

(2010) 10 MAD CK 0035

In the Madras High Court

Case No : Writ Petition No. 1975 of 2005

Madras Fertilizers Ltd.

APPELLANT

Vs

The Regional Labour Commissioner (Central) and Appellate
Authority under the Payment of Gratuity Act, 1972 and
Others

RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4(2), 7(4)

Citation : (2011) 3 LLJ 687

Hon'ble Judges : K.B.K. Vasuki, J

Bench : Single Bench

Advocate : G. Venkararaman, SC for Aiyar and Dolia, for the Appellant; Vijay Narayan, SC for R. Parthiban, for the Respondent

Final Decision : Dismissed

Judgement

K.B.K. Vasuki, J.—The writ petition is filed against the order of the first Respondent dated 31.12.2004 made in Gratuity Appeal Nos. 17

to 150 of 2004 and to quash the same.

2. The brief facts which are relevant for consideration herein are as follows:

The Petitioner company is a public sector undertaking under the administrative control of department of fertilizers, Ministry of chemicals and

fertilizers, Government of India. The Petitioner company was during 1999, directed to submit the proposal for pay revision in respect of its

employees as on 1.1.97 for consideration by the dept. of fertilizers, Ministry of Chemicals and fertilizers and the Petitioner company has in

compliance with the direction, sent proposed revised wage structure for all its employees and sought for due approval of the same from the

Ministry of chemicals and fertilizers. The Ministry of Chemicals and Fertilizers has after taking note of the financial position

6 of the Petitioners company and future improvement in the production level, approved the implementation of pay revision of below Board level

executives, non-unionised supervisors and workers of the company with effect from 1.1.97 to 31.12.2006 subject to certain terms and conditions

as per one of the conditions, the payment of revised salary arrears with effect from 1.1.97 to 31.3.2000 shall be paid in 8 installments subject to

company's making minimum profit of Rs. 10.5 crores in the particular year and the installments will be paid to the extent of ensuring that maximum

of 50% of the profits shall be permitted to be appropriated for payment of arrears.

3. Pending approval of the revised pay structure by the Ministry, the Petitioner company has due to financial position, introduced voluntary

retirement scheme as per Personnel and Administration Bulletin No. 8/99 dated 30.7.99 and made an offer to its employees to avail the benefits

under Voluntary Retirement Scheme. Out of 128 employees who have been arrayed as the Respondents 3 to 130 herein except the Respondents

having sl. Nos. 81 to 83, 85 to 88, 104, 116 to 118 and 122 who retired on reaching the age of superannuation, 84th Respondent who resigned

from the service of the company on his own other Respondents having sl. Nos. 3 to 80, 89 to 103, 105 to 115, 119 7 to 121, 123 to 130 opted

for voluntary retirement and voluntarily retired, much before 12.10.2000, the date on which the Ministry gave approval for implementation of

revised pay structure subject to conditions. The gratuity payable to those employees who left the service on account of Voluntary Retirement

Scheme, on reaching the age of superannuation and on account of resignation was paid at the rate of 15 days based on ""the rate of wages last

drawn"" as provided u/s 4(2) of the Payment of Gratuity Act (hereinafter shortly referred to as "Act"). Though the revised wage structure was

actually given effect to from 1.1.97, the payment of salary arrears with effect from 1.1.97 to 31.3.2000 could not be paid in view of the specific

condition that it shall be paid only in 8 installments subject to company's making minimum profit of Rs. 10.5 crores in the particular year. However,

the employees who left the service under three different categories as referred to above, demanded the Petitioner company to pay the difference in

payment of gratuity based on the revision of wages and the Petitioner company sent a detailed reply on 3.9.2001 denying them the arrears on the

ground that in view of the condition No. 3 in the letter of approval of the Government dated 12.10.2000, the salary arrears for the period from

1.1.97 to 31.3.2000 cannot be immediately implemented. The reply so issued compelled the Respondents/retired employees to approach the

second Respondent who is the competent authority by invoking the provisions of Section 7(4) of the Payment of Gratuity Act, claiming the

difference in the gratuity payable to them. The second Respondent has by his order dated 17.6.2002 directed the Petitioner company to pay the

difference in gratuity to the Respondents 3 to 130 totaling a sum of Rs. 1,01,55,469/-together with simple interest 10% p.a.

4. Aggrieved against the same, the Petitioner company approached the first Respondent/Regional Labour Commissioner (Central) by way of

statutory appeals. Originally, the Petitioner company sought for waiving the requirement of pre-deposit of the amount directed to be paid by the

Petitioner company. The appellate authority did not agree with the request of the Petitioner for dispensing with the deposit and dismissed the

appeals by order dated 13.1.2003. Aggrieved against the same, the Petitioner company filed three writ petitions in W.P. Nos. 8921, 11978 and

13800 of 2003 before our High Court and our High court is pleased to direct the Petitioner company to furnish bank guarantee for a period of one

year equivalent to the value of the amount to be deposited and to entertain the appeals after compliance of the same. The Petitioner was in

compliance of such direction produced bank guarantee and the same was periodically renewed till the disposal of the appeals by the first

Respondent. The first Respondent disposed of the appeals on merits by a common order dated 31.12.2004 thereby confirming the order of the

second Respondent/Controlling Authority for payment of difference in gratuity to all 128 employees to the tune of Rs. 1,01,55,469/-together with

simple interest at 10% and also permitted the second Respondent to encash the bank guarantee. Aggrieved against the same, the Petitioner

company has come forward with this writ petition for the relief as stated supra.

5. According to the learned senior counsel for the Petitioner company, 128 employees who have been arrayed as the Respondents 3 to 130 have

already received Gratuity at the rate of 15 days wages based on wages last drawn and the difference in gratuity amount based on the revised pay

structure can be paid to them only subject to condition No. 3 of the approval letter dated 12.10.2000 and could be paid only after payment of the

salary arrears for the period between 1.1.97 to 31.3.2000 in 8 instalments when the company earns profit of Rs. 10.5 crores in a particular year

and the retired employees have to wait for the fulfillment of such condition by the Petitioner company.

6. According to the learned senior counsel for the Respondents 3 to 130, what is claimed by the Respondents 3 to 130 and what is ordered by the

Respondents 1 and 2 is not the arrears of salary based on the revised pay structure and the condition No. 3 in the letter dated 12.10.2000 to pay

the amount in 8 instalments is only in respect of salary arrears for the periods from 1.1.97 to 31.3.2000 and not for the difference in gratuity based

on the revised pay structure and as the revised pay structure is already approved and is given effect to with effect from 1.1.97 and actually paid

with effect from 1.1.2000, the gratuity arrears for the 128 employees who have left the services ought to have been revised and the difference

amount based on the revised pay structure ought to have been paid to the employees by the Respondents 1 and 2.

7. I have heard and considered the rival submissions made on both sides and perused the materials available on record.

8. It is not in dispute that the department of fertilizers, Ministry of Chemicals and Fertilizers as per proceedings dated 12.10.2000 approved the

revised pay structure with effect from 1.1.97 to 31.12.2000 and it is actually given effect to from 1.4.2000. Some of the conditions subject to

which, implementation of pay revision approved are as follows:

(ii) No budgetary support shall be provided to the company by the Government to meet additional liability on pay revision.

(iii) Payment of revised salary arrears w.e.f. 1.1.97 to 31.3.2000 shall be paid to 8 installments subject to company's making a minimum profit of

Rs. 10.5 crores in a particular year. The installments will be spaced to the extent of ensuring that a maximum of 50% of the profits shall be

permitted to be appropriated for payment of arrears.

(iv) Since the pay revision, shall have to be sustained on a perpetual basis and

the same have been approved considering that the enterprise would be in a position to sustain the revised pay perpetually, on no occasion shall the company come back requesting for budgetary support for payment of salary at revised scales.

9. In so far as the claim made by the Respondents 3 to 130 who left services of the company, pending approval of pay revision by the concerned

Ministry are concerned, the same is admittedly for the difference in gratuity amount based on the revised pay structure. The application for the

same is made on 9.11.2001 by the Petitioner company before the 1st Respondent/controlling authority the copy of which is enclosed at pages 62

and 63 of the typed set of papers filed on the side of the Petitioner and the same is admittedly preceded by representation through employees

association demanding difference in gratuity amount and the same is replied by the employer not by denying the liability to pay gratuity amount but

by postponing the payment along with the salary arrears, pay of which is subjected to clause-3 as referred to above. The same compelled the

retired employees to approach the controlling authority with due applications seeking appropriate direction to be issued to the employer and the

same is decided in favour of the employees and the same is also confirmed by the appellate authority. Thus, the main issue to be considered herein

is as to whether difference in gratuity amount can be treated as part of salary arrears and the payment of same is covered under clause-3 of the

letter of approval dated 12.10.2000.

10. It is not in dispute that gratuity payable by the employer at the rate of 15 days wages based on wages last drawn was paid to each

employees/Respondents 3 to 130 herein who left the services on account of voluntary retirement under VR Scheme, on their superannuation and

on account of resignation pending approval of the revised pay structure by the Ministry of Chemicals and Fertilizers. The revised pay structure as

per the approval of the Government dated 12.10.2000 is given effect from 01.01.1997 to 31.12.2000 and the employees who are in service are

not yet paid arrears of salary based on revised pay structure for the period from 01.01.1997 to 31.03.2000 in view of the condition No. 3 and the

wages on the basis of revised pay structure is paid from 01.04.2000 onwards and the employees who left the services after 1.4.2000 is paid the

gratuity as per the revised pay structure.

11. At this juncture, it is relevant to extract the definition of ""wages"" under Payment of Gratuity Act which reads as follows:

Section 2(s): ""wages"" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and

conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus,

commission, house rent allowance, overtime wages and any other allowance."" The wages is defined u/s 2(VI) as follows:

Section 2(iv): ""Wages"" means all remuneration (whether by way of salary, allowance, or otherwise) expressed in terms of money or capable of

being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his

employment or of work done in such employment, and includes.

12. It is well settled law that the payment of Gratuity Act is piece of social welfare legislation and deals with the payment of gratuity which is kind

of retiral pension, provident fund etc. The main purpose and concept of gratuity is to help the workmen retired on superannuation or physical

disablement or impairment of vital part of the body etc. The expression gratuity itself suggests that it is gracious payment given to an employee on

discharge, superannuation or death and is an amount paid unconnected with any consideration and not resting upon it and has to be considered

something given freely, voluntarily and without recompense. It is a sort of financial assistance to tide over post retiral hardships and inconveniences.

13. The learned senior counsel for the Petitioner has cited authority of our High Court reported in Madras Fertilisers Limited Vs. The Controlling

Authority, Assistant Commissioner of Labour (Gratuity), The Deputy Commissioner of Labour (Appeals), Appellate Authority, The Management

of Bharath Transport, N.E. Nilavazhagan, C. Gunasekaran, S. Anthony, P. Paramasivam, C. Pandiyan, P. Rajendran, M. Ramalingam, K.

Dayalan, T. Badrachalam, George V. Philips, G. Elumalai, R. Manoharan, C. Ganesan, S. Varadan, S. Veeraraghavan, V.K. Vaidyalingam, S.

Kalyanasundaram, C. Selvaraj, C. Dhakshnamoorthy, V. Venkatesan, S. Muralidharan, P. Nethaji, P. Kapali, G. Easu Patham, E. Mohan, G.

Selvaraj, N. Govindasamy, R. Duraivelu, G. Easuadiyan, A.P. Ethiraj, S.R. Raman,

M. Alphonse, T.R. Samy, G. Radhakrishnan, M. Nallamal, G.

Yasodha, V. Murugesan and N. Nithyanandam, , wherein our High court in different context is pleased to observe that the wages as defined in

Payment of Gratuity Act includes gratuity payable on the termination of any person under the payment of gratuity act. The learned senior counsel

for the Respondents would by relying upon the observation of our High Court attempt to argue that as the difference in wages for the period from

11.97 to 31.3.2000, shall be paid in 8 installments, based on the revised pay structure along with the arrears of salary, the difference in gratuity is

also payable only after complying with the payment of salary arrears.

14. In order to appreciate the contentions made on both sides in this regard, it is necessary for this Court to consider the terms of Voluntary

Retirement Scheme notified by the Government, Ministry of Industry on 5.10.1988 the copy of which is enclosed at pages 15 to 19 of the typed

set of papers. The same provides eligibility, benefits, time schedule and other aspects relating to v. and the relevant column is dealt with under the

caption ""benefits"" which is enclosed at page 17 of the typed set of papers and cl.2.1.0 reads as follows:

Nevertheless, the employee will be eligible for the benefits arising out of revision of salary whenever applicable

15. The notification so issued raised certain clarifications by 16 certain employees and additional guidelines on v. dated 30.7.1999 by the

Personnel and Administration Group was issued on 1.9.99 and cl.1 of the same reads as follows:

1. Payment of differential amount arising on account of salary revision effective 1.1.97: Salary arrears, v. compensation, Provident Fund and

Gratuity: The differential amounts on account of revision in respect of salary, v. compensation, provident fund and gratuity shall be paid to the VR

optees as and when the salary revision is implemented. The maximum amount of gratuity is Rs. 3.5 lac.

16. The Department of Public Enterprises issued another official memorandum dated 8.12.2000 giving certain clarifications under cl.8 in respect of

payment of P.F., Leave encashment, Gratuity, Notice Pay and LTC to employees in case of voluntary retirement and the clarification given is that

the amounts are to be paid to the employees as per the provisions of relevant

statutes under the relevant conditions. The terms and conditions of v.

as referred to above would go to show that the employees leaving the service on voluntary retirement scheme are entitled to get gratuity and PF

amount as per the statutory Act and the differential amounts on account of revision in respect of salary, v. compensation, Provident Fund and

gratuity shall be paid to the VR optees as and when the salary revision is implemented. Whereas, the approval letter dated 12.10.2000 which is

subsequent to the appeals relating to v. restricted only the payment of salary arrears for the period from 1.1.97 to 31.3.2000 in 8 installments and

the same does not include the payment of other amounts.

17. In so far as the definition of "wages" is concerned, the same is wider in definition and includes all payments due to the employees what ever it

may be in terms of money such as salary, allowance or otherwise and be payable to them in respect of employment and the work done for such

employment. That being so, the contention of the learned senior counsel for the Petitioner that the difference in gratuity amount is payable along

with salary arrears is devoid of any merit and deserves no acceptance.

18. It is note worthy to mention that as all the Respondents herein have left the services between 1.1.97 to 31.3.2000, the salary arrears if any due

to the period from 1.1.97 till the date they left the service, can only be subject to Clause 3 as referred to above. Whereas the differential gratuity

amount is one lumpsum payment to be calculated on the basis of the last drawn wages cannot be equated to salary arrears. Though, it is further

contended by the learned senior counsel for the Petitioner that the revised pay structure for the employees can be determined only as and when the

salary revision is implemented. Such contention is in my opinion factually and legally not tenable. As a matter of fact, ex-gratia has been sanctioned

subsequent to voluntary retirement and the same has already been calculated on the basis of revised pay scale and the revised salary structure for

payment of difference in gratuity cannot be a different one and there is no difficulty in determining the differential gratuity on the basis of the revised

fee structure determined for the payment of ex-gratia. It is sought to be argued by the learned senior counsel for the Petitioner that as the ex-gratia

is paid, out of budgetary support from the government, the company cannot seek any such similar budgetary support for payment of gratuity

difference on the revised pay scale and the company in not in sound financial condition, to meet out the extra liability arising out the payment of difference in gratuity. Such contention is also liable to be rejected.

19. The company having invited the employees to opt for VRS subject to certain benefits, one among which is payment of gratuity as per law cannot be permitted to postpone the same on the ground of financial strain of the company. As rightly pointed out by the learned senior counsel for the respondents, when the company is able to extend the benefits on the basis of revised pay scale for the existing employees and the employees who retired on superannuation, after actual implementation of revised pay structure the refusal to extend the same benefit to the employees who are also entitled to the same based on the revised pay structure and who left the services pending approval of the revised pay structure is totally unfair, arbitrary and discriminatory in nature.

20. Both the authorities below have after considering all the relevant aspects rightly held that the employees are entitled to receive the difference in gratuity without reference to condition contained in approval letter which is only in respect of payment of salary arrears. The appellate authority has rightly pointed out that the provisions of Payment of Gratuity Act does not envisage any conditionality, when the v. envisages the payment of gratuity amount as per the statute and when the Payment of Gratuity is based on last drawn wages and when the last drawn wage is for the purpose of ex gratia determined based on the revised pay structure, the same last drawn wage is to be adopted for the payment of gratuity amount and both the authorities below have rightly upheld the workers claim to get the differential gratuity amount.

21. As a matter of fact, out of 128 employees, 93 employees have already reported to have received the differential gratuity amount by enforcing the bank guarantee. That being so, this Court finds for the discussion held above, no ground much less valid ground to interfere with the well considered orders of the authorities below.

22. In the result, the writ petition fails. No costs.