

(2014) 03 MP CK 0011

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 2871, 3109, 3718, 3719, 3723, 4513, 7770, 7771, 7772, 8217, 8374, 8375, 8377, 8552, 8553, 8772, 8849, 8908, 8910, 8918, 8929 of 2013 and 213, 214, 215, 250, 1396 of 2014

Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd.

APPELLANT

Vs

D.D. Singh

RESPONDENT

Date of Decision : 14-03-2014

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1)(f), 227, 300(A), 300A

Electricity (Supply) Act, 1948 — Section 79, 79(c)

Payment of Gratuity Act, 1972 — Section 14, 4, 4(1), 4(3), 4(5)

Citation : (2014) 143 FLR 918 : (2014) 2 JLJ 267 : (2014) 3 MPLJ 641

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Anmol Khedkar, Ravi Jain, Nitin Agrawal, Vivek Jain and Manoj Kumar Dwivedi, Advocate for the Appellant; M.L. Hirway, Prashant Sharma, D.P. Singh, Neeraj Shrivastava and Subodh Pradhan, Advocate for the Respondent

Judgement

Sujoy Paul, J.—Since similar questions are involved in these matters, on the joint request of the parties, matters were heard analogously and decided by this common order.

This order shall govern the disposal of Writ Petitions No. 8929/2013, 8849/2013, 2871/2013, 3109/2013, 3718/2013, 3719/2013, 3723/2013, 4513/2013, 7770/2013, 7771/2013, 7772/2013, 8217/2013, 8374/2013, 215/2014, 214/2014, 213/2014, 250/2014, 1396/2014, 8375/2013, 8377/2013, 8552/2013, 8553/2013, 8772/2013, 8908/2013 and 8910/2013.

Facts are taken from Writ Petition No. 8918/2013:

This petition filed under Article 227 of the Constitution challenges the order of the controlling authority under the payment of Gratuity Act, 1972 (for brevity "the Act") dated 30.6.2012 (Annexure P-2). The appellate order passed by the Appellate authority, under the Act, dated 3.8.2013 (Annexure P-10) is also called

in question.

2. I have heard Shri K.N. Gupta, Shri Ravi Jain, Shri Vivek Jain and Shri Nitin Agrawal and Shri Manoj Kumar Dwivedi, learned counsel for the petitioner-employer. Learned counsel for the petitioners have criticized the impugned orders on the ground that as per section 4(5) of the Act the employee is entitled to get better terms of gratuity as per rules prevailing in the employer's department, better terms of gratuity is as per the rules of the employer and not as per the gratuity Act. By taking this Court to section 79(c) of the Electricity (Supply) Act, 1948, it is contended that the power to make regulations is flowing from this provision. By placing reliance on Annexure P-5 dated 5.5.1976, it is contended that by invoking powers conferred u/s 79(c), aforesaid, the Board had framed the M.P. Electricity Board payment of Gratuity Rules 1972. These rules were subsequently substituted by notification issued in exercise of power conferred by Clause (c) of section 79 of Electricity (Supply) Act, 1948 on 3.4.1978. By this notification the M.P. Civil Services (Pension) Rules, 1976 (for brevity "Pension Rules") were adopted. By relying on clause (6) of this notification, it is submitted that the employees were given option to decide whether they intend to continue with earlier rules or by new rules. In absence of exercising any option within prescribed period, as per deeming clause Pension Rules would be applicable.

3. The bone of contention is that pension Rules adopted by the employer would be applicable and payment of gratuity made to the employees is in accordance with Pension Rules. It is further contended that in certain cases the employee retired before 24.5.2010 and in those cases also the Authorities under the Act have granted more than Rs. 3,50,000/- as gratuity. By placing reliance on section 4(3) of the Act, it is contended that before 24.5.2010 the maximum amount payable as gratuity was Rs. 3,50,000/- whereas after the said date, it became Rs. 10,00,000/-.

4. Learned counsel for the petitioners also criticized the orders impugned on the ground that the employees without any objection or demur accepted the gratuity amount at the time of their retirement. After lapse of long time, they preferred an application seeking gratuity with interest. Such applications were hit by limitation and should have been dismissed on this count. In no case, interest could have been granted to the employees because of their belated approach to the authorities under Act.

5. Per Contra, Shri Prashant Sharma, Shri Subodh Pradhan and Shri D.P. Singh, learned counsel for the employees supported the orders. They relied on Division Bench judgment of this Court in Writ Petition No. 5618/2007(s) (Chief Engineer, M.P. State Electricity Board v. Radheshyam Goyal). Shri Prashant Sharma submits that against this Division Bench judgment, the employer filed a SLP. It was withdrawn with the liberty to file the review. The review petition was subsequently filed before this Court which was dismissed. Thus, order has attained finality. On a specific query from the Bench, learned counsel for the employer did not dispute the aforesaid contention of Shri Prashant Sharma.

6. No other point is pressed by learned counsel for the parties.

7. Before dealing with rival contentions advanced, I deem it proper to quote certain provisions of the Act, which read as under:

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 this superannuation, or

(b) on his retirement or resignation, or

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

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement.

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

(2) 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 paid on the rate of wages last drawn by the employee concerned.

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account.

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not empowered throughout the year, the employer shall pay the gratuity at the rate of seven days' wages for each season.

(3) The amount of gratuity payable to an employee shall not exceed ten lakh rupees.

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to this disablement shall be taken to be the wages as so reduced.

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6).....

Section 14 of the Payment of Gratuity Act, 1972 reads as under:

14. Act to override other enactments, etc.--The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.

8. The stand of the employer is that the Pension Rules are more beneficial, whereas the stand of the employees is that Gratuity Act is more beneficial. In no case, learned counsel for the petitioners assailed the method, manner and quantification of the amount by the controlling and appellate authorities in favour of the employees. In other words, the amount of gratuity determined in favour of the employees by the controlling authority, affirmed by the appellate authority, is not assailed by learned counsel for the employer. Thus, the said calculation itself makes it clear that amount determined as per the formula under the Gratuity Act is higher than the amount of gratuity derived under the Pension Rules. The Division Bench of this Court in *Radheshyam Goyal (supra)*, opined as under:

5. After having heard at length to the counsel for the parties and going through the orders passed by the controlling authority as well as by the appellate authority, we are of the opinion that there is no merit in the petition. Section 14 of Payment of Gratuity Act, 1972 overrides the provisions of other enactments. Under sub-section 5 of section 4 of the Act there is a right available to the employee to opt for better terms of gratuity. Employee has right to choose the gratuity under the provision which is more beneficial. The payment of gratuity is more beneficial under the Gratuity Act has been concurrently found on facts. Thus, in our opinion, the order passed by the controlling authority and the appellate authority are proper.

6. The petitioner counsel was unable to point out any provision in pension rules that in case gratuity is availed under the Payment of Gratuity Act benefit of pension would be available. The petitioner's counsel has relied on *DTC Retired Employees' Association (supra)*; it was a case with regard to the applicability of the Pension Scheme and applicability of Provident Fund Scheme. In that Pension Scheme was required to be accepted using the option within the specified time which is not the case of the petitioner. Counsel for the petitioner further relied on *EID Parry (I) Ltd. (supra)*, in which the provision of A.P. Shops and Establishment Act, 1996 was found to be more beneficial as compared to the Payment of Gratuity Act, 1972. Here, position is contrary.

7. We find that the ratio of the aforesaid decisions are of no avail to rescue the cause of petitioner.

8. Writ Petition being devoid of merits is hereby dismissed. No costs.

9. In the opinion of this Court, this judgment in no uncertain terms makes it clear that section 14 of the Act is having overriding effect on other rules and

regulations etc. Thus, as per sub-section (5) of section 4 read with section 14 of the Act, the employees are entitled for better terms. The apex Court in its recent judgment *Y.K. Singla Vs. Punjab National Bank and Others*, considered the impact of section 4(5) and section 14 of the Act. In the said case, the stand of the PNB was that the gratuity payable to the employees will be governed by Punjab National Bank (Employees) Pension Regulations, 1995 (Regulations) and, therefore, gratuity Act will not apply. The apex Court has opined as under:

Further more, from the mandate of section 14 of the Gratuity Act, it is imperative to further conclude that the provisions of the Gratuity Act would have overriding effect with reference to any inconsistency therewith in any other provision or instrument. Insofar as the entitlement of an employee to gratuity is concerned, in cases where gratuity of an employee is not regulated under the Gratuity Act, section 14 thereof having vested superiority to the provisions of the Gratuity Act over all other provisions/enactments (including any instrument or contract having the force of law), the provisions of the Gratuity Act cannot be ignored. The term "instrument" and the phrase "instrument or contract having the force of law" shall most definitely be deemed to include the 1995 Regulations, which regulate the payment of gratuity to the appellant.

10. A simple reading of this finding makes it clear that the apex Court opined that the Gratuity Act will have overriding effect over any other provisions/enactments. Said principle is squarely applicable in the present case. Resultantly, I have no hesitation to hold that Gratuity rules have overriding effect on the Pension Rules. As discussed above, the calculation under the Gratuity Act is more beneficial to the employees. In this regard, controlling and appellate authority have not committed any error in applying the Gratuity Act.

11. So far the question of delay in approaching the Authority is concerned, the rule 7 of payment of Gratuity M.P. Rules, 1973 prescribes the method of submission of application. Rule 7(5) provides that no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within specified period.

12. This is settled in law that amount of retiral dues, including gratuity, are not bounty. It is differed payment to the employee for the long services rendered by him to the Department. This payment is made to the employees in December of their life with a view to provide them a security. They can use this amount for their own settlement, discharge of social obligations etc. The retiral dues are also recognized as property under the Article 300(A) of the Constitution. A person can be deprived from the property only in accordance with law made in this regard. In *Bhaskar Ramchandra Joshi Vs. State of M.P. and Others*, this Court has considered this aspect and opined as under:

10. The apex Court on different occasions had considered the scope and ambit of property. In *H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another*, opined that Privy Purse

payable to ex-rulers is property. In *Nagraj, K. v. State of Andhra Pradesh* (AIR 1985 SC 553), apex Court opined that right of person to his livelihood is property which is subject to rules of retirement. In *State of Kerala and Others Vs. M. Padmanabhan Nair*, the apex Court opined that right of pension is property under the Government Service Rules. In *Madhaorao Phalke Vs. The State of Madhya Bharat*, and *State of Madhya Pradesh Vs. Ranojirao Shinde and Another*, the apex Court opined that property in the context of Article 300A includes "money", salary which has accrued pension, and cash grants annually payable by the Government; pension due under Government Service Rules; a right to bonus and other sums due to employees under statute. This view was also taken in *Deokinandan Prasad Vs. The State of Bihar and Others*, Bombay High Court in the case reported in (2012) 3 Mah. LJ 126 (*Shapoor M. Mehra v. Allahabad Bank*), opined that retiral benefits including pension and gratuity constitute a valuable right in property. In *Deokinandan* (supra), apex Court opined as under:

(i) The right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no powers to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order denying the petitioner right to receive pension affects the fundamental right of the petitioner under Article 19(1)(f) and 31(1) of the Constitution and as such the writ petition under Article 32 is maintainable.

11. In the light of aforesaid legal position, it is crystal clear that right to get the aforesaid benefits is constitutional right. Gratuity or retiral dues can be withheld or reduced only as per provision made under M.P. Civil Services (Pension) Rules, 1976. In the present case, there is no material on record to show that respondents have taken any action in invoking the said rules to stop or withhold gratuity or other

dues.

13. The apex Court in *State of Jharkhand and Others Vs. Jitendra Kumar Srivastava and Another*, opined as under:

14. Article 300A of the Constitution of India reads as under:

300A. Persons not to be deprived of property save by authority of law. - No person shall be deprived of this property save by authority of law.

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

(Emphasis supplied)

14. No enabling provision is brought to the notice of this Court which permits the employer to deprive the employees from the right of gratuity. In absence of any enabling provision, in my view, employees cannot be deprived from their right of gratuity which is flowing from Article 300(A) of the Constitution. Thus, ground of delay is of no help to the petitioners.

15. The next ground of attack is regarding payment of interest on delayed payment. Learned counsel for the petitioners have stated that in various cases the delay in approaching the authority by employees is from one year to ten years. They prepared and submitted a chart to demonstrate the delay on the part of the employees in approaching the controlling authority. The question is whether the employees can be deprived from the benefit of interest on the ground of delay.

16. Shri Ravi Jain, learned counsel for the employer, relied on various High Court judgments to submit that interest is not payable to employees. In the opinion of this Court, this question is no more *res Integra*. In *Y.K. Singla (supra)*, the employee was facing a criminal case. He was acquitted from the criminal case on 31.10.2009 whereas he retired on 31.10.1996. The employer granted him interest only from the date he was acquitted. The apex Court after considering section 7(3A) of the Payment of Gratuity Act opined as under:

The claim of interest on delayed payment of gratuity is dealt with u/s 7(3A) of the Payment of Gratuity Act. The proviso to sub-section (3A), however, provides an exception. The proviso incorporates the following two ingredients: (i) The payment of gratuity to the employee was delayed because of some fault of the employee himself, (ii) The controlling authority should have approved such withholding of gratuity (of the employee concerned) on the basis of the alleged fault of the employee himself. Where these two ingredients are fulfilled, the employee concerned can be denied interest despite delayed payment of gratuity.

The second ingredient expressed in the proviso to section 7(3A) was clearly satisfied, when the competent authority approved the action of withholding the appellant's gratuity. The instant conclusion is inevitable because it is not the case of the appellant that the communication dated 13.5.2000, by which his gratuity was withheld, had not been issued at the instance of the controlling authority concerned.

(Emphasis supplied)

A bare perusal of this finding of Supreme Court makes it clear that the employee can be deprived from the interest only when the ingredients of (i) and (ii) of section 7(3A) are satisfied.

17. In the present case, there is no fault on the part of the employees in not getting payment of gratuity as per the Gratuity Act. It was for the employer to make the payment in accordance with the Gratuity Act. Similarly, clause (2) is also not applicable. This Court way back in *Radheshyam Goyal (supra)*, on

19.11.2008 has held that Gratuity Act overrides the provisions of other enactments. Despite that payment have not been made as per the Gratuity Act. Thus, in view of Supreme Court's judgment, employees are entitled to get the interest and the authorities below have not committed any error of law in granting interest. In view of aforesaid, judgments cited by Shri Ravi Jain are of no help to the employer.

18. Next contention is regarding the ceiling of Rs. 3,50,000/- as per section 4(3) of the Act. Although Shri Prashant Sharma, learned counsel for the petitioner, contended that on the date when controlling authority passed the order, amendment by Act 15 of 2010 (w.e.f. 24.5.2010) came into being, I do not see any merit in this contention. The gratuity needs to be paid as per section 4(1) on the date of superannuation, retirement or resignation or on the date of death or disablement due to accident or disease. Thus, the ceiling on maximum amount of Gratuity has to be read with the date of entitlement. Thus, I am unable to hold that employees who have retired before 24.5.2010 (date of amendment) are entitled to gratuity beyond Rs. 3,50,000/-.

19. Thus, such impugned orders of controlling and appellate authorities in those cases where employees retired prior to 24.5.2010 and the said authorities have granted them gratuity beyond Rs. 3,50,000/-, are set aside to the extent gratuity is paid above Rs. 3,50,000/-, remaining portion of orders passed by the controlling and appellate authority are affirmed. Petitions are disposed of. No Costs. True copy of this order be kept in all the connected writ petitions.