
(2009) 12 MAD CK 0260

In the Madras High Court

Case No : Writ Petition No. 18970 of 2000

Neyveli Lignite Corporation Ltd.

APPELLANT

Vs

O. Raju and Others

RESPONDENT

Date of Decision : 17-12-2009

Acts Referred:

Citation : (2009) 12 MAD CK 0260

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : N. Nithianandam, for the Appellant; Ysshod Vardhan, Sundar Narayanan and Sunil Kumar for the Respondent No. 1 V. Bharathidasan for the Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Sasidharan, J.—This Writ Petition is directed against the order dated 30.09.2000 on the file of the 3rd respondent whereby and whereunder the Appeal preferred by the petitioner against the order passed by the Controlling Authority under the provisions of the Payment of Gratuity Act, 1972 was dismissed.

Background Facts:

The first respondent was an employee of the Neyveli Lignite Corporation (hereinafter referred to as Corporation) for the period from 25.11.1955 to 29.2.1938. He was relieved from the services of the Corporation on 29.02.1983 on attaining the age of superannuation. The gratuity payable to him had been worked out at Rs. 31,140/- with reference to the wages last drawn and length of his service in the Corporation. The Management offered him the gratuity as per proceedings dated 22.3.1988. The Management has also marked a copy of the proceedings to the Controlling Authority. Therefore, the mandate of section 7(2) of the Payment of Gratuity Act, 1972 were duly complied with.

2. Though the first respondent received the communication, he never turned

upto receive the gratuity. In fact, there was not even a response to the notice send by the petitioner on 22.3.1988. Subsequent to his retirement, his total emoluments were enhanced on account of wage revision and the gratuity for the difference of amount was also calculated and an intimation was sent to the first respondent on 4.3.1996. The total gratuity was arrived at Rs. 38,681.54.

3. There were writ proceedings as well as civil proceedings initiated by the first respondent against the Corporation with respect to his date of birth. According to the first respondent he was born only on 8.2.1937 and as such he should be permitted to continue in service till he attained the age of retirement, treating the date of birth as 8.2.1937. However, the Writ Petition was dismissed.

4. The first respondent was in occupation of the residential accommodation allotted to him by the Corporation. As per rules, the employee was entitled to retain the quarters for a period of four months from the date of retirement. However, even after the expiry of four months, the first respondent continued to occupy the residential accommodation without remitting any amount towards house rent, electricity or water charges.

5. The first respondent made a written request for payment gratuity on 1.12.1994. Since he was in unauthorised occupation the residential unit, he was asked to surrender the quarters and clear the arrears as a condition to settle the gratuity. However there was no followup action by the first respondent to pay the rent arrears and collect the gratuity amount.

6. Subsequently in the year 1995, the first respondent preferred a Claim Petition before the Controlling Authority. The Controlling Authority as per order dated 23.11.1995, dismissed the claim on the ground that the quantum of gratuity could be decided only after the disposal of the Writ Petition.

7. The first respondent once again preferred a Gratuity Application in G.A. No. 191 of 1998. The second respondent has allowed the said Application and the Corporation was directed to pay the gratuity amount with simple interest at the rate of 10% per annum.

8. The award dated 11.11.1999 on the file of the 2nd respondent was challenged before the 3rd respondent. The 3rd respondent dismissed the Appeal filed by the petitioner in Appeal No. 1 of 2002 and confirmed the award of the second respondent. The said award is challenged in this Writ Petition. Submissions:

9. The learned Counsel for the petitioner contended that the Corporation was always ready and willing to pay the gratuity. They have also sent a letter to the petitioner as early as on 22.3.1988 calling upon him to approach the office and to receive the gratuity. However, no such claim was made by the first respondent. According to the learned Counsel, the first respondent was in huge arrears to the Corporation on account of his unauthorised occupation of the residential quarters. Therefore, it could not be said that the Management illegally retained the gratuity amount. The learned Counsel further contended that there

was no question of payment of interest, in view of the readiness on the part of the Management to pay the gratuity amount immediately after the retirement. The learned Counsel also submitted that the Management was ready at all point of time to pay the gratuity and as such there was no reason for awarding interest.

10. The learned Counsel for the first respondent justified the award passed by the Controlling Authority as confirmed by the appellate Authority. According to the learned Counsel, the petitioner was bound to pay the gratuity within the time prescribed by law and failure on their part has given a cause of action to the first respondent to claim interest. The learned Counsel further contended that there was no question of adjustment of the rent or other charges from the gratuity amount. The learned Counsel placed reliance on the judgment in *Air India Ltd. v. appellate Authority under the Payment of Gratuity Act, 1972 and others* 1999 (81) FLR 900 (Bom.), in support of his contention that it was not permissible to deduct the house rent and other charges out of the gratuity amount.

Discussion:

11. The Payment of Gratuity Act provides for payment of gratuity to the employees, employed in factories mines, oil fields, plantations, ports, Railways Companies, shops and other establishments. The Act is a beneficial peace of legislation enacted for the welfare of the employees. Section 4 of the Payment of Gratuity Act, 1972 (hereinafter called as Act) provides that 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. Section 7 of the Act deals with determination of the amount of gratuity. As per the said provision, it was obligatory on the part of a person, eligible for payment of gratuity to send a written application to the employer. Section 7(2) provides that the employer has to 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. Such a notice has to given by the employer irrespective of the Tact as to whether an application for payment of gratuity was made by the employee u/s 7(1) of the Act. Sections 7(3) provides that 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. Similarly, section 7(3-A) provides for payment of simple interest in case gratuity was not paid within the statutory period.

12. The Payment of Gratuity Act, 1972 is a self-contained Code as it deals with the eligibility to claim gratuity, determination of the amount of gratuity, the nomination to be made by the employee, the liability of the employer to pay the gratuity and in case of failure, to pay the gratuity amount with interest. Similarly, the Act contains provisions for recovery of the gratuity amount and penalty for furnishing false information.

13. The first respondent retired from the service on 29.2.1988. It is true that the petitioner as per communication dated 22.3.1988 called upon him to collect the

gratuity amount from the Corporation. The Controlling Authority was also informed of the computation of gratuity. It is also not in dispute that the first respondent refused to accept the gratuity amount on account of the pending litigation regarding date of birth. According to the first respondent, he has to retire only on 29.2.1988 and he was having seven more years of service, it was only on account of pendency of such dispute, the first respondent declined to accept the gratuity amount.

14. The question is as to whether the petitioner was relieved from the responsibility of payment of gratuity on account of such inaction on the part of the first respondent to receive the gratuity amount. Though section 7(1) of the Act mandates that an Application should be made by the person. Who is eligible for payment of gratuity in the prescribed form, the other provisions as contained in section 7 of the Act clearly shows that the liability was on the employer to pay gratuity within the outer time limit. Therefore, irrespective of the fact as to whether there was a written Application made by the petitioner, the employer was bound to pay the amount or deposit the same before the Controlling Authority.

15. Section 7(3) of the Act very clearly provides that the employer shall arrange to pay the gratuity within thirty days from the date it becomes payable, to the person to whom it was payable. Therefore, the question is not as to whether there was a demand made by the employee to collect the gratuity. The liability is on the employer to pay the amount of gratuity. In case the employee fail to claim the gratuity amount, the Management was obliged to deposit the gratuity amount before the Controlling Authority. The legislature was conscious of the fact that the payment of gratuity would be delayed on account of submission of Claim Petition by the employee and its processing by the employer.

16. Therefore, by way of an amendment, as per section 7(3) of the Act, the employer was made liable to pay the gratuity within thirty days from the cut-off date and in the event of their failure to pay the gratuity within the outer time limit, they were required to pay interest not exceeding the rate notified by the Central Government from time to time for repayment of long time deposit.

17. The petitioner contested the proceedings before the Controlling Authority on the ground that the delay was on the part of the employee and they were ready and willing at ail point of time to pay the gratuity amount. However, the petitioner cannot escape from the liability of payment of statutory interest. The Proviso to section 7(3-A) provides that in case the delay in payment of the gratuity amount was due to the fault of the employee the employer has to obtain the permission in writing from the Controlling Authority, to avoid payment of interest. In the case on hand, there was nothing on record to show that the petitioner has deposited the amount before the Controlling Authority. Similarly, the petitioner has no case that they have obtained permission from the Controlling Authority as per the Proviso to section 7(3-A) of the Act.

18. The petitioner justified the non-payment of gratuity also on the ground that the first respondent has not vacated the residential occupation provided to him by the Management. In short, the petitioner was making a sort of attachment of the gratuity amount to recover the arrears of house rent from the petitioner. Such an action for recovery was not possible in view of section 13 of the Act. The legislature was very particular that no attachment, should be made of the gratuity amount in execution of any decree or order of Civil, Revenue or Criminal Court. Therefore, it was not possible for the petitioner to collect the house rent as well as electricity Charges from gratuity amount.

19. The amount of gratuity payable to an employee should be free from attachment whether it be in execution of any decree or order of a Court. The gratuity amount should be paid to the employee on his retirement in case he qualifies for payment of gratuity. Therefore, it was not open to the Corporation to come up with a contention that they were justified in denying, payment of the gratuity amount on account of the failure of the employee to pay the house rent and Electricity Charges.

Legal Principles:

20. In Calcutta Dock Labour Board and Another Vs. Smt. Sandhya Mitra and Others, , the Hon''ble Supreme Court has observed that the gratuity payable to dock workers under a scheme in absence of a notification u/s 5 of the Payment of Gratuity Act, 1972, was not attachable for satisfaction of a decree.

21. The Supreme Court in Som Prakash Rekhi v. Union of India and others 1981 (1) LLJ 79, indicated that benefits such as pension, provident fund and gratuity are in fulfilment of the directive principles. The payment of gratuity or provident fund should not occasion any deduction from the pension as a "set-off". Otherwise, the solemn statutory provisions ensuring provident fund and gratuity become illusory.

22. In Radhey Shyam Gupta Vs. Punjab National Bank and Another, , the Supreme Court concurred with the submission made by the employee that even after the retirement, the amount paid as pension and gratuity would not lose their character.

23. In a recent decision in Allahabad Bank v. All India Allahabad Bank Retired Emps. Assn. 2010 (124) FLR 192 (SC), the Supreme Court in the context of interpreting provisions of the Payment of Gratuity Act, 1972 observed that labour and welfare legislation have to be liberally construed having due regard to the Directive Principles of State Policy. The observation reads thus:

11. We shall proceed to examine the point urged by the learned Counsel for the appellant. Remedial statutes, in contradistinction to penal statutes are known as welfare, beneficent or social justice oriented legislations. Such welfare statutes always receive a liberal construction. They are required to be so construed so as to secure the relief contemplated by the statute. It is well settled and needs no

restatement at our hands that labour and welfare legislation have to be broadly and liberally construed having due regard to the Directive Principles of State Policy. The Act with which we are concerned for the present is undoubtedly one such welfare oriented legislation meant to confer certain benefits upon the employees working in various establishments in the country.

12. Krishna Iyer, J. in *Som Prakash Rekhi v. Union of India*, stated the principle in his inimitable style that benignant provision must receive a benign construction and, even if two interpretations are permissible, that which furthers the beneficial object should be preferred. It has been further observed: "We live in welfare State, in a "socialist" republic, under a Constitution with profound concern for the weaker classes including workers (Part IV). Welfare benefits such as pensions, payment of provident fund and gratuity are in fulfilment of the Directive Principles. The payment of gratuity or provident fund should not occasion any deduction from the pension as a "set-off". Otherwise, the solemn statutory provisions, ensuring provident fund and gratuity become illusory. Pensions are paid out of regard for past meritorious services, The root of gratuity and the foundation of provident fund are different, Each one is a salutary benefaction statutorily guaranteed independently of the other. Even assuming that by private treaty parties had otherwise agreed to deductions before the coming into force of these beneficial enactments they cannot now be depravatory. It is precisely to guard against such mischief that the non-obstante and overriding provisions are engrafted on these statutes."

13. Interpreting the provisions of the said Act this Court in *Sudhir Chandra Sarkar v. Tata Iron and Steel Company Ltd.*, observed that pension and gratuity coupled with contributory provident fund are well recognised retiral benefits governed by various statutes. These statutes are legislative responses to the developing notions of the fair and humane conditions of work, being the promise of Part IV of the Constitution. It was observed: "the fundamental principle underlying gratuity is that it is a retirement benefit for long service as a provision for old age. Demands of social security and social justice made it necessary to provide for payment of gratuity. On the enactment of Payment of Gratuity Act, 1972 a statutory liability was cast on the employer to pay gratuity.

24. The Controlling Authority as well as the appellate Authority on the basis of materials found that there was delay in payment of gratuity and as such, the petitioner was liable to pay the amount with simple interest at the rate of 10% per annum. The 3rd respondent was the final authority on facts and the said authority scanned the materials relied on by the Controlling Authority and confirmed that the petitioner failed to pay the gratuity within the time permitted by law and as such they are liable to pay statutory interest.

25. The order of the Controlling Authority as confirmed by the First appellate Authority contain valid reason which made those authorities to take a decision against the petitioner. There is no merit in the Writ Petition and as such, the same is liable to be dismissed.

26. The learned Counsel for the petitioner would submit that liberty should be granted to the petitioner to recover the arrears of house rent as well as the electricity and water charges from the petitioner. It is always open to the petitioner to recover the amount, in the manner known to law.

In the result, the Writ Petition is dismissed. No costs.