

(2019) 07 KAR CK 0042

In the Karnataka High Court

Case No : Writ Appeal No. 100195, 100509, 100524, 100202, 100581 Of 2015

North West Karnataka Road And Ors

APPELLANT

Vs

Kallurappa S/O Nagappa Hirehal,

RESPONDENT

Date of Decision : 23-07-2019

Acts Referred:

Payment Of Gratuity Act, 1972 — Section 2(s), 4
Central Civil Services (Pension) Rules, 1972 — Rule 293D, 293C, 293E

Citation : (2019) 07 KAR CK 0042

Hon'ble Judges : G.Narendar, J;Bellunke.A.S, J

Bench : Division Bench

Advocate : V.Lakshminarayana, Shivakumar S.Badawadagi, H.R.Renuka, Dinesh M Kulkarni, V.S.Naik

Final Decision : Allowed

Judgement

1. Heard the learned Senior Counsel Sri V.Lakshminarayana along with the Counsel for the appellants Smt. H.R.Renuka and Sri Shivakumar S.Badawadagi, learned Counsel for the respondents Sri Dinesh M.Kulkarni and Sri V.S.Naik.

2. The appellants are the State Road Transport Corporations and are before this Court by these intra-court appeals being aggrieved by the order passed by the learned Single Judge allowing the writ petitions in part and quashing the endorsement issued by the Corporations and further directing the Corporations to carry out the exercise of computing the gratuity payable to the writ petitioners in the light of the observations made therein and also by taking into consideration the subsequent Circular No.09/2007 dated 11.07.2007 and to pay the difference of gratuity, if any, to all the petitioners within 12 weeks from the date of receipt of the certified copy of the order.

3. The facts necessary for determination of the appeal are as under:

The respondents herein are all former employees of the Appellant-Corporations and they have attained superannuation or have opted for voluntary retirement

between 2000 and 2006. The respondents were appointed to various posts and the only common thread or feature is that all the respondents are seeking for payment of gratuity on a higher scale than the one allowed by the appellants to the employees retiring from service during the said period.

4. It is the case of the appellants that the appellants-State Road Transport Corporations framed the Karnataka State Road Transport Corporation Gratuity Regulations (for short, 'Gratuity Regulations') on 30.03.1960 with retrospective effect by deeming it to have come into force with effect from 01.04.1957. That Regulation 8 of the Gratuity Regulations provided that the amount of gratuity payable would be a sum equal to a month's pay for each year of service, subject to a maximum of 12 months' pay or Rs.10,000/- whichever is lower. That the 'last drawn pay' means substantive pay and personal pay or officiating pay, whichever is higher drawn by an employee at the time of retirement, resignation or death. That several memorandum of settlements were entered into between the appellant-employer and the employee unions on 18.03.1974, 06.07.1977, 27.09.1981 & 17.07.1989. Under the Memorandum of Settlement dated 27.09.1981, Clause

7 pertaining gratuity was concluded as under:

"7. Gratuity:

(a) Gratuity shall be paid in accordance with the Gratuity Regulations or in accordance with the provisions of the Gratuity Act, 1972, whichever is beneficial to the employee.

(b) The quantum of gratuity shall be equal to one month's pay for each completed year of service. For incomplete period of final year of service, if any prorated contribution of gratuity shall be reckoned for completed months excluding part of the month if any. In the event of payment of gratuity to employees dismissed from service for misconduct, the Management may deduct from the gratuity payable, financial loss if any, caused to it on account of any such misconduct.

(c) Gratuity shall be paid on the basis of pay drawn on the date of any events stipulated in Clause (5) of Gratuity Regulations and the pay would include basic pay, personal pay and charge allowance consequent upon holding incharge of a higher post and not additional charge."

5. Under the Memorandum of Settlement dated 17. 07.1989, the settlement regarding Dearness Allowance (Clause 5) was concluded and settled as under:

"5. DEARNESS ALLOWANCE

The rates of Dearness Allowance shall be on par with the rates sanctioned by the State Government to its employees from time to time and from the same dates. The enhanced Dearness Allowance shall be paid in cash.

If during the currency of this Settlement, the Government of Karnataka were to

merge any portion of Dearness Allowance presently being paid to its employees, that portion of the Dearness Allowance so merged will also be reckoned at appropriate levels by the Corporation for determining the Dearness Allowance, House Rent Allowance, City Compensatory Allowance and Gratuity payable to the employees of the Corporation, but shall not be reckoned for other purposes."

6. It is this clause which apparently has become the bone of contention between the appellants and the respondents. That the respondent-employees, who retired from service between 02.02.2000 and 31.05.2006 are claiming benefits arising out of the Government Order dated 28.11.1995, pursuant to which Rule 293-D came to be inserted into the Rules, whereby the Government directed the merger of Dearness Allowance with Basic Pay at different rates in respect of different pay scales. For instance, in respect of the employee drawing a Basic Pay of Rs.3,500/- Dearness Allowance at the rate of 90% of Basic Pay was ordered to be merged in respect of the employee drawing Basic Pay between Rs.3,501/- and upto Rs.6,000/- Dearness Allowance at rate of 67% of Basic Pay subject to minimum of Rs.3,150/-, and in respect of employee whose Basic Pay is Rs.6,000/- and above, Dearness Allowance at the rate of 58% of Basic Pay subject to minimum of Rs.4,020/- came to be merged. The said merger was made for the purpose of calculating the gratuity payable.

7. By the Government Order dated 07.01.1999, Dearness Allowance at the rate of 138% was added or merged with the Pay and payments were made with effect from 01.04.1998. It is further submitted that the Government Order dated 07.01.1999 is inapplicable to the employees who retired during the period between 28.11.1995 and 31.03.1998 and was made applicable to the employees who were on the rolls of the Government from 01.04.1998 onwards.

8. That as per the Memorandum of Settlement dated 6. 07.1977, Clause 7(a) provided for payment of gratuity either in accordance with the Payment of Gratuity Act or the Gratuity Regulations whichever was beneficial to the employee and Clause 7(b) provided for payment of gratuity equal to one month's pay for each completed year of service subject to a maximum of Rs.30,000/-. That the settlements are binding on the employees including the respondents and the only option available is to opt for payment of gratuity either under the Gratuity Act or Gratuity Regulations. That the calculation of gratuity is more beneficial to the employees under the Gratuity Regulations than what they would be entitled to under the Gratuity Act. That the claim of the respondents that they are entitled for calculation of payment of gratuity in terms of Krishna Reddy's case is incorrect.

9. The case of the respondents is that the settlement of gratuity is to be calculated on the basis of the last drawn pay, in that, Basic Pay includes Dearness Allowance, and hence, the calculation of pay for the purpose of payment of gratuity is Basic Pay plus Dearness Allowance taking together. That the appellant-employer has calculated and settled the gratuity by only taking into consideration the Basic Pay and without adding the Dearness Allowance and thus

shortchanged the legitimate dues of the employees.

10. Learned Senior Counsel Sri V.Lakshminarayana would contend that the learned Single Judge has fallen in error in placing reliance on Krishna Reddy's case for allowing the writ petitions. He would contend that the facts involved in Krishna Reddy's case are totally different and that the said employee who was appointed on 04.06.1959 retired on 30.03.1996 and in lieu of his retirement on 30. 03.1996, he claimed the benefit of the Government Order dated 28.11.1995. He would fairly submit that the Corporations have rightly interpreted the Government Order dated 28.11.1995 and placing reliance on the same, have extended the benefit. Learned Senior Counsel would invite the attention of the Court to the Government Order dated 28.11.1995 produced along with the compilation of documents filed into Court on 17.03.2017 and would take the Court through paragraph 2 of the Government Order, which reads as under:

"2. Government are now pleased to order that Dearness Allowance mentioned up to the average All India Consumer Price Index (AICPI) and in Government Order No.FD 20 SMP 93 dated 30th October 1993 as indicated below, shall be reckoned as emoluments for the purpose of retirement gratuity/death gratuity under the Karnataka Civil Services Rules in respect of State Government Employees who retire or die on or after 28th November 1995."

11. He would further take the Court to paragraphs 3 & 4 of the Government Order, whereby the Government is pleased to set the ceiling limit with regard to maximum amount of gratuity that could be paid to Rs.2.5 lakhs with effect from 28.11.1995, and further recommended for modification of the existing Karnataka Civil Service Rules.

He would contend that pursuant to the Government Order, Rule 293-D came to be inserted into the Rules which reads as under:

"293-D. In respect of the Statement Government servants who retire or die while in service on or after 28.11.1995 and before 01.04.1998, the dearness allowance sanctioned upto the average of All India Consumer Price Index (AICPI), 1201.66 in G.O.No.FD 29 SRP 93, dated 30th October, 1993 as indicated below, shall also be reckoned with the emoluments as specified in Rule 293-C as emoluments for the purpose of retirement gratuity or death gratuity under the Karnataka Civil Services Rules in accordance with the following scales.-

Rate of dearness

Sl.

Pay Range

allowance to be added

No.

to pay for calculating

gratuity

1

Basic Pay upto Rs.3,500/-

90% of basic pay

p.m.

2

Basic Pay between

67%

of

basic

pay

Rs.3,501/- and upto

subject to minimum of

Rs.6,000/- p.m.

Rs.3150/- p.m.

3

Basic Pay above Rs.6,000/-

58%

of

basic

pay

p.m.

subject to minimum of

Rs.4,020/- p.m.

12. He would contend that on account of merger of Dearness Allowance with Basic Pay, the same resulted in revision of wages and hence, in terms of the definition of 'wage', the gratuity came to be paid by calculating the merged portion of dearness allowance also as wage. That the said Government Order and the consequential amended Rules entitled only such of those employees who retired or died while in service on or after 28.11.1995 and before 01.04.1998 and that writ petitioners who retired between 02.02.2000 and 31.03.2006 are specifically excluded in terms of the Government Order itself. He would further

invite the attention of the Court to Rule 293-E to contend that the Government had fixed a different rate of emoluments for the purpose of calculating retirement and death benefits and family pension in respect of such of those employees who retired or died while in service after 01.04.1998.

13. He would contend that the learned Single Judge has erred in not noticing that this Court, more particularly the Apex Court was pleased to uphold the scheme in Krishna Reddy's case as the same was based on the Government Order dated 28.11.1995 and the said Government Order became applicable to the said Krishna Reddy in view of the fact that he had retired on or after 28.11.1995 and before 1. 04.1998 i.e., he retired on 30.03.1996 and in that view of the matter, the Courts have rightly held that in the light of the settlement arrived at between the parties, the employees would be entitled to the benefits granted by the State Government by way of merger of Dearness Allowance with the Basic Pay or revision of pay scale thereby resulting in payment of higher gratuity.

14. He would contend that the instant petitioners having retired between 2000 and 2006 are not entitled to the benefit of calculation of pay of gratuity by adding Dearness Allowance to the Basic Pay as ordered by the Government vide Government Order dated 28.11.1995 as the said benefit was limited to that group of employees who retired or died while in service on or after 28.11.1995 and before 01.04.1998. That the learned Single Judge failed to take note of the limited applicability set out in the Government Order dated 28.11.1995.

15. He would further contend that the learned Single Judge having accepted the act of merger of Basic Pay with Dearness Allowance with effect from 01.01.2000, could not have directed for further addition of dearness allowance for the purpose of calculating gratuity payable. He would submit that the learned Single Judge has erred in directing computation of gratuity in accordance with Circular No.09/2007 dated 11.07.2007 which came into effect from 1. 04.2006, whereby new pay scale was revised by merging 71% of Dearness Allowance with basic pay, and hence, the learned Single Judge erred in directing extension of this benefit to the respondents who admittedly had retired prior to 01.04.2006.

16. He would further contend that the learned Single Judge has misread the decision rendered in Krishna Reddy's case and construed that the relief has been granted dehors the Government Order dated 28.11.1995. That the relief in Krishna Reddy's case was granted in view of the fact that the employee had retired from service during the period stipulated under the Government Order i.e., on or after 28.11.1995 and before 01.04.1998. He would contend that it is not even the case of the petitioners that they are entitled for computation of their gratuity in terms of the Circular dated 11.07.2007. Admittedly, all the respondents have retired from service prior to 01.04.2006.

17. The contention merits consideration in the light of the fact that the respondents have retired before 01.04.2006 and hence, are ineligible under the Circular dated 11. 07.2007. Further, no such case is canvassed by the petitioners

nor such relief is sought.

18. Learned Senior Counsel would place before the Court the orders passed in W.A.No.437/2012 upholding the findings of the learned Single Judge in W.P.No.23306/2011 and would invite the attention of this Court to the observations of the Division Bench in paragraph 2 to buttress his contention of limited applicability of the Government Order dated 28.11.1995 to that group of employees who died or retired during the period stipulated in the Government Order. He would also contend that the Division Bench has interpreted that Dearness Allowance/emoluments is available only under Rule 293-D and is applicable in respect of that class of Government servants who died between the period on or after 29.08.1995 and before 01.04.1998 and similarly, in case of appellant-Corporations, the same would be applicable in respect of those persons who have retired or died while in service on or after 28.11.1995 and before 01.04.1998 and the instant respondents not being the persons who retired or died between the said period, are not entitled to the benefits of the said notification which was made available to the petitioner in Krishna Reddy's case on account of the fact that the petitioner therein had retired on 30.03.1996 i.e., during the relevant period.

19. Learned Senior Counsel would take this Court through the writ petitions and the representations to buttress his contention that no such relief has been sought for and the direction issued is beyond the scope of the writ petitions. Learned Senior Counsel would fairly submit that he would not press the issue regarding maintainability of the writ petitions and would further pray that the appeals be allowed and the order of the learned Single Judge directing computation of gratuity payable in terms of the Circular dated 11.07.2007 be set aside.

20. Per contra, learned Counsel for the respondents would reiterate the findings of the learned Single Judge and submit that the same does not warrant any interference. Learned Counsel Sri V.S.Naik would place reliance on the ruling of the Apex Court in the case of D.S.NAKARA & OTHERS VS UNION OF INDIA - AIR 1983 SC 130, to contend that the employers are not entitled to discriminate between the employees merely on the basis of date of retirement. In the said case, the Apex Court was dealing with issue of pension formula under the Central Civil Services (Pension) Rules, 1972, whereby the yardstick adopted was the date of retirement and was pleased to hold that the same is arbitrary. It is contended by the learned Counsel Sri V.S.Naik that in the instant case also, the extension of the benefits under the notification is being denied on the basis of the date of retirement only and hence, the said principle is applicable to the instant case also.

21. In our considered opinion, the said interpretation placed by the learned Counsel for the respondents appears to be incorrect. In the instant case, the notifications, Government Orders and Circular are not dealing with pensionary benefits, but with the factum of revision of pay scale on account of merger of Dearness Allowance with Basic Pay and the same is on the recommendation of the State and the fourth and fifth Central Pay Commissions and as a

consequence of which, revision of computation of gratuity is arrived at. Hence, the said ruling in our considered opinion is inapplicable to the facts of the case.

22. Learned Counsel for the respondents would lay emphasis on the observations of the Apex Court on paragraphs 15, 18 & 65 of the aforesaid ruling. In the instant case, the admitted fact is that the Corporation under its Memorandum of Understanding and its Regulations concluded that the gratuity which is beneficial to the employee either under the Payment of Gratuity Act or under the Gratuity Regulations shall be paid. Payment of Gratuity Act provides for payment of gratuity at the rate of 15 days wages based on the scale of pay last drawn by the employee. Whereas, under the Gratuity Regulations, the amount of gratuity payable is one month's pay per year. Hence, the said contention is misconceived.

23. We have given our anxious consideration to all the aforesaid contentions and adverted to the facts and the materials on record.

24. In our opinion, the point that arises for consideration is,

(i) whether the case of the writ petitioners/respondents herein is covered by the ruling rendered in Krishna Reddy's case?

(ii) Whether the petitioners are entitled for computation of gratuity in terms of the Circular dated 11.07.2007?

25. We have perused the order of the learned Single Judge. The learned Single Judge, in our opinion, has erred in holding that the case of the petitioners is covered by the ruling in Krishna Reddy's case, a former employee of the Corporation. In this regard, we have referred to observations of the learned Single Judge in Krishna Reddy's case in paragraphs 3, 5 & 6. The entire claim of the petitioner in Krishna Reddy, was based on the notification dated 28.11.1995. The said claim was sought to be repudiated by the Corporation on the premise that the same has not been adopted by the Corporation. The learned Single Judge after adverting to the facts, particularly to the date of retirement in paragraph 9 and placing reliance on the Memorandum of Understanding dated 17.07.1999, more particularly Clause 5, concluded in paragraphs 10 & 11 that the petitioner therein would be entitled to the benefit under Clause 5 of the Memorandum of Settlement pertaining to merger of Dearness Allowance. After having rendered a categorical finding, the learned Single Judge in Krishna Reddy's case with regard to the entitlement of the employee to the benefit under Clause 5 of the Memorandum of Settlement, held that the Corporation is not at liberty to contend that they are not liable to extend the benefit under the Government Order dated 28.11.1995 on the ground that they have not adopted the same and held that the applicability of the Government Order is automatic in view of Clause 5 of the Memorandum of Settlement and the learned Single Judge in Krishna Reddy's case also found fault with the Appellate Authority for having held that the employee is not entitled to any benefit under the Government Order as the same is not being adopted by the Corporation. The learned Single Judge (Krishna Reddy's case) has been pleased to observe in paragraph 16 as

under:

"16. The gratuity payable to the workmen is the wages which he has earned. It is a deferred wages payable on his retirement. When the stipulation in the settlement categorically provides for extension of all benefits given by the Government to KSRTC employees and when the said Government Order specifically provides for merger of addition of Dearness Allowance with basic pay for the purpose of calculating gratuity the petitioner is legitimately entitled to the said benefit of the Government Order. [emphasis supplied] The Appellate Authority has proceeded on the assumption that unless the respondents adopt the said Government Order the petitioner is not entitled to the said benefit. The workmen are not at mercy of the respondents. Once there is a solemn settlement entered into between the parties it is binding on them. One party to the settlement by unilateral action cannot alter the terms of settlement by taking a stand that unless the Government Order is adopted by them the petitioner is not entitled to the relief.

[emphasis supplied] The said Government Order is expressly adopted under the terms of settlement to the workmen of the respondent of which petitioner is one. Therefore seen from any angle the petitioner is entitled to the relief sought for. Hence, I pass the following order.

Rule is made absolute. The impugned order passed by the Appellate Authority at Annexure-K is hereby quashed. The order passed by Controlling Authority as per Annexure-F is upheld.

Respondents are directed to pay the difference in gratuity payable to the petitioner in terms of Annexure-F within three months from today. Parties to bear their own costs."

26. After a close scrutiny of the ruling rendered by the learned Single Judge, we are of the opinion that the point that came to be considered was, as to whether the Corporation was right in denying the benefit of the Government Order on the ground that the same has not been adopted by the Corporation, despite Clause 5 of the Memorandum of Settlement, and in our opinion, the learned Single Judge has rightly concluded in favour of the petitioner, the said Krishna Reddy. The Division Bench while considering the appeal by the Corporation in W.A.No.7954/2003 formulated the following question for consideration:

"In the light of the rival contentions advanced by the counsel appearing for the parties, the only question that arises for consideration in this appeal is, Whether the Government Order - Annexure-B would be applicable to the employees of the Corporation in view of Clause (5) of the settlement - Annexure-O? [emphasis supplied]"

27. The Division Bench after looking into the findings recorded by the learned Single Judge in paragraph 14, was pleased to reject the hyper technical approach of the Corporation and was further pleased to concur and uphold the views of the

learned Single Judge. Thus, in effect, the ruling of the learned Single Judge (Krishna Reddy's case) that employees are entitled to the benefit under the Government Order in view of Clause 5 of the Memorandum of Settlement was upheld. The said ruling of the Division Bench was taken up before the Apex Court by the Corporation and the contention that in view of the merger of pay pursuant to the Government Order dated 07.01.1999 with effect from 01.04.1998, petitioner (Krishna Reddy) was not entitled to the benefit under the earlier Government Order dated 28.11.1995, came to be rejected. The Apex Court has recorded the facts pertaining to the employee Krishna Reddy and has observed in paragraphs 16 to 19 as under:

"16. We have noticed hereinbefore that the Government of Karnataka in terms of Government Order dated November 28, 1995 inter alia directed that 90% of Basic Pay to be added to pay for calculating gratuity. If the basic pay of an employee was upto Rs.3500/- per month and was drawing a Dearness Allowance of Rs.2000/-, what was to be added was the 90% of the Dearness Allowance which was being paid. If 90% of the Basic Pay as Dearness Allowance is to be added to the basic pay, the employee became entitled to higher wages on the basis thereof. It is in that sense the question of application of the merger of Dearness Allowance with the scale of pay arose for all intent and purport. As was rightly held by the learned single Judge, different terminologies used did not make any material difference. Section 4 of the Act itself contemplates implementation of a settlement. Settlement, therefore, entered into by and between the parties was required to be interpreted having regard to the intention of the parties. What was contemplated by the parties was that the rates of Dearness Allowance would be at par with the rate sanctioned by the State Government to its employees from time to time and from the same date. It was never contemplated that a different amount of gratuity shall be payable to an employee who retires prior to the revision of scale of pay although the terms of the settlement are applicable to his case.

17. What was necessary to be taken into account was the merger of any portion of the Dearness Allowance with pay which was being paid to its employees. In such an event that portion of the Dearness Allowance was also to be reckoned at appropriate level by the appellant for determining the quantum of Gratuity payable to its employees. The said settlement was arrived at for calculating amount of gratuity payable to the employees of the appellant and not for any other purpose.

18. It is, therefore, not a case where the appellant could legitimately raise a contention that any enhancement in the emoluments to its employees by the State would not automatically enhance the emoluments of the employees of the appellant. It has been contended before us that the effect of the merger and addition of Dearness Allowance would be different. It may be so. But, having regard to the fact of the present matter and the definition of 'wages' under the Act, we need not go into the said question.

19. We have noticed hereinbefore that the contention may ordinarily be applicable to a case of merger of the basic pay vis-à-vis adding of Dearness Allowance to basic pay, but, herein the same would not make any substantive difference for the purpose of payment of gratuity keeping in view the definition of "wages" contained in Section 2(s) of the Act. It is not a case where the scheme of the Corporation and the provisions of the Act are inconsistent with each other."

28. It is relevant to note that in the instant case, the petitioners-respondents herein have not questioned the Memorandum of Settlement, but on the other hand, are also canvassing their case in the light of the settlement and payment of gratuity in terms of the Regulations.

29. Thus, on a close reading of the above, we are of the opinion that the case of Krishna Reddy stands on a different footing than the case of the instant respondents. The case of Krishna Reddy was canvassed on the merits of the Government Order dated 28.11.1995 read with Clause 5 of the Memorandum of Settlement, whereby interpreting the same, this Court held that the benefits extended by the State Government would become automatically applicable to the employees of the Corporation also. It is relevant to note that the benefit under the Government Order dated

28. 11.1995 was limited to such employees who retired or died while in service during the relevant period i.e., on or before 28.11.1995 and before 01.04.1998 and the said Krishna Reddy having retired on 30.06.1996, he was rightly held to be entitled.

30. In the instant case, the respondents have retired between 2000 and 2006 and the fact remains that by Government Order dated 07.01.1999, the Government ordered merger of the Dearness Allowance and the Corporation following the said merger added Dearness Allowance, at the rate of 138%, to Basic Pay and payments were made with effect from 01.04.1998. The said merger took place prior to the retirement of the respondents. The next merger admittedly was under the Circular dated 11. 07.2007 with effect from 01.04.2006 i.e., much after the petitioners had retired from service. Hence, the pay of the respondents ought to be in accordance with and calculated in the light of the merger with effect from 01.04.1998 and as per the Gratuity Regulations, the gratuity has to be computed in accordance with the last pay drawn or the pay they were entitled to on the date of retirement from service.

31. It is not the case of the respondents that the appellant-Corporation has computed the gratuity any differently or contrary to Clause 5 of the Memorandum of Settlement. In that view of the matter, we are of considered opinion, that the writ petitions are liable to be rejected and are accordingly rejected.

32. Further, the direction of the learned Single Judge directing computation of gratuity by taking into consideration the Circular dated 11.07.2007 also requires to be interfered with as being beyond the relief sought for in the writ petition.

Accordingly, the writ appeals are allowed. Order of the learned Single is set aside.
No order as to costs.