(2013) 06 KL CK 0047

In the High Court Of Kerala

Case No : C.O.C. No. 1307 of 2012 in Writ Petition (C) No. 34217 of 2011

Rajasekharan Nair — APPELLANT

Vs

Kerala State Electricity Board — RESPONDENT

Date of Decision : 12-06-2013

Acts Referred:
Payment of Gratuity Act, 1972 — Section 7, 7(3A), 8

Citation : (2013) 3 KHC 74 : (2013) 3 KLT 198 : (2013) LLR 984

Hon'ble Judges : P.N. Ravindran, J

Bench : Single Bench

Advocate : R. Sreehari and R. Mohan Kumar, for the Appellant; K.S. Anil, for the Respondent

Judgement

P.N. Ravindran, J.—The petitioners are former employees of the Kerala State Electricity Board (hereinafter referred to as ''the Board'' for short). Upon retirement they were paid terminal benefits including gratuity computed in terms of the provisions contained in Part-III of the Kerala Service Rules. Long after their retirement from service, the petitioners filed separate applications before the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the "Act" for short) seeking payment of gratuity in terms thereof. Those applications were disposed of by orders produced and marked as Exts.P1 to P4 in W.P.(C) No. 34217 of 2011. By the said orders, the Controlling Authority held that the petitioners are entitled to gratuity under the Act and directed the Board to pay the difference in the amount of gratuity together with simple interest at the rate of 10% per annum from the date on which it fell due, within 30 days of question as to whether the petitioners are entitled to interest on the difference in the amount of gratuity was specifically raised and decided in favour of the petitioners. When the amount covered by the said orders was not paid, the aforesaid Writ Petition was filed. When W.P.(C) No. 34217 of 2011 came up for consideration before me on 11.1.2012, after hearing the learned counsel on both sides, it was disposed of by Annexure A1 judgment with the following directions:
(i) The Board shall within six months from today deposit with the Controlling

Authority the principal amount payable to the petitioners in terms of Exts.P1 to P4 orders and shall within six months from the date of deposit of the principal amount deposit the interest portion computed with reference to the respective due dates till the date of deposit of the principal amount.

a) Upon such deposits being made, it will be open to the petitioners to unconditionally withdraw the amounts deposited.

This contempt case is filed alleging that though pursuant to the direction of this Court, the principal amount of gratuity was paid and later interest was also paid, the interest was limited to the principal amount of gratuity. In other words, it is contended that though the petitioners were entitled to a higher amount by way of interest, interest was limited to the principal amount. It is alleged that the respondent has thereby committed civil contempt of this Court.

2. The respondent has entered appearance and filed an affidavit dated 28.2.2013. The stand taken therein is that in view of S. 8 of the Act, the interest paid to the petitioners was limited to the principal amount of gratuity ordered to be paid by the Controlling Authority. It is also contended that if the petitioners are aggrieved by the quantum of interest, they can raise the issue before the appropriate forum.

3. The liability to pay interest on the amount of gratuity arises by virtue of S. 7(3A) of the Act, which reads as follows:

7(3A). If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as mat Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground].

4. The Government of India have in exercise of the power conferred on it issued a notification dated 1.10.1987 specifying the rate of interest payable in terms of sub-section (3A) of S. 7 of the Act. The notification reads as follows: In exercise of the powers conferred by sub-section (3A) of Section 7 of the Payment of Gratuity Act, 1972 the Central Government hereby specifies ten percent per annum as the rate of simple interest payable for the time being by the employer to his employee in cases where the gratuity is not paid within the specified period. This notification shall come into force on the date of its publication in the official Gazette.

It was relying on sub-section (3A) of S. 7 of the Act and the notification dated 1.10.1987 issued by the Central Government that the Controlling Authority held in Exts.P1 to P4 orders produced in the Writ Petition that the petitioners are entitled to interest at the rate of 10% per annum. The stand now taken by the respondent is that interest payable to the petitioners cannot exceed the principal amount of gratuity. The Apex Court has in Charon Singh v. Birla Textiles & Anr. (1988 (57) FLR 543) held, interpreting the aforesaid provision, that it is only when the Collector issues a certificate for recovery of the dues as a public demand that interest as provided under S. 8 is admissible. The respondent cannot therefore rely on S. 8 of the Act to contend that the interest payable should be limited in terms thereof. That apart, the interest payable under S. 8 is not simple interest, but compound interest at such rate as the Central Government may, by notification, specify. The second proviso to S. 8 of the Act stipulates that the amount of interest payable under S. 8 shall in no case exceed the amount of gratuity payable under the Act Such a stipulation has been made for the reason that unlike interest under S. 7(3A) of the Act, which is only simple interest, interest which is recoverable under S. 8 of the Act is compound interest. In the instant case what is payable is only simple interest under S. 7(3A) of the Act. Therefore, for that reason also, I am of the opinion that no reliance can be placed on S. 8 of the Act to contend that the petitioners are not entitled to interest in excess of the principal amount of gratuity payable to them.

I am therefore satisfied that the petitioners have made out a prima facie case warranting initiation of proceedings against the respondent under the Contempt of Courts Act, 1971. I accordingly refer this contempt case to be heard by a Division Bench of this Court.

