(2008) 08 DEL CK 0122

In the Delhi High Court

Case No : Writ Petition (C) No. 128 of 2005

Mahanagar Telephone Nigam Ltd. APPELLANT

Vs

Smt. Shakuntla Rekhi and Another RESPONDENT

Date of Decision : 27-08-2008

Acts Referred:
Central Civil Services (Pension) Rules, 1972 — Rule 50(1)
Payment of Gratuity Act, 1972 — Section 4(1)

Citation : (2008) 08 DEL CK 0122

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : Dinesh Agnani, for the Appellant; Mata Din, for the Respondent

Final Decision : Allowed

Judgement

S.N. Aggarwal, J.—The only short question that needs consideration in these writ petitions is whether the provisions of Payment of Gratuity Act, 1972 are applicable to the Respondents after they had exercised their option to retain the pensionary benefits available to them under the Government Rules. 2 Brief facts of the case giving rise to these petitions are as follow:

2. The Respondents in all these three writ petitions were the employees of Department of Telecommunication prior to their absorption in the Petitioner corporation (MTNL) w.e.f. 01.11.1998. Prior to the absorption of the Respondents in the MTNL, the Respondents were given an option either to retain the pensionary benefits available to them under the Government Rules or to receive pro-rata retirement benefits for the services rendered by them under the Central Government and to be governed by the rules of PSU w.e.f. 01.11.1998. The Respondents in all these three petitions exercised their option to retain the pensionary benefits available to them under the Government Rules presumably because they were left with lesser period to serve the MTNL. All these three Respondents in the present writ petitions have retired from the service of the MTNL on or around 2001. After their retirement, they were paid gratuity under

the CCS (Pension) Rules, 1972. The Respondents were not satisfied with the payment of gratuity made to them under the CCS (Pension) Rules and therefore they filed separate applications before the Controlling Authority under the Payment of Gratuity Act, 1972 for payment of difference of gratuity payable under the Payment of Gratuity Act, 1972. The Controlling Authority vide its order dated 12.02.2004 held that the provisions of Payment of Gratuity Act are applicable to the Respondents and therefore directed payment of difference of gratuity payable under the CCS (Pension) Rules and that payable under the Payment of Gratuity Act, 1972 to the said Respondents. Aggrieved by the order of the Controlling Authority, the Petitioner (MTNL) preferred an appeal before the Appellate Authority and the Appellate Authority vide its order dated 02.11.2004 agreed with the decision of the Controlling Authority and dismissed the appeal of the Petitioner.

3. Aggrieved from the order of the Appellate Authority dated 02.11.2004, the Petitioner has filed these three petitions seeking setting aside of the order of the Controlling Authority dated 12.02.2004 and also that of the Appellate Authority dated 02.11.2004. The case of the Petitioner is that the Respondents are governed by the provisions of CCS (Pension) Rules and not by the provisions of Payment of Gratuity Act, 1972 in view of option exercised by them to retain the pensionary benefits available to the Central Government employees.

4. Mr. Agnani, learned Counsel appearing on behalf of the Petitioner has contended that in case the Respondents would have exercised the second option of getting pro-rata retirement benefits for the services rendered by them under the Central Government and to be governed by the rules of PSU w.e.f. 01.11.1998, in that event the Petitioner would have paid them gratuity as per the provisions contained in the Payment of Gratuity Act, 1972 for the period of service rendered by them with the MTNL. In the present case, it is not disputed by counsel appearing on behalf of the Respondents that the Respondents have already been paid gratuity admissible under the CCS (Pension) Rules to them.

5. The dispute raised in these petitions appears to be that under Rule 50 (1)(a) of the CCS (Pension) Rules, there is a maximum ceiling of 16-1/2 times whereas there is no such ceiling under the Payment of Gratuity Act, 1972. However, both under the CCS (Pension) Rules as well as in the Payment of Gratuity Act, the maximum amount of gratuity payable to a retired employee is Rs. 3.5 lacs. In the present case, the Respondents before they were absorbed in the service of the MTNL w.e.f. 01.11.1998, they were admittedly the employees of the Central Government. None of the Respondents in these three petitions had completed five years of service in the MTNL at the time of their retirement from the MTNL. Section 4(1) of the Payment of Gratuity Act, 1972 provides that gratuity shall be payable to an employee to whom provisions of the Payment of Gratuity Act are applicable after he has rendered continues service of not less than five years. Since in the present case, none of the Respondents had rendered five years service with the MTNL at the time of their retirement, they even otherwise were

not entitled to get gratuity under the Payment of Gratuity Act from the MTNL. However, the gratuity has been paid to the Respondents for the entire period of service rendered by them with the Central Government or with the MTNL as admissible to them under the CCS (Pension) Rules and thereby no prejudice can be said to have been caused to the said Respondents. Even if the Respondents had continued in the service of Central Government, they were entitled to get gratuity only under the CCS (Pension) Rules and not under the provisions of the Payment of Gratuity Act, 1972. It further fortifies my conclusion that no prejudice is caused to the Respondents by payment of gratuity to them under the CCS (Pension) Rules. In the opinion of this Court, the judgment of Hon''ble Supreme Court in MCD v. Dharam Prakash Sharma and Anr. was not correctly applied either by the Controlling Authority or by the Appellate Authority under the Payment of Gratuity Act, 1972. In the case of Dharam Prakash Sharma (supra), the Court was not seized with a matter where the Central Government employee was absorbed in the service of Public Sector Undertaking. The Court was also not seized with a case where an option was given to the employee upon such absorption to retain the pensionary benefits available under the Central Government Rules or to go by the service rules of Public Sector Undertaking. Mr. Agnani, learned Counsel appearing on behalf of the Petitioner has submitted that pension is not payable to the employees of the Petitioner as it is payable to the Central Government employees including the Respondents herein.

6. Taking all the above facts and circumstances in consideration, I have no hesitation in holding that authorities below were wrong in holding that the Respondents were entitled to get gratuity under provisions of the Payment of Gratuity Act, 1972. This Court is of the considered view that gratuity has been rightly paid to the Respondents under the CCS (Pension) Rules and for that reason, the impugned orders of the authorities below cannot stand the test of judicial scrutiny and are, therefore, set aside. The amount deposited by the Petitioner pursuant to the order of the Controlling Authority be returned to the Petitioner forthwith.

7. In view of the above, these writ petitions are allowed and stand disposed of accordingly. The parties are left to bear their own costs.

