the contention raised by the learned Counsel for the petitioner it is necessary to consider the language of Section 5 and 14 of the Act of 1972. Section 5 reads under:

5. Power to exempt--(1) The appropriate Government may by notification and subject to such conditions as may be specified in the notification exempt ''any establishment, factory mine oilfield, plantation port railway company or shop to which this Act applies from the operation of the provisions of the Act, if in the opinion of the appropriate Government the employees in such establishment, factory mine, oilfield plantation port, railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

(2) The appropriate Government by notification and subject to such conditions as may be specified in the notification, exempt any employee of class of employees employed in any establishment, factory, mine oilfield, plantation, port, railway company or shop to which Act applies from the operation of the provisions of this Act, if in the opinion of the appropriate Government such employee or class of employees are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

According to Section 5 if any employor wants that the operation of the provisions of the Act of 1972 should be exempted they will have to move the appropriate Government and satisfy the Government that the amount of pension or gratuity which is paid under the Rules of that undertaking are not less favourable than the provisions of the Act of 1972, therefore the provisions may be exempted. The appropriate Government, if satisfied can exempt the undertaking from the operation of the Act of 1972.

5. Section 14 of the Act of 1972 reads as under :

14. Act to override other enactment etc. The provisions of this Act or any rule made thereunder shall have effect not with standing any thing inconsistent therewith contained in any instrument or contract having effect by virtue of any enactment other than this Act.

Section 14 clearly lays down that if any provisions are inconsistent with the Act then the provisions of the Act of 1972 will prevail and not other provisions of any undertaking. Thus, the resultant position is that the provisions of the Gratuity Act will have overriding effect over all other provisions of undertaking on the subject.

6. Now examining the impact of both these provisions contained in the Act of 1972 in the present case, it is an admitted fact that the petitioner came in the service of the Corporation from 1st April, 1964 and the Corporation is also covered by the provisions of this Act and the Corporation has not sought any exemption from this Act. Thus the Act of 1972 will be applicable to the Corporation. It has not been disputed before me that the Act is not applicable to the Corporation. The petitioner has given his option that he shall continue to be governed by the conditions regarding past terminal benefits of the Government of Rajasthan and the Government of Rajasthan shall eredit that amount from the Corporation. Since the petitioner was employee of the Corporation from 1-4-1964 therefore he shall be entitled to all the benefits of the Act of 1972. In view of Section 14 of the Act that if any of provisions are inconsistent with the provisions of the Act then the provisions of this Act will have overriding effect, therefore the petitioner is entitled to all the benefits under the Act of 1972, from 1972 when this Act came into force. The appellate authority has taken the view that the petitioner cannot take the benefits of both the Acts is not correct approach. Perhaps the attention of the authority was not drawn to Section 5 and 14 because Section 14 lays down that the provisions of this Act will have overriding effect over other provisions on the subject. Thus, the view taken by the appellate authority is not correct, it is set aside. In result, I up hold the order of the authority under the Gratuity Act dated 18th January, 1984 (Annx. 3).

7. In this connection Mr. Sharma, learned Counsel for the respondent Corporation has raised an objection that the State Government was not a party either before the Authorities or before the appellate authority, therefore the State Government cannot be saddled with any financial liabilities. I am afraid this submission of Mr. Sharma is not well-founded. In terms of the option it clearly transpires that whatever amount is due to the incumbent the State Government shall pay to the

incumbent and credit the amount to the account of the Corporation. Thus I hold that the State Government is not necessary party, and I over rule the objection of Mr. Sharma that the State Government is not necessary party.

8. Thus, writ petition is allowed and the order of the appellate authority dated 20th April, 1985 is set aside and I up hold the order of the Authority under the Payment of Gratuity Act, 1972 dated 18th January, 1984 (Annx. 3).

9. This brings me to the second writ petition filed by the petitioner aggrieved against the order of the Authority under the Payment of Gratuity Act, 1972 dated 18th June, 1984 (Annx. 7). The Authority has relied on Section 4(2) of the Act of 1972 which lays down that 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. The Authority under the Payment of Gratuity Act has rejected the claim of the petitioner and this has been up held by the appellate authority. Thus in view of the concurrent finding of fact I am not inclined to interfere with this finding of fact.

10. Thus, in the result I do not find any merit in this writ petition and it is dismissed.

