(2010) 03 DEL CK 0302

In the Delhi High Court

Case No : Writ Petition (C) No. 8093 of 2008

M.L. Banga APPELLANT

Vs

The Chief General Manager RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 50
Payment of Gratuity (Amendment) Act, 1998 — Section 4
Payment of Gratuity Act, 1972 — Section 4

Citation : (2011) 128 FLR 990

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Ranbir Yadav, for the Appellant; Rajiv Kapoor, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—The short question arises in the present case is as to that whether the amendment brought under the Payment of Gratuity Act covers the case of the petitioner to entitle him to claim the increased amount of gratuity.

2. Counsel for the petitioner submits that the petitioner was superannuated on 31.10.95 and the said amendment in the Payment of Gratuity Act enhancing the limit from Rs.1 lac to Rs.2.50 lacs became effective from 1.4.95. In support of his arguments counsel for the petitioner has placed reliance on Rule 50 of CCS (Pension) Rules dealing with the regulations of the amount of pension. Counsel for the petitioner has also placed reliance on the judgment of the Punjab & Haryana High Court in Rukmani Vs. State of Haryana and Another, and the judgment of the Apex Court in State of Punjab and Others Vs. Amar Nath Goyal and Others, . Counsel for the petitioner further submits that in reply to the RTI, the respondent through its Senior Officer has taken a stand that the amount of ceiling of the gratuity was enhanced from Rs. 1 lac to Rs.2.50 lacs and thereafter the ceiling was raised to Rs. 3.50 lacs. The contention of the counsel for the

petitioner is that the ordinance dated 24.9.97 became effective from 1.4.95 as would be evident from Rule 50 of the CCS (Pensions) Rules.

3. Refuting the said submissions of the counsel for the petitioner, Mr. Rajiv Kapoor counsel for the respondent submits that the petitioner has already been paid Rs. 1 lac towards his gratuity, payable under the Payment of Gratuity Act. Counsel further submits that the ceiling amount of Rs.1 lac was enhanced to Rs. 3.5 lacs through the amending act of 1998 and the said amendment became effective from 24.9.97. In support of his arguments counsel for the respondent has placed reliance on the said Amendment Act 1998, whereby Section 4 of the Gratuity Act was amended to enhance the limit of Rs. 1 lac to Rs. 3.50 lacs. Mr. Rajiv Kapoor further submits that in the additional affidavit filed by the respondent bank, it has been clearly stated that gratuity to the employees of the bank is payable under one of the schemes i.e. (i) Payment of Gratuity Act, 1972; (ii) Service gratuity as per DTCS/Award and (iii) Compassionate Gratuity (Officers). Counsel further submits that the petitioner is entitled to the gratuity under the Payment of Gratuity Act 1972 and not under the other two schemes. Counsel further submits that amendment upon which the counsel for the petitioner has placed reliance is not under the Payment of Gratuity Act but the same relates to retirement gratuity or death gratuity amendment which was brought through Notification dated 17.3.97 published as GSR NO. 177 in the Gazette of India dated 5.4.1997. Counsel thus submits that the said enhancement which the petitioner is claiming is not applicable to him as the petitioner was entitled to gratuity under the Payment of Gratuity Act, which has already been paid to him. Counsel further submits that so far the information given by the Officer of the respondent bank is concerned, the same was due to some inadvertent mistake. It wrongly stated that under the Payment of Gratuity Act the amount of ceiling was enhanced from Rs. 1 lac to Rs.2.50 lacs which in fact should have been from Rs. 1 lac to Rs. 3.50 lacs as per the said amendment in the Payment of Gratuity Act.

4. I have heard learned counsel for the parties.

5. It is not in dispute that the petitioner is entitled to amount of gratuity payable under the Payment of Gratuity Act. Section 4 of the Payment of Gratuity Act was amended by the Parliament Act 11 of 1998 and through the said amendment the ceiling of Rs. 1 lac was enhanced to Rs. 3.50 lacs. Perusal of the said amendment also clearly shows that the said amendment came into force on 24.9.97. It would be necessary to reproduce the said amendment u/s 4 of the Payment of Gratuity (Amendment) Act 1998 as under:

Amendment of Section 4 of Act 39 of 1972:-In Section 4 of the Payment of Gratuity Act, 1972 (hereinafter referred to as the principal Act), in sub-section(3), for the words "one lakh" the words "three lakhs and fifty thousand" shall be substituted.

6. Reference to this amendment in the Payment of Gratuity Act has also been

made in the judgment of the Apex Court reported in Shitla Sharan Srivastava and Others Vs. Government of India and Others, . In the said matter the Apex Court has clearly held that the said Act was amended in 1998 fixing the ceiling of payment of Gratuity at Rs. 3.5 lacs effective from 24.9.1997. The Apex Court also clearly held that the officers of the respondent bank are governed by the Pension Rules and are paid gratuity only in terms of the Act while the compassionate gratuity is a separate scheme to provide succour to the bereaved families of the officers who die in harness and the effective date of revision is fixed by the Executive Committee of the Central Board at Rs. 1 lac w.e.f. 1.1.1986, Rs. 2.5 lacs w.e.f. 1.4.1995 and Rs. 3.5 lacs with effect from 1.1.96. Relevant para of the said judgment is reproduced as under:

6. It is not disputed that the claim made in these petitions is in respect of the employees who retired prior to 24.9.1997. The respondent-Bank has its own service rules/ schemes governing its employees. The 5th Pay Commission recommendations are in relation to the Central Government employees. A mere speech made by the Finance Minister without taking further steps to give the benefit of enhanced ceiling limit of gratuity amount specifically in the case of the respondent-Bank is of no help to the petitioners. The service rules governing employees of RBI/IDBI and Central Government employees are different. The Act was amended in 1998 fixing the ceiling of payment of gratuity at Rs. 3.5 lakhs effective from 24.9.1997. Assuming that the respondent-Bank had made profit, the claims of the petitioners cannot be allowed unless there is a sustainable foundation for such a claim. The respondent-Bank has pointed out that the officers of the Bank are governed by the pension rules and are paid gratuity, only in terms of the Act while the compassionate gratuity is a separate scheme to provide succour to the bereaved families of the officers who die in harness and the effective date of revision is fixed by the Executive Committee of the Central Board at rs. 1 lakh with effect from 1.1.1986, Rs. 2.5 lakhs with effect from 1.4.1995 and Rs. 3.5 lakhs with effect from 1.1.1996. The compassionate gratuity, as stated above, is different from the gratuity amount payable under the Act. Office memorandum dated 27.10.1997 relied upon by the petitioners categorically provides that those orders apply to Central Government employees governed by CCS (Pension) Rules, 1972. Further, the 5th Pay Commission recommendations are applicable to Central Government employees only and are not made applicable to the employees of the respondent-Bank. Thus looking to the various aspects, we conclude that these petitions are devoid of merit, hence they are dismissed. No order as to costs.

7. The counsel for the petitioner has placed reliance on Rule 50 of the CCS (Pensions) Rules which deals with retirement and death gratuity to which the petitioner is not entitled, therefore, any enhancement made thereof even if became effective from 1.4.95 would be of no help to the petitioner. Also the judgments relied upon by the counsel for the petitioner will not be applicable to the facts of the present case.

8. Hence, since the petitioner had retired on 31.10.1995, on which date, as per the Payment of Gratuity Act he was entitled to gratuity for a sum of Rs. 1 lac and which amount has already been paid to the petitioner, there is no merit in the present petition.

9. Hence in the light of the above discussion, the present petition is dismissed.