(2004) 08 BOM CK 0055

In the Bombay High Court

Case No : Writ Petition No. 5003 of 2004

Pune District Central Co-operative Bank Limited — APPELLANT

Vs

Shivajirao Dinkarrao Jadhavrao, Deputy Commissioner of Labour and Appellate Authority under the Payment of Gratuity Act, 1972 and The Controlling Authority, Payment of Gratuity Act, Assistant Labour Commissioner — RESPONDENT

Date of Decision : 06-08-2004

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2005) 1 ALLMR 86 : (2004) 6 BomCR 33 : (2005) 104 FLR 238 : (2005) 1 LLJ 838 : (2004) 4 MhLj 859

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : V.D. Patil, for the Appellant; Parag Bhosale, for Respondent Nos. 1, 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—This Petition arises out of the judgment and order passed by the Controlling Authority under the Payment of Gratuity Act, 1972 and the Appellate Authority confirming the same. By the judgments and orders, the Authorities under the Payment of Gratuity Act have directed the Petitioner bank to pay additional gratuity to the respondent-workman including interest thereon @ 10% per annum w.e.f. 30.4.1997 till the date of the order. The Petitioner-bank has also been directed to pay further interest of 10% if the amounts were not paid within 30 days as directed.

2. The Respondent-workman was employed as grade I officer with the petitioner-bank. He was retired w.e.f 28.2.1997. The retirement age was 60 years. After retirement on 28.2.1997, the Respondent was paid gratuity due to him on 18.3.1997. The maximum amount of gratuity payable under the Payment of Gratuity Act, 1972 being Rs. 100,000/- at the relevant time, the respondent was

paid this amount.

2. It appears that on 3.9.1998, the respondent-workman filed an application before the Controlling Authority under the Payment of Gratuity Act (for short, ''the Act'') claiming an additional amount as gratuity. According to the respondent, he was entitled to an amount of Rs. 140,362/- as additional gratuity, having accepted Rs. 100,000/- as gratuity on 18.3.1997 along with interest. The averment in the application for claiming gratuity is that the amount was claimed since other similarly situated workmen, who had retired from service, were paid gratuity in excess of Rs. 100,000/-.

3. A written statement was filed by the Petitioner contending that the gratuity had already been paid to the respondent under the Act and, therefore, no further payment was due to the respondent. The Petitioner contended that the amendment to the Payment of Gratuity Act, enhancing the maximum limit for gratuity to Rs. 2,50,000/- was introduced on 24.9.1997 and therefore, the Respondent was not entitled to avail of the benefit under the amendment. On the basis of the evidence led before it, the Controlling Authority decided that the amount of gratuity claimed by the workman must be paid to him. The Controlling Authority arrived at this conclusion on the basis of a resolution dated 3.2.1997 passed by the Board of Directors of the Petitioner-bank. The Controlling Authority held that although others had retired after the respondent-workman and before 24.9.1997 and they had been paid gratuity in excess of Rs. 100,000/-. The respondent-workman, who was similarly situated, was entitled to the same amounts as claimed by him in his application. The Controlling Authority then considered the resolution of the Board dated 3.2.1997 which according to it, entitled the employees to be paid gratuity without an upper limit. The Controlling Authority found that since others had been paid an amount of Rs. 250,000/- although they had retired prior to the amendment to the Act on 24.9.1997, the respondent-workman was also entitled to a similar increase. Aggrieved by this order, the Bank preferred an appeal before the Appellate Authority. The Appellate Authority confirmed the order of the Controlling Authority. The Petitioner has, therefore, approached this Court under Article 226 and 227 of the Constitution of India.

4. Mr. Patil, learned Advocate for the Petitioner, submits that the respondent in his application had claimed gratuity under provisions of the Act and because some other persons had been paid gratuity in excess of Rs. 100,000/- and therefore, he was entitled to the same. He submits that the bank was, therefore, required only to answer this contention raised by the respondent. The Bank in its written statement had stated that an amount of Rs. 100,000/- had already been paid to the respondent by way of gratuity payable to the workman under the Act and that no further amounts were payable. He therefore, submits that the reliance placed on the resolution of the Board of Directors of the bank by the Controlling Authority and the Appellate Authority is wholly misplaced. According to the learned Advocate, by the resolution of 3.2.1997, the Board of Directors

resolved in principle to introduce a group gratuity scheme which was available with the Life Insurance Corporation and this decision was taken in view of the current situation as well as the proposed amendment to the Act under which the ceiling for payment of gratuity was to be raised to Rs. 250,000/-. He submits that it was in view of the group gratuity scheme which was introduced w.e.f. 1.4.1997 for those employees who were on the rolls on 31.3.1997, that those who had retired between the period 31.3.1997 and 24.9.1997 when the Act was amended, were paid in excess of Rs. 100,000/-. He submits that the group gratuity scheme which was introduced by the Petitioner-bank w.e.f. 1.4.1997 did not specify any limit for payment of gratuity and it is for this reason that the other workmen were paid amounts in excess of Rs. 100,000/- as gratuity although retired after the respondent-workman.

5. Mr. Bhosale, the learned Advocate for the Respondent-workman, submits that the petitioner-bank has not depicted a true picture in its written statement and had in fact suppressed the fact that it had resolved on 3.2.1997 to pay gratuity in excess of Rs. 100,000/-. He submits that the resolution if property interpreted would indicate that on 3.2.1997, a decision was taken to increase the limit of payment of gratuity to Rs. 250,000/- and, therefore, the Petitioner had paid other workmen this amount despite the ceiling on the payment of gratuity being raised to Rs. 250,000/- only by an amendment introduced to the Act in September 1997. He submits that other workmen who were similarly situated had been paid the gratuity in excess of Rs. 100,000/- and therefore there was no reason as to why this amount should be denied by the bank. In answer to the submission of Mr. Patil that the claim made for gratuity was hopelessly delayed, Mr. Bhosale submits that a person cannot be denied gratuity merely on account of there being some delay in approaching the Court. He further submits that the respondent-workman had submitted an application to the bank in the prescribed form and therefore, the bank was expected to deposit the amount within one month in Court or to make the payment to the respondent-workman. The bank in fact had not communicated to the respondent-workman whether the application was rejected to granted. In view of this position, he submits that there can be no limitation. The limitation would start only if the petitioner had denied the gratuity payable to the workman.

6. A proper reading of the gratuity application filed before the Controlling Authority would establish that what was sought was payment of gratuity under the Act. There was no reference made at all to any resolution nor was any reference made to other persons having been paid gratuity in excess of Rs. 100,000/- nor was there any submission that the Petitioner-bank had shown favouritism to some employees or had discriminated against the respondent-workman by not paying him gratuity in excess of Rs. 100,000/-. The written statement, therefore, naturally did not contain any pleading about the resolution of the bank dtd.3.2.1997. According to the bank, as contended in the written statement, the gratuity of Rs. 100,000/- had been paid to the workman on 18.3.1997 in accordance with the Act and no further amounts were payable to

him. It appears that it was during the course of evidence and arguments before the Controlling Authority that material was brought on record to indicate that some persons had been paid gratuity in excess of Rs. 100,000/- although they had retired after the respondent-workman but before the amendment to the Act in September 1997 raising the ceiling to Rs. 250,000/-. The Controlling Authority, therefore, was in error to grant gratuity to the respondent-workman in excess of Rs. 100,000/- when the claim of gratuity was made under the Act and there was no evidence on record to indicate that the bank was paying gratuity at a more beneficial rate than that available under the Act. The only reason for granting the application is that the other employees, who had retired prior to the amendment being brought into force, were paid gratuity in excess of Rs. 100,000/-. The Controlling Authority has observed that the Board resolution of 3.2.1997 had not been brought on record. The Labour Court had given no reasons to indicate as to why the amount in excess of the gratuity claimed should have been paid to the respondent. There was no scheme available before the Controlling Authority which stipulated that gratuity in excess of Rs. 100,000/- was payable to the employees. That being so, the Controlling Authority was wholly in error to grant this amount.

7. The Appellate Authority has committed a further error by confirming the judgment and order of the Controlling Authority. The resolution of the bank dated 3.2.1997 was brought on record before the Appellate Authority. The Appellate Authority has interpreted the resolution to mean that the bank intended to pay the enhanced gratuity to the employees who were on their muster rolls on 3.2.1997. The submission made by the Petitioner that the group gratuity scheme was applicable only from 1.4.1997 was not accepted by the Appellate Authority because by the resolution it was decided to ascertain the burden of the estimated gratuity payable on 3.2.1997. A perusal of the resolution dated 3.2.1997 indicates that the Board of Directors of the bank had taken a decision to introduce the group gratuity scheme in view of the provisions of law then existing as well as the future amendments to the Payment of Gratuity Act which would stipulate Rs. 250,000/- as the maximum limit of gratuity payable to an employee. After deciding to introduce the gratuity scheme in principle, the resolution stated that Rs. 17,78,47,261/- was the liability as on that date. It was then resolved to make a deposit of this amount in installments with the Life Insurance Corporation towards the group gratuity scheme. A further decision was taken to introduce the scheme in respect of workmen who were on the rolls on 21.3.1997. It was also decided to introduce the scheme from 1.4.1997. The Commissioner of Income Tax, Pune had accorded approval to the scheme of gratuity known as the Pune District Central Cooperative Bank Limited Employees Group Gratuity cum Life Insurance Scheme. This approval was effective from 1.4.1997. Therefore, obviously, the scheme could come into operation only w.e.f. 1.4.1997. There is no doubt that some workmen who, the respondent-workman claimed, had retired after him were paid gratuity in excess of Rs. 100,000/-. These persons had retired some time in July 1997. Obviously, therefore, they

were paid gratuity under the Group Gratuity Scheme introduced on 1.4.1997 under which there was no ceiling for the payment of gratuity, although a ceiling existed under the Act. The Petitioner bank therefore, cannot be faulted for having paid those persons who had retired after the introduction of the scheme on 1.4.1997 gratuity in excess of Rs. 100,000/-.

8. It is not possible to accept the interpretation placed on the resolution by the learned Advocate for the respondent-workman. A plain reading of the resolution shows that the decision was to introduce the group gratuity cum life insurance scheme. This decision was taken in order to cope with the current liabilities, that is liabilities as on 3.2.1997 as well as the liabilities which would be incurred on account of the proposed rise in the ceiling limit to Rs. 250,000/- under the Act. The resolution of 3.2.1997 shows that in principle, the Board of Directors of the Bank had decided to introduce the scheme, it was to be introduced w.e.f. 1.4.1997. The Commissioner of Income Tax, Pune, also accorded approval for the scheme only from 1.4.1997 and therefore, the respondent could not be entitled to payment of gratuity having retired prior that date. The submission of the learned advocate for the Respondent that the liabilities on 3.2.1997 would include the gratuity payable to Respondent and therefore, he was entitled to the benefit of the scheme is without merit. The scheme came into force only on 1.4.1997, after the retirement of the Respondent and after he was paid gratuity. Merely because the liabilities as on 3.2.1997 would include the amount of gratuity payable to Respondent it would not necessarily follow that he was entitled to gratuity under the Group Gratuity Scheme.

9. The submission of Mr. Patil that the claims made were belated need not be considered as I have already considered the entire issue on merits.

10. Petition is, therefore, allowed. The application filed by the respondent-workman is dismissed.

11. The amounts awarded have been deposited by the bank with the authorities. In view of the Petition being allowed, the bank may withdraw the amounts deposited alongwith the accrued interest, if any.