(2015) 02 KAR CK 0078

In the Karnataka High Court

Case No : Writ Appeal Nos. 3501-3636/2013 (S-RES)

Karnataka Power Transmission Corporation Ltd. APPELLANT

Vs

Vishwanatha and Others RESPONDENT

Date of Decision : 16-02-2015

Acts Referred:

Constitution of India, 1950 — Article 14
Payment of Gratuity Act, 1972 — Section 2(s), 4, 5(1)

Citation : (2015) 02 KAR CK 0078

Hon'ble Judges : K.L. Manjunath and S. Sujatha, JJ.

Bench : Division Bench

Advocate : S.S. Nagananda, Sr. Counsel for B.C. Prabhakar, Adv. for Bhoopalam Law Assts., for the Appellant; B. Pramod, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—The appellant - Karnataka Power Transport Corporation Limited is questioning the legality and correctness of the order passed by the learned Single Judge dated 7.3.2013 in Writ Petition No. 6046/2006 and other connected matters.

2. Heard Mr. Naganand, learned Sr. counsel appearing for the appellant and Ms Ankita G. Shalke, counsel appearing for the respondent.

3. The writ petitioners are all retired employees of KPTCL. Earlier they were in the services of the erstwhile Mysore State Electricity Board which later was renamed as Karnataka Electricity Board and the same has been converted into corporation with effect from 29.4.2000. On account of the incorporation of the KPTCL, the employees who were working in KEB were transferred as employees of the KPTCL with the same service conditions. After retirement, the appellant/ KPTCL has paid the death cum retirement benefit as DCRG and pension. Contending that they have not been paid the gratuity under the provision of Payment of Gratuity Act, 1972 (hereinafter referred to as The Act'' for brevity), writ petitions were filed challenging the notification issued by the State

Government granting exemption under the provisions of the Act. The reliefs sought in the writ petitions are as hereunder:

"i. To quash the order bearing No. KPTCL/B16/3593/98-99 dated 17.11.2003 (Annexure -A) in so far as it restricts the benefits of payment of enhanced amount of gratuity to the employees who cease to be in service on account of retirement/death on or after 18.10.2003 as wholly illegal, without jurisdiction, arbitrary, contrary to the Payment of Gratuity Act, 1972 & violative of Article 14 of the Constitution of India;

ii. To declare that the petitioners are entitled to the benefits of enhancement of amount of gratuity of Rs. 3,50,000/- in terms of Sub-section of Section 4 of the Payment of Gratuity Act, 1972 and;

iii. and also issue a Writ, order or direction more in the nature of Writ of mandamus directing the respondent corporation to pay to the petitioner the difference of amount due and payable to the petitioner in terms of Sub-section 3 of Section 4 of the Payment of Gratuity Act, 1972 along with interest @ 18% P A from the date of its actual payment till the date of its realization;"

4. The petitioner in W.P. 659/2006 also requesting the Court to quash the notification dated 17.11.2013. A case was registered by the appellant/ corporation on the ground that the notification dated 21.11.1988 issued under Section 5(1) of the Act cannot be questioned by the writ petitioners by filing a writ petition in 2006 and that the Government considering that the appellant is paying pension as well as DCRG and other retirement benefits which is more beneficial in nature to the employees of the Corporation, granted exemption in regard to the applicability of the provisions of the Act and also contended that at best, on the notification issued from time to time, the gratuity has been settled. At the first instance, it was held that revised amount of Rs. 3,50,000/- is to be paid to the persons who retired from service on or after 17.11.2003 and during the pendency of the writ petition, a submission was also made that as regards the applicability of the Act, the amount of Rs. 3,50,000/- is also extended to such of those persons who retired on or after 27.3.1999 with retrospective effect. Accordingly, the difference of payment of gratuity has been paid. In such circumstances, the appellant requested the Court to dismiss the writ petition.

5. Learned Single Judge having heard both the parties and considering the material placed before him, came to the conclusion that the notification in question cannot be quashed firstly, on account of the inordinate delay, secondly on the ground that there are no adequate grounds to quash the notification. Accordingly, the prayer of the writ petitioners to quash the notification has been rejected. The second prayer was also rejected in view of the notification dated 23.11.2009 enhancing the ceiling limit of gratuity from Rs. 2,50,000/- to Rs. 3,50,000/- to persons who retired on or after 28.07.1999. Having held that the notification issued under Section 5(1) of the Act as valid, however, directed the appellant to pay pensionary benefits calculated in terms of definition of Wages''

under Section 2(s) of the Act and such pensionary benefits shall be calculated and disbursed as expeditiously as possible.

6. Being aggrieved by the last direction issued by the learned Single Judge, the present appeals are filed.

7. Mr. Naganand, learned Sr. counsel appearing for the appellant submits that the learned Single Judge has committed an error in issuing a direction to calculate the pensionary benefits relying upon Section 2(s) of the Act, when the provisions of the Gratuity Act itself is not applicable to the appellant/corporation in view of the notification dated 21.11.1988 and also on the ground that in regard to the calculation of the pensionary benefits are concerned, the appellant/corporation is governed by its rules which has been issued by the Government from time to time and relying upon the Government Order dated 15.2.1999 submits that the Government has issued directions the manner in which the emoluments are to be calculated in regard to the death benefits and family pension as enumerated under Clause 8.1 of the Government Order which reads as hereunder:

"Clause 8.1 The terms emoluments for purpose of calculating various retirement and death benefits and Family Pension shall mean the basic pay drawn by a Government Servant in the scale of pay applicable to the post held by him on the date of retirement/death shall also include:

(a) stagnation increment, if any, granted to him above the maximum of the scale of pay.

(b) Personal pay, if any, granted to him under sub-rule (3), of Rule 7 of the Karnataka Civil Services (Revised Pay) Rules, 1999"

8. Relying upon this provision, learned Sr. Counsel submits that the pension has been settled and emoluments are calculated as per the Government Order. He further submits that none of the respondents have placed any material before the Court to show that the appellant/corporation has not adhered to the above said provision and on account of the wrong calculation, the respondents have been paid lesser amount than what they are entitled to under the Rules. Therefore, he submits that the direction issued by the learned Single Judge to recalculate the retirement benefits payable to the respondent is required to be set-aside.

9. Per contra, learned counsel appearing for the respondent submits that even though the notification is issued by the Government granting exemption, so far as retirement benefits are concerned, learned Single Judge is justified in granting the manner in which the same has to be calculated. Therefore, they contend that no error is committed by the learned Single Judge in issuing such a direction.

10. Having heard the learned counsel for the parties, the only point to be considered by this Court is, "Whether learned Single Judge has committed an error in issuing a direction to the appellant to calculate the pensionary benefits payable to the respondent in terms of definition of ''wages'' under Section 2(s) of

the Act and such pensionary benefits shall be calculated and disbursed as expeditiously as possible?"

11. Admittedly in view of the notification, the act is not applicable to the appellant/corporation. When it is not applicable to the appellant/corporation, the manner in which retirement benefits are to be extended to its employees, the appellant is governed by the Government Order dated 15.2.1999 which is not disputed by the learned counsel appearing for the respondents. In view of Clause 8.1 of the Government Order, it is manifestly clear the manner in which the benefits are to be calculated. It is not the case of the respondent that there is a failure on the part of the respondents in not adhering to clause 8.1 of the Government Order in settling the pension. When such a case is not made out by the appellant, we are at loss to understand how Section 2(s) of the Act can be made applicable for the calculation of the retirement benefits when the respondents are governed by the service conditions of the appellant and when the appellant is bound to carry out the directions of the State Government from time to time in regard to the retirement benefits. Since the aforesaid provisions has not been noticed, we are of the view that an error is committed by the learned Single Judge in issuing the direction. Therefore, the order passed by the learned Single Judge requires to be set-aside.

12. While we hold that the direction issued by the learned Single Judge has to be set-aside, if really, the appellant has not paid the amount payable to the respondents by following Clause 8.1 of the Government Order, it is always open for the respondents to approach the appellant/corporation and if the respondents are able to show that still they are entitled for the difference amount, it if for the appellant to consider such representation in accordance with law.

13. In the result, the appeals are allowed. The direction issued by the learned Single Judge in directing the appellant to calculate the pensionary benefits payable to the respondents by applying the provisions of Section 2(s) of Payment of Gratuity Act is hereby set-aside. Consequently, the writ petitions filed by all the respondents are hereby dismissed.