(2017) 02 BOM CK 0023

In the Bombay High Court

Case No : Writ Petition No. 775 of 2015

MOIL Executive Association APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 15-02-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 4(3), Section 4(5)

Citation : (2017) 3 ALLMR 392 : (2017) 3 MhLJ 152

Hon'ble Judges : Smt. Vasanti A. Naik and V.M. Deshpande, JJ.

Bench : Division Bench

Advocate : Shri Anand Jaiswal, Senior Counsel with Mrs. Radhika Bajaj, Counsel, for the Petitioner; Shri A.M. Joshi, Counsel, for the Respondent No. 1; Shri C.S. Kaptan, Senior Counsel with Shri Masood Shareef, Counsel, for the Respondent No. 2

Final Decision : Dismissed

Judgement

Smt.Vasanti A Naik, J.—Whether the employees of the Manganese Ore (India) Limited would be entitled to gratuity of Rupees Ten Lakhs at the maximum, as per the provisions of Section 4(3) of the Payment of Gratuity Act, 1972 and the impugned memorandum or whether they would be entitled to receive better terms of gratuity in terms of the Group Gratuity cum Life Insurance Scheme is the question that falls for consideration in this writ petition.

2. The petitioner no.1 is the Association of the Executive Employees and Officers of the respondent no.2 Manganese Ore (India) Limited (hereinafter referred to as ''the MOIL'') and the petitioner no.2 is a former employee of the MOIL and the Ex-Member of the petitioner Association and is stated to be directly aggrieved by the Office Memorandum issued by the Government of India, Ministry of Heavy Industries and Public Enterprises as also the communication of the General Manager (Personnel) of MOIL, dated 26.11.2014 informing the petitioner no.2 that he is not entitled to gratuity beyond Rupees Ten Lakhs.

3. In the year 1975, MOIL framed the Group Gratuity-cum-Life Assurance Scheme for its employees. A trustdeed was executed with a view to provide certain benefits in terms of the Rules of the Fund to its employees on the termination of their services or retirement or to their beneficiaries in the event of their death. As per Section 1 of the Scheme, the Fund would be governed by the Rules of MOIL Employees Group Gratuity-cum-Life Assurance Scheme (hereinafter referred to as ''the Rules'') and the Rules would be binding on the members and their beneficiaries. The Rules appended to the scheme and specially Section IV thereof, specify the benefits "on survival to superannuation". As per Clause 8 of Section IV, upon an employee''s retirement on the date of superannuation, an amount equal to fifteen days salary, as on the date of retirement, multiplied by the total number of years of service completed by the employee, subject to a maximum of twenty months salary, is payable to the employee towards gratuity. As per Appendix 1, annexed to the Rules, fifteen days salary of the employee, as on the date of retirement for each year of service subject to a maximum of twenty months salary would be paid to the employee towards gratuity. Even in the offer of appointment issued in favour of the employees by the MOIL, it is stipulated that in addition to the scale of pay, the employees would receive such allowances or benefits as may be admissible as per the rules of the company as amended from time to time. The appointment order refers to the Regulations and Regulation 12 provides that the employees would be entitled to gratuity in the manner prescribed in the Moil Employees Group Gratuity-cum-Life Assurance Scheme (linked with the Payment of Gratuity Act, 1972). It is the case of the petitioners that before the impugned office memorandum was issued by the Government of India, providing for the limit of gratuity to Rupees Ten Lakhs, the employees of MOIL were receiving higher amount towards gratuity than the limit fixed under Section 4(3) of the Payment of Gratuity Act. Since the respondent no.2MOIL refused to grant gratuity to the employees over and above the amount of Rupees Ten Lakhs in view of the impugned office memorandum, the petitioners have filed this petition with a prayer that they would be entitled to receive higher amount of gratuity than the prescribed limit of Rupees Ten Lakhs in view of Section 4(5) of the Act that provides that the provisions of Section 4 of the Act would not affect the right of an employee to receive better terms of gratuity under any award, agreement or contract with the employer.

4. Shri Jaiswal, the learned Senior counsel appearing for the petitioners submitted that in view of the provisions of Section 4(5) of the Act, the employees of the MOIL are entitled to receive better terms of gratuity in view of the Scheme framed by the MOIL in the year 1975. It is submitted that though the provisions of Sub-Section 3 of Section 4 fixes a limit on the gratuity payable to an employee at Rupees Ten Lakhs, Sub-Section 5 of Section 4 provides that the provisions of Section 4 would not affect the right of an employee to receive better terms of gratuity under an award, agreement or contract with the employer. It is submitted that it is apparent from the regulations framed by the MOIL, as also

the scheme framed in the year 1975 that the employees would be entitled to fifteen days salary for each year of service subject to the maximum of twenty months salary, towards gratuity. It is submitted that if gratuity is released in favour of the employees as per Appendix 1 to the Rules of the Scheme, the amount payable to some of the employees would be more than the maximum amount prescribed by Sub-Section 3 of Section 4 of the Act. It is submitted that the offer of appointment issued in favour of the employees recites that in addition to the scale of pay, the employees would receive the allowances and benefits, as may be admissible as per the Rules of the company, as amended from time to time. It is submitted that there is no amendment to the rule that provides that an employee would be entitled to receive fifteen days salary for every year of service subject to a maximum of twenty months salary towards gratuity. It is submitted that the regulations of MOIL also provide that the employees would be entitled to gratuity in the manner prescribed in the MOIL Employees Group Gratuity-cum-Life Assurance Scheme. It is submitted that on a reading of the provisions of Section 4 of the Act, the scheme and the regulations, the employees of MOIL could be entitled to receive an amount of more than Rupees Ten Lakhs, if it is so computed as per the scheme and the rules. The learned Senior Counsel relied on the judgments reported in (2010) 2 SCC 44 (Allahabad Bank and Another v. All India Allahabad Bank Retired Employees Association) 2012 (4) Mh.L.J. 303 (Ethiopian Airlines v. A.D. Noel Henriques and Another), 2005(1) Mh.L.J. 497 (Transport Manager, Kolhapur Municipal Transport Undertaking, Kolhapur v. Pravin Bhabhutlal Shah and Others), 2004(3) Mh.L.J. 603 (Digamber Yeshwantrao Watane v. Agricultural Produce Market Committee, Achalpur and Others) and 2005III LLJ 379 (Retnavalli v. Ambalapadu Service Cooperative Bank Limited) to substantiate his submission.

5. Shri Kaptan, the learned Senior Counsel appearing for the respondent no.2, has supported the action of the MOIL in limiting the amount of gratuity to Rupees Ten Lakhs. It is submitted that in the year 2008, the pay revision committee headed by Justice Jagannath Rao and the Central Public Sector Entrepreneurs recommended the grant of 30% of the basic as superannuation benefits, which included Contributory Provident Fund, Gratuity and Pension. It is stated that the said recommendations were to be implemented with effect from 01.01.2007. It is stated that while issuing the office memorandum, the ceiling of gratuity was restricted to Rupees Ten Lakhs. It is stated that by the impugned office memorandum, the performance related pay was decided. It is further stated that in view of the office memorandum, the ceiling limit of gratuity was placed at Rupees Ten Lakhs and since the employees are getting a package as a whole, they cannot make a grievance about the restriction on the limit of gratuity.

6. To answer the question involved in this petition, it would be necessary to consider the provisions of Section 4 of the Act. Section 4 of the Act reads thus

4. Payment of Gratuity.

(1) Gratuity shall be payable to an employee on the termination of his

employment after he has rendered continuous service for not less than five years,

(a) on his superannuation, or

(b) on his retirement or resignation,

(c) on his death or disablement due to accident or disease.

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement.

Provided further that in case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is minor, the share of such minor, shall be deposited with the Controlling Authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation. - For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days'' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piecerated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for the purpose, the wages paid for any overtime work shall not be taken into account.

Provided further that in the case of an employee who is employed in a seasonal establishment, and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days'' wages for each season.

Explanation. - In the case of a monthly rated employee, the fifteen days'' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twentysix and multiplying the quotient by fifteen.

(3) The amount of gratuity payable to an employee shall not exceed Ten lakh rupees.

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in subsection (i),

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

(b) the gratuity payable to an employee may be wholly or partially forfeited.

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

It is apparent from a reading of the provisions of Section 4 of the Act that gratuity is payable to an employee on the termination of his employment after he renders continuous service for not less than five years. Subsection 2 of Section 4 of the Act provides the manner in which the gratuity payable to an employee would be computed. Subsection 3 of Section 4 restricts the amount of gratuity payable to an employee at Rupees Ten Lakhs. The said amendment was brought into force on 17.05.2010 and the limit of gratuity was enhanced from Rupees Three Lakhs Fifty Thousand to Rupees Ten Lakhs. Subsection 5 of Section 4, with which we are concerned, provides that nothing in Section 4 of the Act would affect the right of an employee to receive better terms of gratuity under any award, agreement or contract with the employer. It is, thus, clear from a reading of the provisions of subsection 5 that the said provisions have an overriding effect over the other provisions of Section 4, which deal with the manner in which the gratuity is computed and the limit of gratuity, as fixed by subsection 3 of Section 4 of the Act. In view of subsection 5 of Section 4, an employee would be entitled to receive better terms of gratuity under any award, agreement or contract with the employer. As already referred to herein above, a scheme was framed by the MOIL in the year 1975 with a view to provide certain benefits in terms of the rules at the time of retirement or termination of the services of the employees. As per the said scheme, the Fund would be governed by the rules of MOIL that are appended to the scheme. The rules of MOIL, as appended to the scheme provide for retiral benefits to the employees either at the time of their superannuation or at the time of their death. It is provided in the rules appended to the scheme that upon an employees retirement on superannuation, he would be entitled to receive an amount equal to fifteen days salary for every completed year of service subject to maximum of twenty months salary, as gratuity. Rule 12(b) of the Rules provides that gratuity would be payable to an employee as per the provisions of Appendix (1). Appendix (1) further provides, like Rule 8 in Section IV of the Rules that an employee rendering more than five years of service would be entitled to fifteen days salary for every completed year of service subject to maximum of twenty months salary towards gratuity. The offer of appointment of the employees of MOIL stipulates that the employees would receive allowances and benefits as may be admissible as per the rules of the company, as amended from time to time. Clause 12 of the regulation of MOIL provides that the employees would be entitled to gratuity in the manner prescribed in the MOIL employees Group Gratuity-cum-Life Assurance Scheme. It is, thus, clear from a reading of the offer of appointment and regulation 12 of the regulations of MOIL that employees of MOIL would be entitled to gratuity as provided by the Scheme of 1975. As per the Scheme of 1975, as referred to herein above, an employee would be entitled to fifteen days salary for each of the completed year of service subject to maximum of twenty months salary, towards gratuity. It is apparent that the terms in the scheme of MOIL are better than the terms provided by Section 4 of the Act. The terms pertaining to computation of gratuity, as framed by the scheme are better than the terms of computation of gratuity under the Act. If the terms of the scheme for MOIL employees are better than the terms provided in the Act, the employees of MOIL would have a right to receive better terms of gratuity under the scheme in view of the provisions of subsection 5 of Section 4 of the Act. If the gratuity payable to an employee of MOIL is computed at more than Rupees Ten Lakhs as per the scheme, the employee would be entitled to gratuity so computed, in view of the provisions of subsection 5 of Section 4. We do not find any propriety in the action of the MOIL, of restricting the amount of gratuity payable to the employees of MOIL at Rupees Ten Lakhs though the scheme provides for better terms of gratuity. There is no merit in the submission made on behalf of MOIL that since the employees were granted a package with some greater benefits in terms of salary as per the recommendations of the pay revision committee headed by Justice Jagannath Rao, the limit in respect of gratuity payable to the employees was restricted to Rupees Ten Lakhs. On a combined reading of the provisions of subsections 2, 3 and 5 of Section 4 of the Act, it is clear that the employees of MOIL are entitled to receive better terms of gratuity under the Scheme of 1975. In similar set of facts, it is held by the Kerala High Court in the judgment reported in 2005 III LLJ 379 (Retnavalli v. Ambalapadu Service Cooperative Bank Limited) that the right of an employee to receive better terms of gratuity under any award, agreement or contract with the employer would not be affected by the statutory maximum provided by subsection 3 of Section 4 of the Act. In the case before the Kerala High Court, just like the scheme meant for MOIL employees in this case, the Life Insurance Corporation of India had taken over the liability of the employees, by paying the sum assured. A similar view is expressed by this Court in the judgments reported in 2012(4) Mh.L.J. 303 (Ethiopian Airlines v. A.D. Noel Henriques and Another) and 2005(1) Mh.L.J. 497 (Transport Manager, Kolhapur Municipal Transport Undertaking, Kolhapur v. Pravin Bhabhutlal Shah and Others). It is held by the Hon''ble Supreme Court in the judgment reported in AIR 2001 SC 1997 (D.T.C. Retired Employees'' Association and Others v. Delhi Transport Corporation etc.) that subsection 5 of Section 4 is an exception to the main section under which gratuity is payable to the employee. It is held that in all welfare legislations, the amount payable to the employees or labourers is fixed at a minimum rate and there will not be any prohibition for the employer to give better perquisites or amounts than that are fixed under law.

7. Hence, for the reasons aforesaid, the writ petition is allowed. It is held that the employees of the MOIL would be entitled to gratuity as per the terms specified in the scheme of the year 1975. The impugned communication, dated 26.11.2014 informing the petitioner no.2 that he would not be eligible to gratuity beyond Rupees Ten Lakhs is quashed and set aside. The respondent no.2 is directed to pay gratuity to its employees in terms of the scheme and the rules framed thereunder. Rule is made absolute in the aforesaid terms with no order as to costs.