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(2016) 07 BOM CK 0126

In the Bombay High Court

Case No : Writ Petition No. 2549 of 2009

Maharashtra State Cooperative Cotton Growers'' Marketing APPELLANT

Vs

Appellate Authority RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Citation : (2016) 151 FLR 290 : (2016) 4 LLN 322

Hon'ble Judges : A.S. Chandurkar, J.

Bench : Single Bench

Advocate : Shri W.G. Paunikar, Advocate, for the Petitioner; Shri A.J. Thakkar, Advocate h/f Shri S.T. Harkare, Advocate, for the Respondent Nos. 2 to 52

Final Decision : Dismissed

Judgement

A.S. Chandurkar, J.(Oral)—The petitioner is aggrieved by the judgment dated 18/04/2009 passed by the Appellate Authority while adjudicating the appeal preferred by the respondent nos. 2 to 52 whereby the said appeal has been allowed by the Appellate Authority and it has been held that the said respondents are entitled to receive gratuity at the rate 15 days wages for every completed year of service. The respondent nos.2 to 52 claim to be seasonal employees who were engaged with the petitioner Federation. On 08/04/2004, a Circular came to be issued by the petitioner Federation with regard to implementation of a voluntary retirement scheme for seasonal employees. The modality in which voluntary retirement could be sought was laid down in the said Circular which included submitting an affidavit accepting the terms and conditions mentioned therein. Pursuant thereto, the said respondents submitted their respective applications with the Federation and sought voluntary retirement under the aforesaid Circular dated 08/04/2004. On that basis, the request made by the said respondents came to be accepted and they were permitted to retire voluntarily from service.

2. The respondent nos.2 to 52 thereafter approached the Controlling Authority under the Payment and Gratuity Act, 1972 (for short, the said Act) with a

grievance that they were entitled to receive gratuity at the rate of 15 days wages for every year of service. The Controlling Authority passed a detailed order on 08/06/2007 and held that as the said respondents being seasonal employees had accepted voluntary retirement in terms of Circular dated 08/04/2004, they would not be entitled to seek the relief in the matter of payment of gratuity. On that basis, the applications came to be rejected by observing that as seasonal employees, the said respondents had been paid gratuity at the rate of 7 days wages for every completed year of service.

The said respondents approached the Appellate Authority challenging the aforesaid order. The Appellate Authority held that as the said respondents had worked for more than 240 days in every year, they were entitled to receive gratuity at the rate of 15 days wages for every completed year of service. The appeal accordingly came to be allowed. Being aggrieved, the Federation has filed the present writ petition challenging the aforesaid order.

3. Shri W.G. Paunikar, the learned Counsel for the petitioner submitted that each respondent had opted for voluntary retirement as per Circular dated 08/04/2004 and under the said Circular, all necessary benefits had been paid to said respondents. He submitted that from the material placed on record before the Controlling Authority, it was clear that all the respondents were seasonal employees and as they were satisfied with the benefits that were offered as per Circular dated 08/04/2004, the same had been accepted. He, therefore, submitted that the conclusion drawn by the Controlling Authority that it was not necessary to consider continuous service of the workmen was justified. According to him, the Appellate Authority without considering any of the relevant aspects of the matter proceeded to allow the appeal without assigning any justifiable reason. In support of his submission, the learned Counsel placed reliance upon the judgment of the Hon''ble Supreme Court in Maharashtra State Cooperative Cotton Growers'' Marketing Federation Ltd. v. Maharashtra State Cooperative Cotton Growers'' Marketing Federation Employees'' Union and another - AIR 1994 Supreme Court 1046 on the aspect that service rendered by the seasonal employees could not be put in the same category of the employees who had completed 240 days service. He also relied upon the judgment of the Madras High Court in The Management, Binny Ltd. v. The Deputy Commissioner of Labour and others - 1997 ILLJ 1172. He then submitted that though Writ Petition No.6159/2006 filed by the Federation had been dismissed on 08/12/2011, but the facts involved therein were not identical to the facts of the present case. In that case, the dispute as to whether the employees were seasonal employees or not was under challenge. According to him, in the present case, the Circular dated 08/04/2004 was applicable to seasonal employees like the respondent nos.2 to 52. He, therefore, submitted that the impugned order was liable to be set aside.

4. Shri A.J. Thakkar, the learned Counsel holding for Shri S.T. Harkare, the learned Counsel for the respondent nos.2 to 52 supported the impugned order. It

was submitted that the controversy arising in the present writ petition is covered by the judgment dated 08/12/2011 in Writ Petition No.6159/2006 that has been confirmed by the Division Bench in Letters Patent Appeal No.203/2012. According to him, the Appellate Authority was justified in allowing the appeal and directing payment of gratuity at the rate of 15 days wages for every completed year of service.

5. I have heard the respective Counsel for the parties at length and I have perused the documents placed on record. It is not in dispute that the petitioner had formulated a scheme for voluntary retirement by issuing Circular dated 08/04/2004. This Circular specifically pertains to seasonal workmen employed by the Federation. The scheme for voluntary retirement took into consideration the various aspects on the basis of which an employee could seek voluntary retirement. The same included making an application supported by an affidavit accepting the terms and conditions mentioned therein. It is not in dispute that each of the said respondents had applied for voluntary retirement under the Circular dated 08/04/2004 and the said offer was accepted resulted in their voluntary retirement from service. On such acceptance, all benefits including gratuity at the rate of 7 days wages for every completed year of serve came to be paid to each respondent. After issuance of the same, said respondents approached the Controlling Authority seeking payment of gratuity at the rate that was applicable to regular employees.

6. The Controlling Authority recorded the finding that each of the respondents had voluntarily applied for retirement as per the Circular dated 08/04/2004 and thereafter, they were paid all benefits under the said Circular. After receiving these benefits, the dispute in question came to be raised. It proceeded to observe that as the Circular of 08/04/2004 related only to seasonal employees and as they had been paid gratuity in those terms, they would not be entitled for the reliefs claimed by them. The Appellate Authority, however, gave a complete gobye to the Circular dated 08/04/2004 and proceeded to observe that as the respondent nos.2 to 52 had worked for 240 days in each season, they were entitled to receive gratuity at the rate of 15 days wages for every completed year of service. While doing so, the Appellate Authority failed to take into consideration the Circular dated 08/04/2004 and the effect of accepting voluntary retirement pursuant thereto.

7. As noted herein above, the Circular dated 08/04/2004 was applicable only to seasonal employees of the Federation. The question whether the respondent nos.2 to 52 were precluded from seeking benefits as regular employees in the matter of receiving gratuity at the rate of 15 days wages for every completed year of service despite accepting the voluntary retirement has not been considered by the Appellate Authority. In short, the said Circular which goes to the root of the matter has not been taken into account at all. In fact, perusal of the order of the Appellate Authority does not indicate due application of mind to the contentions raised by the petitioner herein. On that count, the impugned

order cannot be sustained.

8. As the respondent nos.2 to 52 have accepted voluntary retirement as per Circular dated 08/04/2004, its effect on the prayer for grant of gratuity at the rate of 15 days wages for every completed year of service requires adjudication by the Appellate Authority. In that view of the matter, the following order is passed :

i. The order dated 18/04/2009 passed by the respondent no.1 in Appeal No.71/2007 is quashed and set aside.

ii. The matter is remanded to the Appellate Authority to reconsider the appeal filed by the respondent nos.2 to 52 in the light of Circular dated 08/04/2004 and the effect thereof on the prayers made by the respondent nos.2 to 52.

iii. The proceedings in the appeal are expedited and the same shall be decided in accordance with law considering the observations made herein above.

iv. Rule is made absolute in aforesaid terms with no order as to costs.