

(2013) 10 KL CK 0075

In the High Court Of Kerala

Case No : Writ Petition (C) No. 21861 of 2013

Mathew Korah

APPELLANT

Vs

Kaduthuruthy Urban Co-operative Bank and Others

RESPONDENT

Date of Decision : 23-10-2013

Acts Referred:

Citation : (2014) 140 FLR 495 : (2013) 4 ILR (Ker) 933 : (2013) 4 KHC 497 : (2013) 4 KLT 558 : (2014) LabIC 992 : (2014) 1 LLJ 759 : (2013) 5 LLN 627

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : Devan Ramachandran, K.M. Aneesh and Adarsh Kumar, for the Appellant; P.N. Mohanan and Harshan K.B., Standing Counsels, Kaduthuruthy Urban Co-op. Bank, D. Somasundaram, Government Pleader, Lal George and S. Easwaran, Standing Counsels, LIC, for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioner is a retired employee of the 1st respondent Bank. The petitioner had, on retirement, made an application to the 1st respondent Bank for gratuity and admittedly, he was paid Rs. 10 Lakhs as gratuity for the service rendered; which is the maximum permissible under the Payment of Gratuity Act, 1972 (for brevity "the Gratuity Act") as has been amended w.e.f. 24/05/2010. The payment was opposed by the Life Insurance Corporation (for brevity "LIC"), with whom the 1st respondent Bank insured its gratuity liability. The short contention of the petitioner based on Ext. P2 communication of the LIC to the respondent Bank, is that, in fact, the eligible claim of gratuity was Rs. 14,37,772/- where as the claim submitted by the Bank was for only Rs. 10 Lakhs. The petitioner relies on Ext. P2 communication from the LIC. The petitioner having received the amounts payable as per the Gratuity Act was again before the 1st respondent Bank for disbursing the balance amount due, as has been noticed in Ext. P2. The 1st respondent Bank declined the same by Ext. P4 wherein it was contended that as per Rule 59 of the Kerala Co-operative Societies Rules (for brevity "the Rules"), there is a stipulation that the gratuity paid shall not exceed 15 months pay and the 2nd proviso to Rule 59 of

the Rules prohibits payment of gratuity in excess of the amounts which an employee is eligible as per the Gratuity Act.

2. The petitioner assails the decision of the respondent Bank on the ground that when a Scheme provides for better benefits then, as per sub-section 5 of Section 4 of the Gratuity Act the rights of the employee to receive such amounts shall not be affected. The petitioner also relies on Ext. P5 judgment of a learned single Judge of this Court and the decisions reported in Retnavalli Vs. Ambalapadu Service Co-operative Bank Ltd., and Nedupuzha Service Co-operative Bank Ltd. Vs. Rugmini, It is the contention of the learned counsel for the petitioner that this Court and the Honourable Supreme Court consistently held that though the payment of gratuity is regulated by the Gratuity Act; any scheme, award or contract which entitle the employee to better benefits than that provided under the Gratuity Act shall not be affected and the employee's entitlement under such scheme, award or contract cannot be curtailed on the strength of the provision in the Gratuity Act prescribing the maximum limit.

3. The learned counsel for the respondent Bank would submit that the liability of the employer to pay gratuity is statutorily fixed on the employer and there is no award or scheme or any contract with the employees of the 1st respondent Bank entitling them to any better benefit than that are prescribed under the Gratuity Act. The 1st respondent Bank, noticing its recurring liability for payment of gratuity to the employees, had enrolled in a premium linked policy with the LIC which shifts the liability of payment of gratuity to the LIC, the insurer. The contract between the 1st respondent Bank, the insured and the LIC is for payment of gratuity on the retirement of the employees; with the unique advantage of the sum assured under the gratuity policy being fully paid to an employee who dies while in service. However, it is contended that being premium linked, the liability of the LIC is only to the extent of the premium paid by the respondent Bank; the insured and it cannot be over and above that prescribed under the Gratuity Act especially in view of the amendment brought into Rule 59 of the Rules by addition of the 2nd proviso in the year 2010, w.e.f. 02/11/2010.

4. The learned counsel appearing for the LIC supports the argument of the 1st respondent Bank; but, contends that if more premium is paid they have no objection in paying the higher amounts due under the policy. However, in the present case, the premium paid was only to cover the liability of a maximum of Rs. 10 Lakhs and the LIC, the insured, cannot be asked to pay anything over and above that to the extent to which the LIC had insured the 1st respondent Bank, with reference to the premium paid.

5. The learned counsel for the petitioner contends that the LIC has specifically averred in its counter-affidavit that the Master Policy Holder is entitled to claim gratuity to the tune of Rs. 14,37,772/- and any change regarding gratuity is possible only through the Board resolution and will have effect only from the next renewal date i.e., 15/09/2013. Here the reference made is to the Board resolution of the LIC. Though the Scheme covers the liability of the insured Bank

to the extent of Rs. 14,37,772/-; in the absence of payment of premium, the LIC cannot be directed to pay the entire amounts by reason only of that amount being the maximum possible under the Master Policy Scheme. The scheme in which the 1st respondent is enrolled is a Group Gratuity Cash Accumulation scheme and irrespective of the maximum amount payable, the liability of the insurer is limited to the amount available in the fund. The amount available in the fund is that remitted by the Bank as premium, which has a nexus with its statutory liability. The statutory liability of the employer/insured, admittedly, stands satisfied by the insurer/LIC. In the context of the 1st respondent employer having statutory liability only to the extent of the amounts prescribed u/s 4 of the Gratuity Act, the 1st respondent Bank also cannot be directed to pay any premium over and above the requirement to satisfy the said liability. The maximum entitlement under the Master Policy Scheme, in which the respondent Bank has enrolled cannot entitle its employees to the same since the employer's liability is limited, statutorily to Rs. 10 Lakhs. The employer too has paid premium only to the extent of insuring its statutory liability.

6. The contention of the petitioner is based on the decisions cited above. Ext. P5 was a case in which the LIC had paid an amount of Rs. 13,15,000/- to the Bank in discharge of its liability to pay gratuity to an employee. However, relying on the 2nd proviso to Rule 59, the Bank paid only the amount of Rs. 10 Lakhs and retained the balance Rs. 3,15,000/-. In such circumstances, definitely sub-section (5) of Section 4 of the Gratuity Act would come into play and though there is no contract, agreement or scheme with the employee, the minute an employee attained superannuation his entitlement would be decided on the basis of the policy; of course with reference to the premium paid. In the said case the premium paid entitled the employee to an amount over and above Rs. 10 Lakhs and that was disbursed by the LIC. The retention of such amounts by the Bank was found to be bad and was directed to be paid to the petitioner therein.

7. Retnavalli (supra) and Nedupuzha Service Co-operative Bank (supra) were both dealing with the issue before the amendment; of Rule 59, which amendment inserted the 2nd proviso. It is also pertinent to notice that in Retnavalli, the question decided was whether the employee is entitled to receive higher gratuity as per the Scheme by which the LIC insured the 1st respondent Bank, though the employee is not a party to the said Scheme. Rule 59 as it stood at the period considered in Retnavalli, provided that in no case shall the gratuity exceed fifteen months pay. As against this a Circular was issued by the Registrar that the gratuity shall be limited to that provided under the Gratuity Act (at that time Rs. 1 Lakh), it was held that the circular is bad since it was without reference to the bye-laws of the Society; which as per Rule 59 has to provide for the gratuity payable to employees. While the Court affirmed the power of the Government to fix the maximum limit of gratuity payable to an employee of a Co-operative Society u/s 80(3) of the Act; the glaring absence of exercise of such power, when framing Rule 59, as it existed then, was highlighted. This Court found that the employee would be entitled to any higher amounts, relying on sub-

section (5) of Section 4 of the Gratuity Act. However, it is pertinent to notice that this Court specifically in paragraph 16 said so:

The result of these findings, is that the 1st respondent Society is bound to pass on entire amounts paid by the LIC pursuant to Ext. P1 in respect of the gratuity liability of the Society towards each employee, taken over by the LIC in full, withholding any amount in their fund even if it is in excess of the amount prescribed as per Rule 59 or the bye-laws of the Society.

8. The period considered in Nedupuzha Service Cooperative Bank (*supra*) was when the Gratuity Act provided for a statutory maximum limit of Rs. 3.5 Lakhs. It was also noticed that if a higher amount is payable, the LIC would prescribe a higher premium; making it clear that the liability of the insurer is premium linked. The issue raised was whether the amount of gratuity paid by the LIC in excess of what was statutorily prescribed in the Gratuity Act, was liable to be retained by the Society for enriching its coffers. The Registrar too issued a circular to that effect entitling the Societies to the additional amounts. The dictum laid down in Retnavalli that the amounts paid by the LIC to the Banks are not entitled to be retained by them was the subject matter of one appeal (WA No. 197/2010), in the said common judgment. That appeal alone was dismissed by the Division Bench of this Court. The employers were held to be disentitled to the policy benefit which was in excess of the statutory limit. With respect to the other appeals, claiming gratuity in terms of the Co-operative Societies Act i.e., 15 days wages for each completed years of service, it was held so:

The claim is in excess of statutory limit of Rs. 3.5 Lakhs provided u/s 4(3) of the Act. It is seen that Group Gratuity Policies taken by the appellant Banks with the LIC limited the gratuity liability to each of the employee including the respondents at the maximum amount of Rs. 3.5 Lakhs provided u/s 4(3) of the Act. Admittedly, the LIC has collected premium from the appellants for the maximum amount of gratuity payable under the Statute to each of the employee. We do not know on what basis the respondents can claim gratuity in excess of statutory limit, which is covered in the Policies taken by the appellant Banks. As already held above, benefit of the employees is limited to the gratuity amount receivable under the Policy, and when it is limited to the statutory amount of Rs. 3.5 Lakhs, the LIC passes on only the said amount to the appellants, which in turn should go to the employees. This reasoning is what is adopted by this Court also in finding the claim having been satisfied on the basis of the premium linked policy.

9. In the context of the LIC having paid the gratuity as against the premium paid by the respondent Bank, one aspect assumes significance. If the employer had insured itself with a policy, and had failed to pay the premium at all, definitely the insurer would not have the liability to pay the gratuity. In that situation would the employee have a legal right u/s 4(5) of the Gratuity Act, to claim from the employer an amount as entitled under the policy? The answer would be definitely in the negative. It is very pertinent that in the instant case, there is no

contention that any amounts exceeding Rs. 10 Lakhs was paid by the LIC to the 1st respondent Bank. It is also evident from the pleadings that the Scheme entered into by the 1st respondent Bank with the LIC was premium linked and the liability of the LIC is only to the extent of the premium paid. The entitlement of the petitioner to gratuity, does not flow from the Scheme; but from the Gratuity Act and Rule 59 of the Rules. The scheme or the policy in which the 1st respondent Bank is said to have enrolled, is only to insure the liability statutorily imposed on the employer i.e.: the 1st respondent Bank. In such circumstances, the above cited decisions do not at all support the stand of the petitioner and it is to the contrary. It is also pertinent that Rule 59 has been amended prescribing the maximum limit as statutorily prescribed in the Gratuity Act. This is the vested power exercised by the Government, as this Court conceded to the Government, in Retnavalli. In any event, the 2nd proviso inserted in Rule 59 in the year 2010 is not seen challenged by the petitioner. This Court does not see any compelling legal ground to interfere with the decision of the employer; the 1st respondent Bank or its insurer, the LIC, and the claim raised is neither supported by the statutory provisions nor the binding precedents. The findings above persuades this Court to find the writ petition as devoid of any merit.

The writ petition is dismissed. No costs.