(2015) 01 KL CK 0059

In the High Court Of Kerala

Case No : Writ Petition(C). No. 14957 of 2013 (T)

Perur Service Co-Operative Bank Ltd. APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 07-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 4, 7, 8

Citation : (2015) 01 KL CK 0059

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : T.C. Suresh Menon, P.S. Appu and A.R. Nimod, for the Appellant; V.K. Rafeeq, Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—The petitioner is aggrieved with the order passed by the Controlling Authority wherein interest was granted from the date of expiry of one month from the date of discharge, i.e., from 11.11.1999. Specifically the challenge is on the ground that there is no power on the Controlling Authority under the Payment of Gratuity Act, 1972 (for short ''the Act of 1972'') to review an order passed. Ext.P5 passed on an application made by the respondent/ employee correcting the interest payable from 11.11.2009 to 11.11.1999 is said to be beyond the jurisdiction conferred on the authority. An appeal filed also was rejected which is produced at Ext.P6.

2. The respondent was admittedly proceeded against for misconduct and in conclusion of disciplinary proceedings, was imposed with the punishment of dismissal. The dismissal took effect from 12.10.1999. A dispute raised on that count was answered by the Labour Court directing reinstatement of the employee. A writ petition filed against the Award of the Labour Court culminated in reinstatement being set aside but however, the punishment being converted to one of discharge. A Division Bench also confirmed the judgment of the learned

single Judge and hence that has become final insofar as the parties are concerned.

3. Subsequent to the judgment of the Division Bench, the petitioner applied for gratuity as per Ext.P1 before the Controlling Authority under the Act of 1972. An order was passed at Ext.P3, allowing the claim and granting interest from 11.11.2009. The employee immediately filed an application at Ext.P4 upon which, the Controlling Authority found that the specification of interest running from 11.11.2009 was a mistake and directed payment of interest from 11.11.1999, the date of expiry of one month from the date of discharge.

4. The learned counsel for the petitioner would contend that, there is absolutely no authority on the Controlling Authority to review its own order. It is to be noticed that this Court is considering an order passed under the Act of 1972, as confirmed in appeal, exercising its jurisdiction under Article 226 of the Constitution of India. The primary concern should be as to whether any illegality has been caused. This Court would not endeavour to exercise its extraordinary jurisdiction to set aside a perfectly justifiable order on mere technical considerations. In such circumstances, de hors the contention of there being no power of review, the injustice, if any, has to be looked into [Rameshan v. Jayavally (2007 (2) KLT 325).

5. The learned counsel for the petitioner would also contend that sub-section (1) of Section 7 of the Act of 1972 mandates an application and since an application was filed only as per Ext.P1, there was no warrant for grant of interest from the date of discharge. The petitioner would further argue that, since the original order was one of dismissal under sub-section (6) of Section 4, the petitioner was not liable to pay any gratuity to the employee and only on account of the interference made by this Court in O.P.29953 of 2001 and W.P.(C). 20922 of 2003 by judgment dated 11.1.2008, converting the punishment into one of discharge; would the respondent be entitled to claim gratuity. The learned counsel would also refer to the 2nd proviso to Section 8 to contend that, the recovery of interest has to be confined to the actual amount of gratuity due.

6. The contention that, there is a mandate in the employee making an application under sub-section (1) cannot be countenanced, going by the provisions in sub-section (1) of Section 7, especially looking at the facts of the above case. In the present case, the order of dismissal was interfered with by the Labour Court by an Award granting reinstatement and there was no warrant for an application for gratuity at that point of time especially since a dispute with respect to the termination was pending before the competent forum.

7. Further, sub-section (2) of Section 7 mandates that even in the event of no application being filed, the employer has the liability to determine the amount of gratuity and give notice of such determination to the employee as also the Controlling Authority. Sub-section (3) of Section 7 further mandates that such amounts shall be paid within 30 days and by sub-section (3A) mulcts liability of

simple interest at the rate notified, on failure to make the payment; however subject to the proviso which requires a permission to be obtained from the Controlling Authority for effecting delayed payment. Sub-section (4) of Section 7 also mandates the deposit of the gratuity amount, if there is any dispute with respect to the payment of gratuity.

8. In considering whether the petitioner in the present case ought to have made the deposit as mandated in sub-section (4) of Section 7, one has to look at the contentions raised by the petitioner, as to, no gratuity being entitled on account of the dismissal, by virtue of the provisions in sub-section (6) of Section 4. That issue is no longer res integra and this Court by judgment reported in Dhanalakshmi Bank Ltd. v. Ramachandran (2012 (2) KLT 170) held that, in making forfeiture of the gratuity amount, there should be a specific order passed to that effect and the factum of dismissal alone will not entitle the employer to make such forfeiture.

9. In the present case, admittedly there is no such order passed since the gratuity amounts have already been deposited by the petitioner before the Controlling Authority. Hence, the fact of severance from employment being on account of a dismissal or discharge is of no relevance since in both events, the employee would be entitled to gratuity; unless a specific order of forfeiture is passed. In such circumstances, it has to be declared that the petitioner herein who was dismissed from service on 12.10.1999, would be entitled to payment of gratuity within one month from that date and such entitlement does not flow from the interference made to the order of dismissal, to one of discharge by this Court. Hence as per the provisions of the Act of 1972, the petitioner is entitled to interest from 11.11.1999. There could be no illegality found, in the grant of interest as made by the Controlling Authority.

10. It is also to be noticed that the provision made in Ext.P3 for interest from 11.11.2009 is an obvious mistake. The date 11.11.2009 does not have any relevance. Neither was the award or the judgment of this Court passed on the said date nor is it pointed out to this Court as to any factual nexus or connection to the date; specified in Ext.P3. It could only have been 11.11.1999, the date of severance from employment.

11. With respect to the contention under Section 8 and the 2nd proviso therein, the same need not be looked into since the Appellate Authority has confined the interest only to the amount of gratuity payable and there is no challenge made by the employee to that order. Such question shall be left open, since the learned counsel for the respondent rightly points out that the said proviso and the Section itself would be applicable only in cases where revenue recovery proceedings are initiated. That however need not be answered by this Court at this point of time.

For the aforesaid reasons, the writ petition is found to be devoid of merit and the same is dismissed. This Court would not extend its long arm under Article 226 of the Constitution of India to interfere with a perfectly justifiable order. If the petitioner does not pay the amounts within a period of three months from today, the 2nd respondent would be entitled to payment of 10% interest from today till payment, which the petitioner Bank would be entitled to recover from the Officer, who committed the default in making such payment, as per the directions of this Court. Parties are left to suffer their respective costs.

