
(1998) 03 AP CK 0087

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2889 of 1997

R. Nagaraju

APPELLANT

Vs

Managing Director, A.P. State Ware Housing Corpn., Hyd.

RESPONDENT

Date of Decision : 30-03-1998

Acts Referred:

Andhra Pradesh State Warehousing Corporation Employees Gratuity Fund Regulations, 1974 — Regulation 4, 7
Payment of Gratuity Act, 1972 — Section 4(3), 4(5)
Warehousing Corporations Act, 1962 — Section 42

Citation : (1998) 3 ALD 579 : (1998) 4 ALT 657 : (1998) 80 FLR 875

Hon'ble Judges : V. Rajagopala Reddy, J

Bench : Single Bench

Advocate : Mr. G. Vidyasagar, for the Appellant; Mr. A.V. Sivaiah, SC for Corpn., for the Respondent

Judgement

1. The petitioner, an employee of the respondent-Ware Housing Corporation, retired from service as warehousing Manager Grad-I on 30-6-1996. On the date of his retirement he completed 30 years of service. The respondent Corporation u/s 42 of the Warehousing Corporation Act 1962 and with prior sanction of the Government framed Regulations called A.P. State Warehousing Corporation Employees Gratuity Fund Regulations, 1974 (hereafter called "the Regulations")- The Regulations came into force w.e.f. 1-4-1971. Admittedly the petitioner is governed by the said Regulations. As per Regulation 4 of the Regulations, the petitioner was entitled for the gratuity equivalent to 15 days pay of the employee for each completed year of qualifying service, subject to a maximum of 20 months pay. The petitioner's pay at the time of retirement, was Rs. 6150/-in addition he was drawing a total pay including D.A. Rs- 8,114/-. As per Regulations, pay + D.A. will be taken into consideration for the purpose of calculation of gratuity. Since the petitioner completed 35 years of service, he was entitled for 17 1/2 months pay, which came to Rs. 1,63,840-38 Ps. However, the respondent Corporation paid only Rs.1,00,000/-. Aggrieved by the same, the

petitioner made a representation dated 16-10-1996 for payment of differential gratuity amount as per regulations. Since the same was not paid, he filed this writ petition for a direction for payment of gratuity in accordance with Regulation 4 of the Regulations.

2. The respondent filed counter affidavit and contested the claim of the petitioner.

3. It is contended by the learned Counsel for the petitioner that though sub-section (3) of Section 4 of the Payment of Gratuity Act, 1972 (for short, "the Act"), stipulates that the amount of gratuity payable to an employee shall not exceed Rs. 1,00,000/- but in view of sub-section (5) the petitioner was entitled for payment of gratuity in accordance with Regulation 4 of the Regulations, since the Regulations provide for better terms of gratuity.

4. It is, however, contended by the learned Counsel for the respondent that the payment of gratuity was governed only by sub-section (3) of Section 4 of the Act and the petitioner was entitled for Rs. 1,00,000/- only which was already paid.

5. Sub-section (3) of Section 4 of the Act underwent three amendments. Initially the sub-section (3) provided for 20 months wages towards gratuity. However, by Act 22/87, which came into force w.e.f. 1-10-1987, it was amended to say that Rs. 50,000/- should be paid instead of 20 months wages. Subsequently, by Act 34/94 which came into force w.e.f. 24-5-1994 Rs. 50,000/- was amended to Rs. 1,00,000/-. The relevant date for the purpose of payment of gratuity to the petitioner is the date of his retirement i.e. 30-6-1996. Hence, as on the said date the amount payable under sub-section. (3) of Section 4 of the Act was Rs. one lakh and relying upon the said provision the Corporation paid Rs. 1,00,000/-. Therefore, it has to be seen whether the petitioner is entitled for any better terms of gratuity under sub-section. (5) of Section 4 of the Act?.

6. Sub-section (5) of Section 4 of the Act reads as follows:

"(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer."

Thus, it is very clear that nothing in the section should effect an employee if he was entitled under any award or agreement of contract with the employer, for better terms of gratuity.

7. Learned Counsel for the petitioner submits that Regulation 4 is in the nature of contract. Since they have come into force v.v.e.f. 1-4-1971, payment of gratuity to the petitioner is governed by the above Regulations. In exercise of powers conferred by Section 42 of the Warehousing Corporation Act 1962, the above Regulations have been framed for the payment of gratuity to its employees. Thus, the regulations are in the nature of contract between the employer and the employee. Reg. 4 clearly stipulates that the Corporation shall pay the amount of gratuity equivalent to 15 days pay of the employee for each completed year of qualifying service, subject to maximum of 20 months' pay. Thus, an employee, on the date of his retirement, is entitled for a gratuity, reckoning completed

years" of service, but not exceeding 20 months pay. Admittedly, as per Reg. 4 the petitioner is entitled for 17 V, months pay. since he has completed 30 years of service which is the amount claimed by the petitioner in the writ petition. Hence, in view of subsection (5) of Section 4 the petitioner is entitled for the amount claimed since Reg.4 of the Regulations provide for better terms of gratuity under contract.

8. Learned Counsel for the respondent, however, submits that the Regulations, having been framed in 1974 in conformity with the unamended sub-section (3) of Section 4 when the provision for payment of gratuity was subject to a maximum of 20 months" pay, without suitably amending it in conformity with later amendments, they are not applicable. Though sub-section (3) underwent amendments subsequently, changing the scheme and basis for the payment of gratuity and now fixing a consolidated amount of Rs. one lakh, the Regulations were not, ununderstandably, amended. It should therefore be held that the Corporation did not intend to provide any better terms of gratuity. Hence, the petitioner cannot be given the benefit of Reg, 4 but should be paid only in accordance with sub-section (3) of Section 4 of the Act.

9. It is significant to notice that the above explanation was not stated in the counter affidavit.

10. There appears to be some justification in the contention. But the explanation put forward may be true or may not. However, the petitioner cannot be denied the benefit that was conferred by virtue of sub-section (5) of Section 4 of the Act read with sub-section (3). It is not the case of the respondent that the Regulations are invalid. It is not denied that for the payment of gratuity the Regulations are being followed. Regulation 7 also indicates that the gratuity has to be paid under these Regulations and such payment is final,

11. Learned Counsel for the petitioner relies upon the decision in the Workmen of Metro Theatre, Bombay Vs. Metro Theatre Ltd., Bombay, in support of his contention that under sub-section (5) better terms of gratuity could be obtained by an employee by an agreement of contract with the employer. In that case it was observed that any subsequent gratuity scheme that was contemplated by the Act and that better terms of gratuity could be obtained by an employee by an agreement with the employer notwithstanding the scheme of gratuity obtained under the Act.

12. A plain reading of Regulation 4 shows that the Corporation granted better terms of gratuity to the employee. The petitioner is, therefore entitled to be paid in accordance with. Regulation 4.

13. In view of the foregoing discussion, the writ petition is allowed. The respondent-Corporation is directed to consider payment of gratuity to the petitioner in terms of Regulation 4 of the Regulations and in the light of the observations made by me, within four weeks from the date of receipt of a copy of this order. In the circumstances, the respondent shall pay costs of Rs. 2,500/-

(Rupees two thousand five hundred only)