

(2008) 01 KL CK 0076

In the High Court Of Kerala

Case No : W.A. No. 1062 of 2003 and W.A. No. 1938 of 2004

Kerala State Electricity Board

APPELLANT

Vs

R. Mohankumar

RESPONDENT

Date of Decision : 08-01-2008

Acts Referred:

Kerala Service Rules, 1958 — Rule 4, 68
Payment of Gratuity Act, 1972 — Section 14, 2, 4(5)

Citation : (2008) 01 KL CK 0076

Hon'ble Judges : H.L. Dattu, C.J.; K.M. Joseph, J

Bench : Division Bench

Advocate : N.N. Sugunapalan, K.S. Anil and Kodoth Sreedharan, S.C., KSEB, for the Appellant; S. Ramesh Babu, for the Respondent

Judgement

H.L. Dattu, C.J.—Since common questions of law and facts are involved in these writ appeals, they are clubbed together, heard and disposed of by this common order.

2. The first case that was filed before this Court was O.P. 674/2002. In that case, the Petitioner was an employee of the Kerala State Electricity Board. He retired from service as Chief Personnel Officer and Head of Personnel Department on 30th September, 2001. His claim was payment of gratuity at the rates provided under the provisions of the Payment of Gratuity Act, 1972 (hereinafter for brevity referred to as Act of 1972). According to the Petitioner, he was eligible to receive 3.5 lakhs under the provisions of the Gratuity Act. The Kerala State Electricity Board, relying upon Rule 68 of Part III of Kerala Service Rules, had paid only a sum of Rs. 2.8 lakhs and thereby his request for payment of 3.5 lakhs under Act of 1972 was rejected by the Respondents. That was how the Petitioner was before this Court seeking appropriate directions to the Kerala State Electricity Board for payment of gratuity at the rates provided under the provisions of Act of 1972.

3. Detailed objections were filed by the Board resisting the reliefs sought for by

the Petitioner in the writ petition. However, at the time of hearing the petitions for disposal, primarily two contentions were canvassed by the learned Counsel appearing for the Board before the learned Single Judge. Firstly, in view of Section 2(e) of the Payment of Gratuity Act, the employee of the Corporation is none other than an employee of the State Government. Therefore, the provisions of the Payment of Gratuity Act cannot be made applicable to him. Secondly, since the Petitioner under the provisions of the Kerala Service Rules had received pension package and the gratuity, he is not entitled for payment of gratuity under the provisions of the Payment of Gratuity Act.

4. The learned Single Judge, has relied upon the dicta of the Apex Court in the case of Municipal Corporation of Delhi Vs. Dharam Prakash Sharma and Another, wherein it is stated,

We have examined carefully the provisions of the Pension Rules as well as the provisions of the Payment of Gratuity Act. The Payment of Gratuity Act being a special provision for payment of gratuity unless there is any provision therein which excludes its applicability to an employee who is otherwise governed by the provision of the Pension Rules it is not possible for us to hold that the Respondent is not entitled to the gratuity under the Payment of Gratuity Act ... The mere fact that the gratuity is provided for under the Pension Rules will not disentitle him to get the payment of gratuity under the Payment of Gratuity Act. In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, the provision for gratuity under Pension Rules will have no effect...In the aforesaid premises we are of the considered opinion that the employees of the MCD would be entitled to the payment of gratuity under the Payment of Gratuity Act not with standing the fact that the provisions of Pension Rules have been made applicable to them for the purpose of determining the pension. Needless to mention that the employees cannot claim gratuity available under Pension Rules.

5. Following the dicta of the Apex Court, the learned Single Judge has allowed the writ petition and has declared that Exts. P-3 and P-5 will not in any way affect the right of the Petitioner to get the gratuity under the provisions of Act of 1972 and further has directed the Board to to pay the balance amount of gratuity due to the Petitioner after deducting the gratuity already paid under Rule 68 of Part III of the KSR. Aggrieved by the orders so passed by the learned Single Judge, the Board is before us in this appeal.

6. The learned Single Judge following the decision in O.P. No. 674 of 2002 has disposed of other writ petitions. The Board, aggrieved by those orders has filed separate appeals before this Court.

7. The Payment of Gratuity Act, 1972 is an act to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oil fields, plantations, ports, railway companies, shops or other establishments and formatters connected therewith or incidental thereto. Section 2 of the Act defines

the meaning of certain words that finds a place in the Act. Section 2(e) of the Act defines the meaning of the expression "employee". It means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oil field, plantation, port, railway company or shop to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

8. The definition of an employee is wide enough to include an employee of Kerala State Electricity Board, since it is an establishment. The argument of the learned Counsel for the Appellant is that an employee working in Kerala State Electricity Board is an employee of the State Government and therefore, the Payment of Gratuity Act cannot be made applicable to him. In our view, this submission of the learned Counsel has no merit whatsoever. The clause specifically excludes only those employees who are employed under the Central Government or the State Government. The employees of the Corporation by no stretch of imagination can be an employee of the State Government. The law on the point is well-settled. We need not have to quote all those decisions for the purpose of the disposal of the issue so canvassed by the learned Counsel for the Board.

9. The learned Counsel for the Board submits that, employees having opted for payment of gratuity under Rule 68 of Part III KSR and having received pensionary benefits are not entitled to payment of gratuity under the provisions of the Payment of Gratuity Act. In support of that submission, our attention is drawn to the decision of the Apex Court in the case of Beed District Central Co-operative Bank Ltd. Vs. State of Maharashtra and Others, .

10. In the aforesaid decision, the Supreme Court was considering the case where the Bank had formulated a scheme. The first scheme was operative for the period from May, 1994 to 24th September, 1997. Under the said scheme an employee of the Bank on retirement or attaining the age of superannuation was entitled for gratuity to be calculated at the rate of 26 day's salary (wages) for every completed years of service with a ceiling limit of 1.7 lakhs. The Bank had formulated yet Anr. scheme superseding the first scheme by raising the ceiling limit to 2.50 lakhs. The employees of the Bank who retired from service, had claimed payment of gratuity under the provisions of Act, 1972 and while doing so had claimed gratuity that is payable to him at the rate to be calculated under the scheme. The request of the employee was negated by the Bank. However, the authorities under the Act as well as the High Court granted the reliefs to the employees of the Bank. The Bank had approached the Apex Court being aggrieved by the orders so passed by the Court. The Apex Court, while dealing with the issues raised in the Civil Appeal at Para 5 has framed the following questions of law for consideration, that is, whether keeping in view the provisions

contained in Sub-section (5) of Section 4 of 1972 Act, the Respondents of that case are entitled to the benefit of ceiling limit of 3.5 lakhs, the rate of gratuity should be calculated at the rate of 26 day's salary instead and in place of 15 days' salary for every completed years of service in terms of the 1972 Act.

11. The employees of the Bank opted for payment of gratuity under the Act of 1972. But, for the purpose of calculation of the payment of gratuity under the Act, they had requested the Bank to calculate at the rate of 26 days wages (salary) for every completed years of service.

12. The Supreme Court, being of the opinion that the employees cannot seek the benefit of the scheme in part apart from the benefit of Payment of Gratuity Act and accordingly allowed the appeal and set aside the orders passed by the authorities under the provisions of Payment of Gratuity Act and also the view expressed by the Bombay High Court.

13. In our view, the said decision on which reliance was placed by the learned Counsel for the Appellant Board may not assist him in the facts and circumstances of the present case.

14. Section IV of the Kerala Service Rules (Part III), provides for Death-cum-Retirement Gratuity. These rules have been adopted by the Kerala State Electricity Board. Rule 68 of the Rules provides for the amount of gratuity payable to an employee on retiring from service on attaining the age of superannuation etc. Under the said rule, the amount of gratuity will be one half of the emoluments of an employee for each completed year of qualifying service subject to a maximum of 16 1/2 times the emoluments. In the case of invalid pension or in the event of death of an employee while in service, the gratuity will be subject to a minimum of 12 times the emoluments of the employee last drawn and the maximum amount of gratuity under this rule is limited to Rs. 2.80 lakhs.

15. Section 14 of the Payment of Gratuity Act provides that the provisions of the Act shall have effect not with standing anything inconsistent therewith contained in any enactment other than the Act or in any instrument or contract having effect by virtue of any enactment under the Act. The sweep of this section clearly provides that the right to claim gratuity by an employee under the provisions of this Act is not based on any contract, but a right which arises out of the provisions of the statute itself. The Apex Court in the case of Municipal Corporation of Delhi Vs. Dharam Prakash Sharma and Another, has held that the Payment of Gratuity Act, 1972 being a special provision, shall have an overriding effect over any scheme that might have been adopted by the concerned employer, and even if the benefit is availed of under the concerned scheme, the employee would be entitled for payment of gratuity under the Act.

16. In the instant case, an employee of the Board has retired from service on his attaining age of superannuation. Under Rule 68 of Part III of the KSR he is entitled to get a sum of Rs. 2.8 lakhs apart from the pensionary benefits. Under the provisions of the Payment of Gratuity Act, a higher ceiling limit is fixed. In

view of Section 14 of the Act and in view of what is declared by the Apex Court in the case of Municipal Corporation of Delhi Vs. Dharam Prakash Sharma and Another, he can opt for payment of gratuity which is favourable and beneficial to him. Since, that was denied by the Board to the retired employee, he had approached this Court. This Court, in our opinion, relying on the dicta of the Apex Court in Municipal Corporation of Delhi v. Dharam Prakash Sharma and Anr. (supra), has allowed the petition filed by the retired employees. In our opinion, the reasoning and conclusion reached by the learned Judge is unexceptional and we do not see any infirmity in the said order. The appeals filed by the Board requires to be rejected and it is rejected.

17. In view of the order passed in the writ appeals, all pending interim applications are rejected.