(2014) 02 CAL CK 0087

In the Calcutta High Court

Case No : Writ Petition No. 37653 (W) of 2013

National Textile Corporation Limited APPELLANT

Vs

Sanjay Sengupta and Others RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Payment of Gratuity Act, 1972 — Section 7 7(3A) 7(4)(a) 7(4)(b) 7(4)(c)
Penal Code, 1860 (IPC) — Section 193 196 228

Citation : (2014) 141 FLR 173 : (2014) LabIC 1867 : (2014) 2 LLJ 498 : (2014) 3 LLN 81

Hon'ble Judges : Soumen Sen, J

Bench : Single Bench

Advocate : Soumya Majumdar, Mr. Sounak Bhattacharya and Mr. Uttam Kumar Mandal, for the Appellant; R. Guha Thakurta and Mr. Debasis Banerjee for the Respondent No. 1, for the Respondent

Final Decision : Allowed

Judgement

Soumen Sen, J.—The quantum of the amount that the writ petitioner is required to deposit u/s 7(7) of the Payment of Gratuity Act, 1972 is the subject matter of consideration in this writ petition. The controlling authority under the Payment of Gratuity Act, 1972 in a proceeding u/s 7 of the said Act of 1972 held that the private respondent is entitled to the payment of gratuity alongwith interest. The writ petitioner was held liable to pay Rs. 6,04,436.00/- as gratuity and Rs. 2,46,811/- as interest aggregating to Rs. 8,51,247/-.

2. The writ petitioner before the authority did not admit any amount to be payable as gratuity and, accordingly, the controlling authority has proceeded to determine the said matter u/s 7(4)(b) and determined the said amount u/s 7(4)(c) of the said Act. The order also records that the petitioner neither paid the gratuity amount to the private respondent, nor deposited the admitted amount of gratuity with the controlling authority as required under sub-section (4)(a) of Section 7 of the said Act of 1972 in time on justified ground and no permission

whatsoever had also been obtained from the controlling authority for the delay in depositing the gratuity amount.

3. Mr. Majumdar, learned Counsel appearing on behalf of the writ petitioner, submits that u/s 7(7), the writ petitioner as appellant is required to deposit before the appellate authority ''the amount equal to the amount of gratuity required to be deposited'' under sub-section (4) and it does not require the payment of any interest.

4. Mr. Majumdar has referred to Sections 7(4)(a), (4)(c) and (7) of the said Act in support of his submission. It is submitted that u/s 7(4)(a), the employer in case of a dispute would be required to deposit with the controlling authority such amount as he admits to be payable by him as gratuity. Similar expression is used in second proviso to sub-section (7) of Section 7 of the said Act, 1972 which requires the appellant to produce a certificate of the controlling authority to the effect that the said appellant has deposited with the controlling authority an amount equal to the amount of gratuity with the controlling authority an amount equal to the amount of gratuity required to be deposited under sub-section (4). The said proviso does not require deposit of any interest or any other sum.

5. Mr. Majumdar has referred to Section 7(4)(c), which requires the controlling authority after inquiry and upon hearing the parties to determine the matter or matters in dispute and if as a result of such inquiry any amount is found to be payable to the employee, the controlling authority would direct the employer to such payment or as the case may be such amount as reduced by the amount already deposited by the employer.

6. The contention of the petitioner appears to be that if the petitioner is required to deposit any amount over and above the amount of gratuity as determined or admitted then the legislature would have in the second proviso to sub-paragraph 7 used the expression as amount "determined" or "adjudicated" upon by the Controlling Authority instead of using the expression "an amount equal to the amount of gratuity required to be deposited under sub-section (4)." The use of the phrase "an amount equal to the amount of gratuity.............." has made all the difference. The word "amount" is qualified by the "amount of gratuity" instead of gratuity and interest.

7. Mr. Majumdar in this regard has relied upon the decisions reported in Gloster Jute Mills Ltd. Vs. Deputy Secretary, Labour Department and Others,) and Auckland International Ltd., Unit-Auckland Jute Mill and Another Vs. State of West Bengal and Others,

8. Per contra, the learned Counsel appearing on behalf of the workmen submits that the Payment of Gratuity Act, 1972 is a beneficial statute and such legislation has to be interpreted in such a manner which would advance the object of the Act.

9. The learned Counsel has relied upon the decisions of the Madras High Court

and Gujarat High Court, viz Christian Medical College and Hospital Vs. The Deputy Commissioner of Labour (Appeals) (Appellate Authority under Payment of Gratuity Act), A.I. Vijayakumar, M. Satyaseelan, N.S. Arjunan, NR. Alice, A. Glory, Mery Kosavai, Y.R. Jayaseelan, P. Krishnan, K.P. Selvaraj, C. Appar, D. Sundrarajan, G. Sampath, K.G. Paramanandam, C. Kanakaraj, P. Velayutham, S. Ganesan and David Sampathkumar, and Indian Red-Cross Society Vs. Vidyaben H. Vyas, and submitted that the second proviso of sub-section (7) of Section 7 refers to whole of subsection (4) of Section 7 and is not confined to clause (a) of sub-section (4) of Section 7 alone. It is submitted that if the interpretation sought to be advanced by Mr. Majumdar on behalf of the writ petitioner is to be countenanced, it would amount to rewriting the very statutory provision.

10. In order to appreciate the respective arguments, it would be useful to refer to Section 7 of the Payment of Gratuity Act, 1972:-

7. Determination of the amount, of gratuity.-

(1) A ''person who is eligible for payment of gratuity under this Act or any person authorised, in writing to act on his behalf shall send a written application to the employer, within such time and in such form, as may be" prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred, to in sub-section (1) has been made'' or not, determine ''the amount of gratuity and give notice in writing to the person, to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

2[(3) The employer shall arrange to pay the amount of gratuity within thirty ''days from the date it becomes payable to the person to whom the gratuity is payable.]

(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.]

(4)(a) If there is any dispute to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

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2[(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.]

3[4[(c)] The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute, and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.]

5[(d)] The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

5[(e)] As soon, as may be, after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit-

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the 6[nominee or, as the case may be, the guardian of such nominee or] heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:--

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discover and production of documents;

(c), receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses.

(6) Any inquiry under this section shall be, a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(7) Any person aggrieved by an order under, sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further, period of sixty days:

[Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal'' to the amount of gratuity required to be deposited under sub-section (4), or deposits with, the appellate authority such amount.]

(8) The appropriate Government or the appellate authority; as the case may, be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify, or reverse the ''decision of the controlling authority.

11. The aforesaid provision makes a clear distinction of gratuity and interest on gratuity. At the stage of 7(4)(a) the employer may deposit with the Controlling Authority such amount as he admits to be payable as gratuity. In case of any dispute arising out of matter or matters covered under Clause 7(4)(a), the Controlling Authority shall determine the matter on an application to be made by following the procedure prescribed in Sections 7(4)(c) and 7(5) of the Act. There is a distinction between Sections 7(4)(a) and 7(4)(c). The employer without waiting for an adjudication at the stage of 7(4)(a) could deposit such amount which he admits to be payable to an employer as gratuity whereas u/s 7(4)(c) the matter or matters covered u/s 7(4)(a) are finally decided and determined. If on enquiry the authority finds any amount is payable then the Controlling Authority shall direct the employer to pay such amount and in case of deposit already made u/s 7(4)(a) to reduce such amount by the amount already deposited. However, in preferring an appeal the employer is required to deposit amount of gratuity required to be deposited under sub-section (4). This amount represents the amount determined u/s 7(4)(c) and not relatable to amount which the employer may voluntarily deposit u/s 7(4)(a). There is no determination of gratuity amount at the stage of 7(4)(a). Such deposit is made on self-assessment by the employer. It was only, thereafter, on enquiry the amount of gratuity payable is decided.

12. In Gloster Jute Mills (supra) the Hon''ble Judge was invited to interpret Section 7(4)(a) and sub-section 7 of the said Act, His Lordship in Paragraph 2 has held that the petitioner Company is required to deposit with the Controlling Authority such amount as the said employer admits to be payable for the purpose of preferring the appeal as gratuity and since the employer has deposited the admitted amount of gratuity, the appellate authority had committed an error by rejecting the appeal preferred by the Company on the ground that the said Company did not deposit the entire amount of money as directed by the Controlling Authority. The amount required to be deposited according to His Lordship is the amount admitted to be payable as gratuity by the employer in terms of sub-section (4)(a) of Section 7.

13. In Gloster Jute Mills (supra) the amount admitted and determined was not in dispute only the interest impugned was challenged. The question arose whether

the employer would be required to deposit in addition to the amount of gratuity admitted, the interest amount as a pre-condition for preferring an appeal u/s 7(7). It appears from the report that the employer deposited gratuity amount u/s 7(4)(a) and the employer was made liable only for the interest for the delayed period. The employer contended that the interest amount is not required to be deposited u/s 7(7). This contention was accepted. Thus, Section 7(7) of the said Act was interpreted to mean that the employer would only be required to deposit at the time of appeal of such amount as he admits to be payable by him as gratuity.

14. The said view was reiterated by Justice Soumitra Pal in Auckland International Ltd. (supra). In Paragraph 12 of the judgment His Lordship has dealt with the aspect of the matter which is stated below:-

12. In the present case, the employer admits that a sum of Rs. 32,194/- is payable for the purpose of preferring the appeal and in terms of sub-section (4)(a) had forwarded the cheque. In my view, the appellate authority erred in passing the impugned order dated 31st August, 2004 in dismissing the appeal and the order dated 28th June, 2005 rejecting the review petition since the employer was ready to deposit ''such amount he admits''. Besides, I find this proposition is also covered by the judgment of this Court in Gloster Jute Mills (supra). Moreover, sub-section (2) of section 7 lays down as soon as "gratuity becomes payable" it shall be determined by the employer. Interest becomes payable u/s 7(3A) of the Act if gratuity is not paid to an employee by the employer within the time specified in sub-section (3). Sub-section (4)(a) of the said section postulates in case of ''any dispute as to the amount of gratuity payable'', the employer shall deposit with the ''controlling authority such amount as he admits to be payable by him-, Therefore, sub-section (4)(a) relates to a dispute regarding the quantum or amount of gratuity payable which is distinct and separate from the question of payment of interest u/s 7(3A) for belated payment of gratuity. It is, thus, clear that ''interest'' cannot form part of ''gratuity'' payable. Sub-sections (3A) and (4)(a) have different applications in different spheres. Therefore, in view of the findings as above, in my view the appellate authority erred in passing the orders dated 31.8.2004 and 28.6.2005 and consequently, the memo dated 4.8.2005 is invalid and illegal.

15. In Christian Medical College (supra) the learned Judge of Madras High Court has held that the contention that it is only the admitted sum that alone is required to be deposited cannot be sustained as the second proviso to sub-section (7) of Section 7 refers to whole of sub-section (4) of Section 7 and not clause (a) of sub-section (4) of Section 7.

16. It was further held that merely because the petitioner has disputed the claim of the workmen it cannot be contended that the petitioner is not liable to make a pre-deposit and get a certificate.

17. In Indian Red-Cross Society (supra), a learned Single Judge of the Gujarat

High Court has followed and reiterated the same principle. The relevant observations in this regard are stated below:-

same question has been examined by Madras High Court again in the case of Management of Christian Medical College & Hospital V. Deputy Commissioner of Labour (Appeals) and another. The relevant discussion made in paragraphs 10 and 11 is quoted as under:

10. The interpretation sought to be placed on the second proviso to section 7(7) if it is to be sustained as contended by Counsel for the writ petitioner, the same will defeat the very object of the statutory provision. Identical provision had been repeatedly upheld, and in this case, there is no challenge to the constitutional validity of the proviso. There is no basis or justification or reason to restrict the meaning of the expression ''amount of gratuity required to be deposited under sub-section (4)'' of section 7 to sub-section (4)(a) alone. Such a construction will defeat the very object of the enactment, a social legislation.

11. If the legislature intended to restrict the pre-deposit to clause (a) of sub-section (4) of section 7, then it would have been provided that the required amount to be deposited under clause (a) of subsection (4). This is not the statutory provision further, if such a contention is to be accepted, the object of legislation, which has provided for a mandatory provision to deposit the amount, as determined by the controlling authority before filing an appeal, would be defeated. The intention and object of the legislation is also very clear and the second proviso has been introduced with the object of making pre-deposit of the amount determined by the controlling authority as pre-requisite under sub-section (7) of section 7. Further, in terms of clause (a) of sub-section (4) of Section 7 the deposit is a voluntary deposit by the employer at the threshold, where the employer comes forward with a deposit such is not the contingency provided for in respect of other clauses in sub-section (4) of Section 7 of the Act.

18. The Kerala High Court has also taken a similar view in Standard Stonewares and Tiles Vs. Appellate Authority, 2 it was held that the deposit contemplated under the second proviso to Section 7(7) of the said Act was in respect of the entire gratuity amount ordered to be paid by the employer under clause (c) of sub-section (4). Thus, the deposit as contemplated under the second proviso to Section 7(7) of the Act is in respect of the entire Gratuity amount ordered to be paid by the employer. Such deposit would relate only to the balance amount of gratuity if the admitted amount of gratuity had already been deposited under clause (a) of sub-section (4) of Section 7. The Statute prescribes only the deposit of the Gratuity amount and not the interest thereon. Although the Kerala High Court has dissented from the decision in Gloster Jute Mills (supra) but the ratio of the decision of the Kerala High Court is also in the same tune that the employer would be required to deposit the Gratuity amount and not the interest thereon. The Kerala High Court, however, has not considered the views of the Madras and Gujarat High Court in this regard.

19. In my view, there is no apparent conflict between the views expressed in Gloster Jute Mills (supra) and the Standard Stonewares (supra). In Gloster (supra), it does not appear that the authority had determined any amount over and above the amount admitted by the employer u/s 7(4)(a) of the said Act.

20. In the instant case, the petitioner has not admitted any amount at the stage of Section 7(4)(a). The Controlling Authority in the impugned order has determined the amount of gratuity and interests separately. In my view, the petitioner would be required to deposit the amount of gratuity as determined by the Controlling Authority and not the interest which may be separately assessed.

21. In view of the aforesaid, the writ petition succeeds. Since the petitioner had already deposited the amount determined as Gratuity with the appellate authority, the appellate authority shall proceed with the appeal and decide the appeal as expeditiously as possible and shall make all endeavour to dispose of the same not later than five months from the date of communication of this order. Urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.