(1986) 10 AHC CK 0059

In the Allahabad High Court

Case No : C.M.W.P. 11659 to 71 of 1981

National Textile Corporation (U.P.) Ltd. APPELLANT

Vs

Additional Labour Commissioner and Others RESPONDENT

Date of Decision : 29-10-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 2

Citation : (1987) 54 FLR 299 : (1994) 3 LLJ 783

Hon'ble Judges : A.N. Varma, J

Bench : Single Bench

Advocate : J.N. Tewari, for the Appellant; Markandey Katju and Standind Counsel, for the Respondent

Final Decision : Allowed

Judgement

Varma, J.—This bunch of petitions is being disposed of by a common judgment as the controversy raised therein is identical. The petitions have been filed by the National Textile Corporation (Uttar Pradesh), Ltd., against the orders passed by the Controlling Authority, Kanpur, constituted by the State Government under the Payment of Gratuity Act, 1972, upholding the claims of the workers and officers of an erstwhile textile mills, namely, Laxmirattan Cotton Mills as well as the orders passed by the Appellate Authority, namely, the Additional Labour Commissioner, constituted by the State Government under the Payment of Gratuity Act, 1972.

2. The impugned orders have been challenged on a variety of grounds by the petitioner; but one ground, on which learned counsel mainly relied, is sufficient for the disposal of this group of cases. The contention raised by the learned counsel for the petitioner was that the factory, in which the contesting respondents were employed either as workmen or as officers, was under the control of the Central Government which had taken over the management of the Laxmirattan and Atherton West Cotton Mills, under the Laxmirattan and Atherton

West Cotton Mills (Taking Over of Management) Act, 1976, hereinafter referred to as the 1976 Act and consequently in terms of Section 2(a)(i)(c) of the Payment of Gratuity Act, 1972, the Central Government would be the appropriate Government in the present case for appointment of an officer to an act as the Controlling Authority u/s 3 of the said Act and as in the present case admittedly the claims lodged by the contesting workmen/officers were filed before the Controlling Authority appointed by the State Government the orders passed by the said Authority are completely null and void. For the same reason the orders passed by the Appellate Authority constituted by the State Government are also liable to be quashed.

3. Having heard learned counsel for the parties, I find considerable merit in the above contention. In order to appreciate the controversy it will be necessary to have a look at the relevant statutory provisions. Section 2(a)(i)(c) of the Payment of Gratuity Act provides:

"2. In this Act unless the context otherwise requires,-

(a) ''appropriate Government'' means,

(i) in relation to an establishment-

(c) of a factory belonging to or under the control of, the Central Government."

Section 3 of the said Act says that the appropriate Government, may by notification, appoint any officer to be a Controlling Authority, who shall be responsible for the administration of this Act and different Controlling Authority may be appointed for different areas.

4. Section 7(4)(b) provides the machinery which is authorised to determine the amount of gratuity claimed by a person who may be eligible for payment of gratuity under this Act. Sub-section (4)(a) of Section 7 lays down that if there is any dispute as to the amount of gratuity payable to an employee under this Act, the employer shall deposit with the Controlling Authority such amount as he admits to be payable by him as gratuity and where there is a deposit with regard to any matter specified in this clause the employee may make an application to the Controlling Authority for taking such action as is specified in Clause (b). Clause (b) of Sub-section (4) of Section 7 states that the Controlling Authority shall, after due enquiry, determine the amount of gratuity payable to the employee.

5. The question which, therefore, arises for consideration is whether in the present case the appropriate Government was the Central Government. A bare survey of the Laxmirattan and Atherton West Cotton Mills (Taking Over of Management) Act, 1976, leaves no room for doubt that the factory in which the contesting respondents were employed is wholly controlled by the Central Government within the meaning of Section 2(a)(i)(c) of the Payment of Gratuity Act, 1972. The Laxmirattan Cotton Mills was taken over on 21 July, 1976, under the aforesaid 1976 Act. The first provision which is relevant to the controversy is

Section 11(1) in the 1976 Act which provides that from the appointed day, the management of the undertakings of the two companies shall vest in the Central Government. The next relevant provision is Section 4(1) of the 1976 Act, which states that the Central Government may appoint any person or body of persons as the Custodian of the undertakings of either or both, of the two companies for the purpose of carrying on the management of such undertakings and the Custodian so appointed shall carry on the management of the undertakings of two companies for and on behalf of the Central Government. Likewise Sub-section (7) of Section 4 leads to the same conclusion, which says that subject to the other provisions of this Act and the control of the Central Government, the Custodian shall be entitled, notwithstanding anything contained in the Companies Act to exercise all the powers of the Board of Directors of the two companies, whether such powers are derived from the Companies Act, or from the memorandum and articles of association of the concerned company or from any other source. The financial control is also exercised by the Central Government under the said Act. We have then s. 8 of the Act which provides that notwithstanding anything contained in the Companies Act so long as the management of the undertakings of the two companies remains vested in the Central Government, no proceeding for the winding up of the two companies or for the appointment of a liquidator or receiver in respect thereof shall lie in any Court except with the consent of the Central Government,

6. It is not disputed that the National Textile Corporation was appointed as the Custodian of the undertakings in question u/s 4 of the Act and the National Textile Corporation (Uttar Pradesh), Ltd. is the Additional Custodian.

7. It will, thus, be apparent that the Central Government exercises complete control in every respect over the establishment and the factory in which the concerned workmen/officers of the erstwhile Laxmirattan Cotton Mills, Ltd., were employed. That being so, the Controlling Authority appointed by the State Government could not legally entertain the applications filed by the contesting respondents. The orders passed by the Controlling Authority in this group of cases were thus clearly void and ineffectual in law. The orders passed by the Appellate Authority affirming the orders passed by the Controlling Authority were also for the same reason completely null and void and liable to be quashed by this Court.

8. Learned counsel for the respondents were unable to dispute the above legal position, namely, that the Controlling Authority in the present case appointed by the State Government could not validly entertain the applications filed by the contesting respondents. Indeed, no attempt was made by the learned counsel for the respondents to demonstrate that the Controlling Authority which passed the impugned orders in these cases was competent to entertain their applications.

9. The upshot of the above discussion, therefore, is that the impugned orders passed by the Controlling Authority, Kanpur Region, Kanpur, as well as the Appellate Authority constituted by the State Government under the Payment of

Gratuity Act, 1972, are all completely without jurisdiction and are liable to be quashed on that ground.

10. On behalf of the petitioners in Writ Petition Nos. 11662 and 11664 to 11671, Sri J.N. Tewari, however, very fairly stated before me that even if the impugned orders are quashed the petitioners shall not recover from the respondents the amounts deposited by it in pursuance of the interim orders of this Court in view of the obvious economic condition of the respondent-workmen. He submitted that the contesting respondents in these petitions are poor workmen and it would expose them to very great hardship and misery if they are called upon to refund the amounts withdrawn by them. Sri Tewari, however, submitted that this concession cannot be made in respect of the contesting respondents in other petitions as they, as officers, were financially much better off. It was urged that the impugned orders being completely null and void there is no good ground why the same should not be quashed in cases of such respondents.

11. If the petitioner is not prepared to make a similar concession in respect of the officers, relief cannot be refused to it once it is found that the impugned orders are a complete nullity, unless there was some disabling circumstance disentitling it to the grant of the reliefs, which is not the case in this group of petitions. Writ Petition Nos. 11660, 11661 and 11663 are hence clearly entitled to succeed in toto.

12. Sri M. Katju, counsel for the respondent Rama Nath Misra in Writ Petition No. 11659, however, vehemently contended that the plea of jurisdiction having been expressly given up by the petitioner before the Controlling Authority, this Court ought not to interfere with the impugned orders even if the same are held to be without jurisdiction as the powers under Article 226 of the Constitution are discretionary in nature and where, as here, the petitioner expressly gives up a plea regarding want of jurisdiction he should be refused the relief. It may be mentioned that the statement of Sri Tewari that Rama Nath Misra has died and substitution matter is still pending has not been substantiated. No such application is on record.

13. The submission is not without any merit. From a perusal of the impugned orders in Writ Petition No. 11659 of 1981, it is quite clear that the plea of want of jurisdiction raised by the petitioner was specifically given up before the Controlling Authority. An issue had been framed by the Controlling Authority on this point but the petitioner''s representative gave a statement before the Controlling Authority to the effect that he was not pressing the same. If the issue had been pressed before and upheld by the Controlling Authority the respondent might have approached the Controlling Authority designated by the Central Government immediately for appropriate relief. The failure of the petitioner to press the issue before the Controlling Authority, therefore, assumes significance and disentitles it to the discretionary relief claimed in this petition. Writ Petition No. 11659 of 1981 is, therefore, liable to be dismissed on this ground.

14. In the result, Writ Petition Nos. 11662 and 11664 to 11671 succeed and are allowed The impugned orders passed in these petitions by the Controlling Authority as well as Appellate Authority are quashed subject to the direction that in terms of the statement made by the petitioner''s counsel the petitioner shall not recover the amounts which the respondents in these petitions have withdrawn under the interim orders of this Court. Writ Petition Nos. 11660, 11661 and 11663 also succeed and are allowed. The impugned orders passed by the Controlling Authority as well as the Appellate Authority are quashed. Writ Petition No. 11659 of 1981, is dismissed. The parties shall, however, bear their own costs in each of these petitions.