

(1996) 07 KAR CK 0080
In the Karnataka High Court
Case No : C.R.P. No. 1173 of 1996

Narayana Rao G.

APPELLANT

Vs

Nagamani V.R. and Another

RESPONDENT

Date of Decision : 24-07-1996

Acts Referred:

Payment of Gratuity Act, 1972 — Section 13, 14

Citation : (1998) 3 LLJ 991

Hon'ble Judges : Mohamed Anwar, J

Bench : Single Bench

Advocate : S.R. Shinde, for the Appellant; A.S. Bopanna, for the Respondent

Final Decision : Allowed

Judgement

Mohamed Anwar, J.—The arguments of the Learned Counsel on both sides are heard.

2. This revision is by the defendant in O.S.No. 10030/1992 pending on its file, directing Respondent No. 2 herein to withhold the Gratuity amount of Rs. 20,000 payable to petitioner until further orders.

3. The undisputed facts leading to this revision are as stated under:

Respondent No. 1 filed his said suit i.e. O.S. No. 10030/1992, for recovery of money from petitioner who was an employee of Respondent No. 2 factory. During the pendency of the said suit Respondent No. 1/ plaintiff made an application before the Trial Court for the direction to Respondent No. 2 to withhold payment of the Gratuity amount payable to Respondent 1. Due to inadvertence, instead of withholding the payment of the said amount to petitioner, Respondent No. 2 deposited in Trial Court the Gratuity amount of Rs. 20,000/-payable to the petitioner. Thereafter, an application was made by Respondent No. 2 before the Trial Court praying that the said amount may be returned to it since the order of the trial Court was to withhold and not to deposit the same with it. Then by its considered order dated January 18, 1995, the Trial Court allowed Respondent No.

2's application directing refund of the said amount and with a further direction that the same shall be withheld for, payment to petitioner until further order. Aggrieved by that order petitioner/defendant has challenged the legality thereof in this revision on the ground that by virtue to relevant provision of Payment of Gratuity Act of 1972, the payment of said gratuity amount to him cannot be withheld in law.

4. Placing reliance on the Supreme Court decision reported in Calcutta Dock Labour Board and Another Vs. Smt. Sandhya Mitra and Others, . Mr. S.R. Shinde, Learned Counsel appearing for petitioner, submitted that the gratuity amount payable to an employee of a concern is exempt from attachment in any suit or proceeding and therefore, the impugned order is patently illegal and not sustainable.

5. The Learned Counsel appearing for Respondent No. 2 Mr. A. S. Bopanna conceding the submission of Learned Counsel for petitioner submitted that in fact on the basis of the said decision of the Supreme Court, the Controlling Authority under the Payment of Gratuity Act, 1972 has also passed its order dated May 27, 1996 on the application of petitioner made before it, which was registered under No. 48(3)96-63, directing Respondent No. 2 to release the said amount to the petitioner.

6. The material Section 13 of the Payment of Gratuity Act, 1972 reads:

"13-Protection of Gratuity: No gratuity payable under this Act shall be liable to attachment in execution of any decree or order of any Civil, Revenue, or Criminal Court."

Interpreting Section 13 of the Act, the Supreme Court in the case of Calcutta Dock Labour Board and Anr. v. Smt. Sandhya Mitra and Ors. (supra) has held at p 414 :

"The gratuity which was payable to him squarely came within the purview of the Act and, therefore, became entitled to immunity u/s 13 thereof."

7. It is therefore clear that by virtue of Section 13 of the Act, the Gratuity amount payable to an employee of an Industrial Concern, is exempt from attachment in execution of any decree or order of any Civil Court or Criminal Court. Section 14 thereof further envisages that the provisions of the Payment of Gratuity Act, 1972 shall have overriding effect on the provisions of any other enactment. In that view of the legal position I find that the impugned order of the Court below is not sustainable and it is liable to be set aside.

8. For the aforesaid reasons the petition is allowed. The impugned order dated January 18, 1995 of the Court below so far as it relates to the direction given to Respondent No. 2 to withhold the gratuity amount of Rs. 20,000 payable to petitioner until further order, is set aside. Parties to bear their own costs.