(2021) 11 J&K CK 0036

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 689 Of 2018

Managing Director, J&K Sidco & Ors APPELLANT

Vs

J&K Industrial Tribunal & Anr RESPONDENT

Date of Decision : 16-11-2021

Acts Referred:

Payment Of Gratuity (Central) Rules, 1972 — Rule 77, 78
Jammu And Kashmir Industrial Development Corporation Service Regulations, 1969 — Regulation 78
Industrial Disputes Act, 1947 — Section 2(s), 33(c)
Payment Of Wages Act, 1936 — Section 15, 15(3)

Citation : (2021) 11 J&K CK 0036

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Sajad Ashraf, Shafqat Nazir

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1. Petitioners have challenged award dated 20.12.2017 passed by Industrial Tribunal Cum Labour Court, J&K, Srinagar, whereby respondent No.2 has been held entitled to an amount of Rs.7,12,028/ on account of gratuity and a direction has been issued to the petitioners to deposit the balance amount of Rs.4,62,028/ with the Tribunal for its disbursement and payment to the respondent No.2.

2. The facts emerging from the record are that respondent No.2 was an employee of the Jammu and Kashmir State Industrial Corporation (for short SIDCO) and he superannuated on 31st of May, 2006. He was granted six months extension and he finally retired on 30th November, 2006. Upon attaining the age of superannuation, respondent No.2 was paid gratuity in the amount of Rs.2.50 lacs by his employer i.e., petitioner Corporation. Besides this, he was also paid leave salary and other retiral benefits after his superannuation.

3. It appears that in the year 2012, respondent No.2 approached J&K Industrial

Tribunal Cum Labour Court (hereinafter referred to as the Tribunal) by way of an application in terms of Section 33(c) of Industrial Disputes Act, 1947 read with Section 15 of Payment of Wages Act for seeking recovery of balance amount of gratuity dues. According to respondent No.2, applicant before the Tribunal, he was paid gratuity in the amount of Rs.2.50 lacs whereas, as per the prevailing rule position, he was entitled to payment of Rs.3.50 lacs on account of gratuity in terms of the decision taken by the Board of Directors of the petitioner Corporation. Thus, applicant-respondent No.2 sought payment of balance amount of gratuity amounting to Rs.1.00 lac along with litigation charges and interest. It further emerges from the record that during the pendency of the said application, an amended application was made by applicant-respondent No.2 wherein it was claimed that he was entitled to an amount of Rs.10.00 lacs as gratuity in view of changed rule position.

4. The application was resisted by the petitioners/non-applicants by filing objections thereto. In their objections it was claimed by the petitioner Corporation that the respondent No.2 has retired from service in the year 2006 and the gratuity ceiling at the relevant time was Rs.2.50/ lacs which was enhanced to Rs.3.50 lacs in the year 2008. According to petitioner Corporation, the order of enhancement of gratuity has not been given retrospective effect by the Board of Directors of the Corporation.

5. The Tribunal considered the material on record and vide the impugned award/ order dated 20.12.2017, it came to the conclusion that the J&K Civil Service Regulations, so far as the same relate to payment of gratuity, are applicable to the employees of the petitioner Corporation and with the amendment of these Regulations in terms of SRO 94 dated 15th April, 2009, the overall ceiling of death-cum- retirement gratuity has been enhanced to Rs.10.00 lacs w.e.f. 01.01.2006. On this basis, the Tribunal held that there was no justification for the petitioner Corporation to withhold the enhanced amount of gratuity to respondent No.2 as he has retired after 01.01.2006.

6. The aforesaid award passed by the Tribunal has been impugned by the petitioner Corporation by way of instant writ petition on the grounds that the Tribunal has no jurisdiction to determine the gratuity claim of respondent No.2 as the said respondent has already received all his retiral benefits as were admissible to him under rules and regulations of the Corporation; that respondent No.2 was working in a Managerial capacity in the petitioner Corporation, as such, he does not fall within the definition of "Workman" as contained in Section 2(s) of the Industrial Disputes Act and, as such, the Tribunal had no jurisdiction to entertain claim of respondent No. 2; that the petitioner Corporation is governed by its own rules and regulations as also the decisions of its Board of Directors, therefore, provisions of Civil Service Regulations are not applicable to the case of respondent No. 2 in the matters relating to payment of gratuity and that the Tribunal while passing the impugned award has not spelled out as to on what basis petitioner corporation has been asked to pay an amount

of Rs. 4,62,028/- to respondent No. 2.

7. I have heard learned counsel for the parties and perused the material on record.

8. As already noted, the respondent No. 2 approached the Tribunal by way of an application in terms of Section 33 (c) (2) of Industrial Disputes Act, 1947 read with Section 15 (3) of Payment of Wages Act for recovery of amount of gratuity dues. According to petitioners, respondent No. 2 was working as a General Manager with petitioner Corporation and, as such, he does not fall within the definition of

"Workman" as contained in Section 2 (s) of the Industrial Disputes Act. On this basis it is urged that the Tribunal had no jurisdiction to entertain the claim of the respondent No. 2.

9. It is correct that as per own case of respondent No. 2 he was working as General Manager Finance at the time of his superannuation.

It is a settled law that whether an employee is a "Workman" or comes within the exceptions to Section 2 (s) of the Industrial Disputes Act does not depend upon his designation but the same depends upon exact nature of duties and functions for which he is paid remuneration. The true test depends upon duties and functions and not whether an employee is designated as Manager or with some other nomenclature. The nature of work of an employee can be determined on the basis of duties that are assigned as also the attending circumstances.

10. The question whether an employee is a "Workman" or not is a question of fact and in the instant case petitioner Corporation has not disputed the status of respondent No. 2 before the Tribunal. Upon going through the objections filed by petitioner Corporation before the Tribunal, it can safely be stated that the petitioner Corporation has nowhere even made a whisper that respondent No. 2 does not qualify to be a "Workman" thereby virtually conceding the status of respondent No. 2 as a "Workman". It is for this reason that the Tribunal did not deal with this aspect of the matter, obviously, because no such issue was raised by petitioner Corporation before it. It is, therefore, not open to this Court in exercise of its writ jurisdiction to go into this factual aspect of the matter. The contention of petitioner Corporation in this regard is, therefore, rejected.

11. The next question which comes up for consideration is as to whether petitioner Corporation has its own rules governing the subject of payment of gratuity to its employees. Learned counsel appearing for the petitioners has brought to the notice of this Court the Jammu and Kashmir Industrial Development Corporation Service Regulations, 1969. These Regulations provide for service conditions of the employees of the corporation including the seniority, confirmation, promotion, retirement, pay & allowances, dismissal, removal and suspension etc. The Regulations also relate to leave rules, travelling allowance, advances, discipline and appeal. Chapter VI of the Regulations relates to Gratuity

Rules. Thus, it is clear that service conditions including payment of gratuity of employees of the Corporation are governed by the Regulations of the Corporation. Rule 77 of the Regulations provide for conditions of grant of gratuity whereas Rule 78 provides the ceiling for payment of amount of gratuity. While it is correct that the employees of petitioner Corporation are governed by the rules of the Corporation including in respect of the matters pertaining to payment of gratuity but at the same time there is no dispute to the fact that the said Corporation has adopted certain rules governing conditions of service of the employees of Government of Jammu and Kashmir.

12. It has been urged by learned counsel for the respondent No.2 that in the year 2008, the of the petitioner Corporation has announced adoption of Gratuity Rules of the State Government as amended from time to time as one of its achievements. According to the learned counsel as also according to learned Tribunal, once the rules pertaining to payment of gratuity to employees of Government of Jammu and Kashmir have been made applicable to the employees of petitioner Corporation, ipso facto the amendments contained in SRO 94 dated 15th April, 2009, whereby ceiling of gratuity has been enhanced to Rs.10.00 lacs w.e.f. 01.01.2006, would apply to the case of respondent No.2 and he would be entitled to payment of gratuity at enhanced rate.

13. As already noted, employees of the petitioner Corporation are governed by its own rules and regulations. The service conditions of the employees including payment of gratuity are also governed by these regulations. The petitioner Corporation is an autonomous body having its existence independent of the Government of Jammu and Kashmir. It is a body corporate having its own rules and regulations as laid down by its Board of Directors. The rules and regulations of the Government do not ipso facto apply to the employees of the Corporation. It is only those rules and regulations with appropriate modifications, as may be adopted by the Board of Directors of the Corporation, that would apply to the employees of the Corporation. For applying the provisions of any rules and regulations applicable to the State Government employees, there has to be a resolution of Board of Directors of the petitioner Corporation in this regard.

14. Respondent No.2 is relying upon the minutes of meeting of the Establishment Sub Committee of Board of Directors dated 17.04.2008, wherein, while considering the Agenda Item No.6, the Sub Committee approved enhancement of maximum encashment limit of gratuity from Rs.2.50 lacs to Rs.3.50 lacs and it was further recommended that the gratuity encashment limit of the Corporation employees in future shall be available at par and on the lines as available to State Government employees and other PSUs. The resolution has been passed by the Establishment Sub Committee and not by the Board of Directors of the petitioner Corporation. Therefore, the said resolution is not binding upon the Corporation. It is only a recommendation to the Board of Directors and the same may or may not be accepted by the Board.

15. As against this, petitioners have placed on record copy of order No.SIDCO/

CO/15/136 dated 23.09.2015, issued by the petitioner Corporation, which provides that sanction has been accorded to the enhancement of maximum encashment limit of gratuity from Rs.3.50 lacs to Rs.10.00 lacs w.e.f 24.05.2010. It means that the Board of Directors of the petitioner Corporation has, while sanctioning enhancement of maximum limit of gratuity at par with the employees of the Government of Jammu and Kashmir, made it operative w.e.f. 24.05.2010 and not from a date prior to that. Thus, the Board of Directors of the petitioner Corporation has decided to adopt SRO 94 dated 15th April, 2009 with a modification that it will be given effect from 24.05.2010 and not from 01.01.2006.

16. The petitioners have also placed on record copy of another order bearing No.SIDCO/MD/08/183 dated 17.10.2008, which provides for accord of sanction to the enhancement of maximum limit of gratuity from Rs.2.50 lacs to Rs.3.50 lacs and the order has been given effect from 17.04.2008. By virtue of this order, the Board of Directors of the petitioner Corporation has enhanced the ceiling of gratuity and brought it at par with the employees of the Government of Jammu and Kashmir who were given the benefit in terms of 5th Pay Commission recommendations. So, again this parity of enhancement of ceiling limit of gratuity to the employees of the petitioner Corporation with the employees of the Government of J&K has been accorded modified application by the petitioner Corporation.

17. From the above discussion it is clear that the petitioner Corporation has not adopted the amendments in the ceiling limit of gratuity as were effected by the Government of Jammu and Kashmir from time to time in toto but they have given effect to these amendments from different dates in accordance with the decision of Board of Directors of the petitioner Corporation, which is well within its jurisdiction and powers.

18. The ceiling of gratuity amount of the employees of the Corporation is governed by Regulation 78 of the Regulations of 1969. The same has been amended from time to time thereby raising the ceiling and all these amendments have taken place with the approval of the Board of Directors of the petitioner Corporation. Thus, the service conditions of the employees of the petitioner Corporation including the payment of gratuity are governed by its own regulations and it is only upon a decision by the Board of Directors of the petitioner Corporation that the rules and regulations of the Government employees would apply to the employees of the Corporation with necessary modifications as per the decision of the Board. In the instant case the Board decided to apply SRO 94 of 2009 so far as it pertains to enhancement of ceiling of gratuity to its employees with effect from 24.05.2010 and not from 01.01.2006. Therefore, an employee of the Corporation who has retired prior to 24.05.2010, cannot claim the benefit of enhanced gratuity.

19. In view of the foregoing discussion, it is clear that the finding of the Tribunal that gratuity rules of the employees of the Government of Jammu and Kashmir

are applicable in toto to the employees of the petitioner Corporation is without any basis. The Tribunal has proceeded and based its aforesaid finding on some communication dated 17.10.2008 wherein petitioner Corporation has mentioned that one of its achievements is adoption of gratuity rules of State Government as amended from time to time. The learned Tribunal has not referred to any decision of the Board of Directors of the petitioner Corporation in this regard nor has it placed reliance upon any such resolution of the of the petitioner Corporation. As against this, we have on record sanction orders of the petitioner Corporation which clearly show that the petitioner Corporation has adopted the regulations relating to payment of gratuity applicable to employees of the Government of Jammu and Kashmir in a modified form, inasmuch as effect to these regulations has been given from different dates, as mentioned hereinabove.

20. In view of what has been discussed hereinbefore, it is clear that at the time when respondent No.2 superannuated from service, the employees of petitioner Corporation, in terms of decision of its Board of Directors, were entitled to maximum gratuity of Rs.2.50 lacs, which they have duly paid to the respondent No.2. The orders relating to payment of enhanced amount of gratuity to the employees of Corporation came into effect much after the superannuation of respondent No.2 and, as such, the same are not applicable to his case. The Tribunal while passing the impugned award has, therefore, fallen into an error and its findings in this regard are perverse and without any basis.

21. Accordingly, the writ petition is allowed and the impugned award passed by the Tribunal is set aside.

