

(2007) 05 PAT CK 0151
In the Patna High Court
Case No : LPA No. 117 of 1998

Satya Narain Kapoor and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-05-2007

Acts Referred:

Citation : (2008) 1 PLJR 74

Hon'ble Judges : Navaniti Pd. Singh, J; Barin Ghosh, J

Bench : Division Bench

Advocate : Y.V. Giri and Jyoti Saran, for the Appellant; R.S. Pradhan and Mr. Prem Kumar Jha for the Corporation, for the Respondent

Final Decision : Allowed

Judgement

Barin Ghosh and Navaniti Pd. Singh, JJ.—Appellants, who were employees of a Sugar Mill, which was taken over under the Bihar State Sugar Undertakings (Acquisition) Act, 1985 and which, upon such take over, became Hathwa Unit of the Bihar State Sugar Corporation, filed a writ petition seeking payment of gratuity by the said Corporation and provident fund dues payable to them under the Employees' Provident Funds and Miscellaneous Provision Act, 1952. The writ court directed the appellants to file applications in proper form before the Assistant Provident Fund Commissioner, Employees' Provident Fund, Muzaffarpur to obtain their provident fund dues to the extent they are entitled. We are told that at least appellant No. 1 has received his provident fund dues pursuant to the said direction of the writ court.

2. That state of affairs clearly indicates that Provident Fund accounts of the employees of the said Unit were maintained by the Assistant Provident Fund Commissioner, Employees' Provident Fund, Muzaffarpur, and, accordingly, to the credit of the employees of the said Unit provident fund is lying in the accounts of the employees of the said Unit maintained by the said Assistant Provident Fund Commissioner, Employees' Provident Fund, Muzaffarpur, if not withdrawn by them or some of them.

3. The writ court decided that in view of Sections 3 and 4 of the Act, the Corporation has no liability to pay gratuity for the period the employees of the said Unit worked prior to its take over. That is the lis in the present appeal. Section 11 of the said Act, to the extent we are concerned here, is as follows:--

"11. Management etc. of the scheduled undertakings.--The general superintendence, direction, control and management of the affairs of the business of a scheduled undertakings, the right, title and interest of the owners and occupiers in relation thereto, which are vested in the State Government u/s 3, shall be?

(2) Every person who is a workman within the meaning of Industrial Disputes Act, 1947 (Act 14 of 1947) and has been in the employment of the scheduled undertaking on or before the 29th day of October, 1978 shall become, on and from the appointed day an employee of the State Sugar Corporation/Government company, as the case may be, in which the right, title and interest of scheduled undertakings have vested under this Act and shall hold office or service in the scheduled undertaking with the same right to pension, gratuity and other matters as would have been admissible to him if the rights in relation to such a scheduled undertaking has not been transferred to and vested in the State Government/Corporation and continue to do so unless and until his employment in the scheduled undertakings is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the State Government/Corporation:

Provided that the State Government may enquire about the genuineness of the workmen at any time whether the workman was genuinely employed in the undertaking on or before the 29th October, 1978 and may terminate the services of such workmen who were not so employed."

4. Provisions of Section 11 of the Act, as setout above, therefore, while makes the erstwhile workmen of a taken over undertaking employees of the Corporation, continues their right to get the same gratuity as was admissible to them while in employment of the taken over undertaking until they remain in employment of the Corporation or until the terms of payment of gratuity is altered by the State Government.

5. By reason of Section 3 of the Act, on the appointed day the scheduled undertakings taken over by and under the said Act stood transferred to and vested in the State of Bihar free from all encumbrances but together with all assets, rights, lease hold powers, authorities and privileges. Sub-section (4) of Section 4 of the Act clarifies that every liability of a taken over undertaking in respect of any period prior to the appointed date shall be the liability of the owner of the taken over undertaking and shall be enforceable against such owner and not against the Government/Corporation.

6. Principally in view of the provisions contained in Section 3 and Subsection (4) of Section 4 of the Act, the writ court held that the liability on account of

gratuity, until such time the undertaking was not taken over, shall vest in the owner of the undertaking and not upon the Corporation. At the same time, as would be evident from the judgment and order under appeal, the writ court had no occasion to take note of the provisions contained in Sub-section (2) of Section 11 of the Act.

7. The liability to pay gratuity is a statutory liability governed by the provisions contained in the Payment of Gratuity Act. In terms of the provisions contained in the Payment of Gratuity Act liability to pay gratuity accrues to the employer upon superannuation, retirement or termination of services of the employee, provided, however, the employee concerned had been employed in the same establishment for the period mentioned in the said Act. In such view of the matter, as on the date when the concerned undertaking, where the appellants were working, was taken over, the owner of the said undertaking had no liability towards the appellants on account of gratuity, for by reason of such taken over, neither the appellants superannuated or retired, nor their services were terminated. In order to make the matter further clear, in Sub-section (2) of Section 11 of the Taking Over Act it had been provided that right to gratuity shall continue in the same manner as was existing immediately prior to taking over of the Undertaking, where the appellants were working, until their employment is terminated or until terms and conditions of their employment are altered by the State Government. Inasmuch neither the State Government, nor the Corporation has prescribed a better scheme for payment of gratuity, and as it is nobody's case that the erstwhile employer had prescribed any such scheme, the right of the appellants to get gratuity on the basis of the provisions contained in the Payment of Gratuity Act continued until their employment came to an end by reason of superannuation.

8. In such view of the matter, we are of the view that the writ court was incorrect in holding that the Corporation is liable to pay gratuity to be calculated from the date the appellants were employed in the Corporation and the erstwhile owner of the taken over Undertaking will be liable for the period prior to take over. According to us, only when the employment of the appellants come to an end, the appellants, if they have worked for the minimum period prescribed in the Payment of Gratuity Act, became entitled to gratuity to be calculated for the entire length of their employment, i.e., for the entire length of their employment, when the undertaking had not been taken over, and also when the undertaking had been taken over, and liability to pay gratuity for the entire period will rest in the Corporation. We think that our view, which is supported by Sub-section (2) of Section 11 of the taken over Act, is also supported by a judgment of the Hon'ble Supreme Court rendered in the case of Central Coalfields Ltd. Vs. Union of India (UOI) and Others, . In view of the findings as recorded above the judgment and order under appeal to that extent is set aside and the writ petition is also allowed to that extent. The time to pay gratuity in terms of the provisions of the Payment of Gratuity Act is extended by three months from today, in default it shall be open to the appellants to take recourse to the provisions of the said Act.