(2012) 11 AHC CK 0021

In the Allahabad High Court

Case No : W.C. No''s. 27336, 27341 and 27343 of 2012

Kraft Palace APPELLANT

Vs

Appellate Authority Under Payment of Gratuity Act and Others RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 1, 2, 4, 7

Citation : (2013) 137 FLR 332 : (2013) 2 LLJ 406 : (2013) LLR 254

Hon'ble Judges : Devendra Pratap Singh, J

Bench : Single Bench

Advocate : Shobhana Srivastava, for the Appellant; K.M. Tripathi, for the Respondent

Final Decision : Dismissed

Judgement

Devendra Pratap Singh, J.—Heard learned counsel for the parties and perused the record.

These three petitions are directed against different orders dated 8.2.2011 passed by the Controlling Authority (Central) under the Payment of Gratuity Act. 1972 (herein after referred to as the ''Act'') and confirming appellate order dated 28.2.2012 on similar facts and grounds and therefore, are being decided together with the consent of learned counsel for the parties. The first writ petition is the leading petition.

Brief relevant facts are that the respondent No. 3 was employed in the petitioner establishment in 1975 and after completion of more than 24 years of service, he retired on 31.3.1999. However, when despite demand the gratuity was not paid, he preferred his claim before the authority appointed by the State Government under the Act. The petitioner raised a preliminary objection that since the establishment is spread in more than two States, only the authority appointed by the Central Government would have jurisdiction. Thus, the application was rejected with liberty to approach the competent forum. in pursuance thereof, the private respondent filed his application under the Act claiming gratuity before the respondent No. 1. After exchange of pleadings and evidence, the claim was allowed and the consequential appeal has also been dismissed.

2. it is firstly urged that the private respondent was drawing more than the prescribed salary under the Act, therefore, was not entitled to gratuity under the Act.

The argument is not only naive, but totally misconceived. In reference to the entitlement for gratuity, the term "employee" has been defined in the Act in sub-section (e) of Section 2. Prior to the Amendment in 1994, it was defined as under:

"employees" means any person (other than an apprentice) employed on wages not exceeding two thousand and five hundred rupees per mensem, or such higher amount as the Central Government may, having regard to the general level of wages, by notification, specify 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.

Explanation--In the case of an employee, who, having been employed for a period of not less than five years on wages not exceeding the amount for the time being specified by or under Clause (a) is employed at any time thereafter on wages exceeding that amount, gratuity in respect of the period during which such employee was employed on wages not exceeding that amount shall be determined on the basis of the wages received by him during that period.

3. This amount originally was Rs. 1000 and was increased to Rs. 1600 and finally by the amendment of 1984 it was set as Rs. 2500. However, it was amended vide Act 34 of 1994 w.e.f. 24.5.1994 and the prescribed limit was removed together with the Explanation and substituted by the following:

"employees" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, 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.

4. Admittedly, the private respondent retired after 1994 and thereafter the

application was filed. Therefore, there was no question of any wage limit. Otherwise also, in view of the Explanation, even if on the date the employee retired and was getting higher wages, he would still be entitled to the benefit if he fulfills the requirement of section 4 as held by the Apex Court in the case of AIR 1985 1759 (SC) . Therefore, either ways, the argument cannot be accepted.

5. It is then urged that at the relevant time, there were less than 10 employees in the establishment and, therefore, the Act would not apply.

The Controlling Authority has considered this argument. It has found that in 1983, there were more than 21 employees in the establishment and for this purpose, it relied upon a report of the Enforcement Officer under the Employees Provident Fund and Miscellaneous Provisions Act, 1952. This fact has not been denied either before the Authority concerned or before this Court. In fact, in paragraph 19 of the writ petition, it is admitted that there were more than 10 employees since 1983. Sub-section (3A) of Section 1 of the Act mandates that once a shop or establishment comes within the purview of this Act, it will apply to it irrespective of the fact that number of persons employed subsequently falls below 10. Therefore, the argument cannot be accepted.

6. It is then urged that the application was filed before the Controlling Authority belatedly and, therefore, it could not have been entertained.

7. Counsel for the petitioner has failed to point out any provision in the Act prescribing a period of filing an application for payment of gratuity before the Controlling Authority. In fact the obligation is upon the employer u/s 7 of the Act to determine the amount of gratuity and give a notice in writing to the person to whom it is to be paid with a copy to the Controlling Authority and thereafter pay it within 30 days. The petitioner did not undertake this exercise. As noted in the opening part of the-judgment, the workman did approach the Controlling Authority appointed by the State Government within a reasonable time claiming gratuity, but upon an objection raised on behalf of the petitioner, the claim was rejected with liberty to approach the Controlling Authority appointed by the Central Government. Therefore, it cannot be said that the petitioner slept over his right or did not present his application before the Authority concerned within a reasonable time. Accordingly, this argument also is rejected.

8. It is then contended that according to the agreement between them, the employee was paid certain extra amount with the salary which was to offset the gratuity to be paid after retirement and, therefore, he was not entitled to any gratuity.

9. The argument is preposterous. The very term ''gratuity'' in Service Jurisprudence, means a certain amount to be paid to a retiring employee and under the Act, it has to be calculated according to the length of service, so how could the amount be calculated while he still remains in service. Further, no such agreement has been filed on record and oral agreement would not be enough to contract out of the statutory obligation especially when there is denial.

10. Lastly it is urged that the Controlling Authority could not have awarded interest as the delay in payment is due to the late action by the workman himself. As noted earlier, the obligation was with the petitioner to have determined the gratuity and to pay it within the specified time but it forced the petitioner to approach the Controlling Authority. The Controlling Authority was fully justified to award interest under sub-Section (3A) of Section 7 of the Act and, therefore, this argument also is bound to be rejected.

No other point has been urged.

For the reasons above, this is not a fit case for interference under Article 226 of the Constitution of India. Rejected.

