

(2011) 05 KL CK 0034

In the High Court Of Kerala

Case No : W.A. No. 980 of 2010 and connected cases

Nedupuzha Service Co-operative Bank Ltd.

APPELLANT

Vs

Rugmini

RESPONDENT

Date of Decision : 30-05-2011

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4(3), 4(5)

Citation : (2011) 131 FLR 106 : (2011) 3 ILR (Ker) 75 : (2011) 3 KLT 134

Hon'ble Judges : C.N. Ramachandran Nair, J;B.P. Ray, J

Bench : Division Bench

Advocate : C.E. Unnikrishnan, P.K. Vyayamohanan, M.A. Thomaskutty, Asha Cherian, M.P. Ashok Kumar and T A. Shaji, for the Appellant; Lal George, CD. Dileep, S.K. Balachandran, Prabha R. Menon, V.M. Kurian, N. Rajagopalan Nair, S. Easwaran, N. Nandakumara Menon P.K. Manoj Kumar, K. Gopalakrishna Kurup S. Manu and K.C. Santhosh Kumar, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—In these Writ Appeals the Appellant Co-operative Banks are challenging judgments of the learned Single Judges directing the Appellants to pay gratuity to the Respondent employees over and above the gratuity amount receivable by them under the L.I.C.'s Group Gratuity cum Life Assurance Policy taken by the Appellant Banks covering all the employees.

2. We have heard learned Counsel appearing for the Appellant Banks and learned Counsel appearing for the Respondents including the learned Standing Counsel appearing for the Life Insurance Corporation of India.

3. At our request, concerned executives from the LIC appeared in Court and personally explained the nature of the Group Gratuity cum Life Assurance Policy, which the Appellant Banks have with them for payment of gratuity to their employees. Before proceeding with the matter, we have to refer to the statutory provisions under which the Appellants as employers are liable to pay gratuity to their employees on their retirement.

4. Admittedly, employees of all Co-operative Banks are entitled to receive gratuity on their death, resignation or retirement in accordance with the provisions of the Payment of Gratuity Act, 1972 (hereinafter referred to as the Act for short). Section 4(5) of the Act provides that employers and employees can have better arrangement for payment of gratuity over the benefits available to the employees under the statute. If there is any such arrangement, the employees are entitled to receive better benefit over the statutory benefits. It is to be noted that all the Appellant Banks are constituted under the provisions of the Kerala Co-operative Societies Act, 1969, which in Section 62 provides that employees of Co-operative Societies are entitled to payment of gratuity at such rates and on such conditions as are prescribed. Rule 59 of the Kerala Co-operative Societies Rules provides for eligibility for gratuity such as minimum period of service required, category of employees entitled to gratuity, etc. In exercise of powers conferred u/s 66A of the Kerala Co-operative Societies Act, the Registrar of Co-operative Societies issued Circular 46/79 authorising Co-operative Societies to take policies to cover employees under the L.I.C.'s Group Gratuity cum Life Assurance Scheme. Following the circular issued by the Registrar of Co-operative Societies, the Appellant Banks took policies with the L.I.C. for operating the Group Gratuity Scheme for their employees. The unique advantage of the Scheme is that life of the employees are also insured under the Gratuity Policy, which will benefit employees dying in service. The Group Gratuity Policies taken by the Co-operative Banks are renewed on an year to year basis. The Scheme provides for individual accounts for each and every employee and depending on pay and years of service available to employee before retirement, gratuity payable to each employee and premium payable are also determined on an year to year basis. There is nothing in the policy limiting the gratuity entitlement for the employees up to the statutory limit which during the relevant years was Rs. 3.5 lakhs. However, the premium fixed for each employee every year will depend on the gratuity amount payable to such employee, which is also provided in the Schedule to the Policy which is an annexure to it. If the employer wants to provide gratuity over and above the statutory limit of Rs. 3.5 lakhs, Policy has to provide for it and the L.I.C. will charge higher premium amount for such endowment policy. In most of the cases, the Banks have taken Policies keeping in mind the maximum gratuity payable under the Act. None of the Respondent employees have raised a dispute that the L.I.C.'s Group Gratuity Policies taken by the Appellant Banks are less favourable to them and therefore they are entitled to payment of gratuity in terms of the statutory provisions which is more than the amount received by the Appellant Banks from the L.I.C. under the Policies and payable to the employee concerned. In our view, the Registrar of Co-operative Societies rightly advised the Appellant Banks to join the LIC's Group Gratuity Scheme because even in the event of liquidation of Societies on account of loss, the employees are protected as they are entitled to gratuity by virtue of the policy coverage. It is seen that under the Policies taken, the Appellant Banks have limited employees' entitlement for gratuity up to the maximum amount payable under the Act. The issue raised in some of the

appeals is whether the excess amount over the statutory limit received by the Banks under the Policy for the retired employees should be given to them or whether the same could be retained by the Bank. The Appellant Banks claim that the Policies are taken by them and their liability is limited to the statutory limit and excess gratuity amount received under the individual account of the employees over the statutory limit should go to the Appellants. The employees, on the other hand, contend that they are entitled to the entire amount payable by the LIC for the policies taken by the Appellant Banks. The learned Single Judges directed the Appellants to pass on the entire benefits received from the L.I.C. in the individual accounts of the employees to them. Besides this, none of the Respondent employees have a case that the gratuity received by them under the Policies taken by the Appellant Banks with the L.I.C. is less than their entitlement for gratuity under the Act. In other words, in all cases the amount payable under the L.I.C.'s Group Gratuity Policies taken by the employers is either the statutory limit or in excess thereof. The above referred circular issued by the Registrar of Co-operative Societies was modified by Circular No. 25/99 wherein the Registrar ordered that the excess amount receivable from the LIC in the individual account of the employees over the gratuity payable to them under the Act will enure to the Societies. Similarly, it is also ordered that if the amount received from the Society is less than the amount of gratuity payable under the Act, the Society is bound to pay the difference to the employees. This Court in the decision in Retnavalli Vs. Ambalapadu Service Co-operative Bank Ltd., held that the circular is bad and the employees are entitled to maturity amount under the L.I.C. policy, which may be in excess of the maximum gratuity provided under the statute u/s 4(3) of the Act.

5. In these batch cases, so far as the judgments under appeals are concerned, the learned Single Judges followed the above referred judgment of this Court and held that employees are entitled to the maturity value of the gratuity policies and the Banks are not entitled to withhold the same. It is this part of the judgment i.e., under challenge in W.A. No. 197/2010. Learned Counsel appearing for the Respondent employees in W.A. No. 197/2010 referred to Ext.P1, wherein the L.I.C. has clearly stated that the accumulated gratuity payable under the Policy to the 3 employees is in excess of Rs. 3.5 lakhs. The amount ranges from Rs. 4.11 lakhs to Rs. 4.68 lakhs for the three employees. We do not find any justification for the Appellant Bank to contend that the Policy benefit should go to the Bank. As already stated by us, LIC's Group Insurance Policy is squarely covered by Section 4(5) of the Act, which excludes statutory liability by which the employer and employee can have separate arrangement for gratuity if the terms of the same are better to the employees. We have already noticed that the terms of the L.I.C.'s Group Gratuity Scheme under the Policy offered by them are advantageous to the employees by virtue of the life insurance coverage and the guarantee even in the event of liquidation of the Society. However, we do not think the employers can claim the benefit of the Group Gratuity Policy taken by them for the benefit of the employees. The Appellant Bank is only a trustee,

which made arrangement with the L.I.C. by taking the policy and making payment of premium to provide gratuity and other benefits to it's employees. All the benefits under the Policy are to the account of the employees and nothing is retained by the employer, which by making payment of the premium, discharges it's annual liability for gratuity to the employees covered under the Scheme. We therefore uphold the judgment of mealeamed Single Judge directing the Appellant to pass on the benefits received from the L.I.C. to the Respondent employees. W.A. No. 197/2010 is accordingly dismissed directing the Appellant Bank to forthwith pass on the differential amount received from the L.I.C. towards the Group Gratuity Scheme to the Respondent employees.

6. So far as other Writ Appeals are concerned, the Appellant Banks have passed on the entire benefits received under the Policies from the LIC to each of the retired employees. However, the learned Single Judge held that the Respondent employees are entitled to gratuity in terms of the Act, i.e., @ 15 days' wages for each year completed in service. The claim is in excess of statutory limit of Rs. 3.5 lakhs provided u/s 4(3) of the Act. It is seen that Group Gratuity Policies taken by the Appellant Banks with the L.I.C. limited the gratuity liability to each of the employee including the Respondents at the maximum amount of Rs. 3.5 lakhs provided u/s 4(3) of the Act. Admittedly, the LIC has collected premium from the Appellants for the maximum amount of gratuity payable under the statute to each of the employee. We do not know on what basis the Respondents can claim gratuity in excess of statutory limit, which is covered in the Policies taken by the Appellant Banks. As already held above, benefit of the employees is limited to the gratuity amount receivable under the Policy, and when it is limited to the statutory amount of Rs. 3.5 lakhs, the L.I.C. passes on only the said amount to the Appellants, which in turn should go to the employees. The Respondents' case is based on Circular No. 25/99, which also does not say that the Appellants have any liability over the statutory limit of Rs. 3.5 lakhs. We, therefore do not find any basis for the learned Single Judges to hold that Appellants are entitled to gratuity over and above the statutory limit, which is covered by the policies and passed on by the Appellants to the Respondent employees on receipt from the LIC. Accordingly, W.A. Nos. 980, 982, 1233, 1666, 1924 of 2010, 470 & 472 of 2011 are allowed vacating the judgments of the learned Single Judges under appeals.

7. In W.A. No. 1924/2010, learned Counsel appearing for the Respondent employees submitted that accumulated amount received from the LIC by the Appellant Bank is more than what is paid to them. This is a matter for verification. Since the Appellant's counsel disputed this position, there will be a direction to the LIC to furnish details of the accumulated amounts accrued in the account of the Respondents i.e., passed on to the Appellant, and if any amount in excess of the amount paid to the Respondents was received by the Appellant Bank, the same should be forthwith passed on to the Respondents. The Respondents can claim the amount based on the information received from the L.I.C.

8. In the result, W.A. No. 197/2010 is dismissed and all other Writ Appeals are allowed as above.