(2014) 02 P&H CK 0059

In the Punjab And Haryana At Chandigarh

Case No : LPA Nos. 406, 407, 408, 618 and 619 of 2009

Senior Superintendent of Post Offices	APPELLANT
Vs	
Darshan Ram	RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

Constitution of India, 1950 — Article 311
Payment of Gratuity Act, 1972 — Section 2(e)

Citation : (2014) 142 FLR 116 : (2014) LabIC 3933 : (2014) 3 LLJ 611

Hon'ble Judges : Rajive Bhalla, J;Bharat Bhushan Parsoon, J

Bench : Division Bench

Advocate : Namit Kumar, Advocate for the Appellant; Madan Mohan, Kulwant Kaur Kahlon and Amrit Pal Singh Kahlon, Advocate for the Respondent

Judgement

Dr. Bharat Bhushan Parsoon, J.—Five Letters Patent Appeals bearing Nos. 406, 407, 408, 618 and 619 of 2009 arising out of adjudication of Civil Writ Petitions bearing Nos. 3450, 3452, 3449 (decided on 4.3.2009), 5290 and 5291 of 2009 (decided on 1.4.2009) respectively by the learned Single Judge for adjudication are being taken up together as these are inter-connected.

The only issue to be adjudicated in these appeals is as to whether Extra Departmental staff of the Post Offices earlier governed by the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 (for short, the Rules of 1964) and now governed by the Gramin Dak Sevak (Conduct and Employment) Rules, 2001 (for short, the Rules of 2001) is covered under the Payment of Gratuity Act, 1972 (hereinafter called the Gratuity Act) and thus, is entitled for payment of gratuity under the Gratuity Act by the employer? Private respondents in these appeals having superannuated from their respective posts (which they were manning), were paid ex-gratia gratuity @ half month''s basic allowance as drawn by them immediately before laying down their offices for each completed year of service, subject to a maximum of Rs. 18,000/- or 161/2 months basic allowance last drawn, whichever is less.

In addition to payment of this ex-gratia gratuity, a severance allowance with a maximum limit of Rs. 30,000/- was also paid.

2. Having come to know that they have not been paid their gratuity in terms of the Gratuity Act, the private respondents had approached the Controlling Authority-cum-Assistant Labour Commissioner (Central), Chandigarh-respondent No. 2 (hereinafter called the Controlling Authority) claiming gratuity under the Gratuity Act. Condoning the delay in filing of their such claims, the Controlling Authority deciding the matter in favour of the employees found that claim of the employees had merit and additional payment with 10% interest, was ordered in each case.

3. Aggrieved with the said orders of the Controlling Authority passed on different dates in case of different claim petitions of the superannuated employees, the employer had preferred separate appeals before the Appellate Authority-cum-Regional Labour Commissioner (Central), Chandigarh-respondent No. 3 (hereinafter called the Appellate Authority). Rejecting plea of the employer that the employees were ''civil servants'' and thus, were not covered under the Act, in all these cases, orders of the Controlling Authority were upheld. In these appeals, affirmation of the said orders of the Appellate Authority by Hon''ble Single Bench of this Court, is under challenge.

4. For convenience and clarity, facts have been taken from LPA No. 406 of 2009.

5. Claim of the appellant is that employee Darshan Ram, now represented by his legal representatives, was a civil servant and thus, was outside the purview of the Gratuity Act and could not have been granted benefit of gratuity under the said Act. Liability to pay additional amount of gratuity as ordered by respondent Nos. 2 and 3 over and above the ex-gratia gratuity earlier paid by them, is questioned.

6. Citing Union of India and others v. Kameshwar Parsad, (1977) 11 SCC 650 it is contended by the Counsel for the appellant that holder of a civil post is not entitled to payment of gratuity under the Gratuity Act and thus, the private respondents are not entitled for additional payment under the Gratuity Act, as was ordered by the Controlling Authority as well as by the Appellate Authority. It is claimed that affirmation of these orders by the learned Single Bench of this Court is also against law.

7. It is alleged that all retrial benefits of the retiree Darshan Ram having been already paid, nothing more is due towards him and the Gratuity Act being not applicable, no further liability of the appellant exists.

8. Countering this version, claim of the private respondents is that neither Darshan Ram was holding a civil post nor was he a civil servant and thus, he having died, his legal representatives are entitled to the benefit under the Gratuity Act.

9. Per contra, contention of the private respondents is that merely because some

protection in matters of departmental enquiries was available to Darshan Ram and to other equally placed employees with him at par with incumbents of civil posts, they were not holding civil posts and thus, cannot be denied applicability of the Gratuity Act to them since it is a beneficial social security legislation for the employees.

10. Hearing has been provided to the learned Counsel for the parties while going through the paper books.

11. To adjudicate the controversy between the parties, definition of an employee as provided in section 2(e) of the Gratuity Act is reproduced as below:

2. Definitions.

(a) x x x

(b) x x x

(c) x x x

(d) x x x

(e) "employee" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oil field, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

12. It is a conceded fact that Darshan Ram (now deceased and represented by his legal representatives) at the time of his superannuation was governed by the Rules of 2001 which Rules were replaced by the Rules of 1964. As per Rule 3(c) of the Rules of 2001, meaning of Gramin Dak Sevak has been given, as under:

3. Definitions.

(a) x x x

(b) x x x

(c) "Gramin Dak Sevak" means--

(i) a Gramin Dak Sevak Sub-Postmaster;

(ii) a Gramin Dak Sevak Branch Postmaster;

(iii) a Gramin Dak Sevak Mail Deliverer;

(iv) a Gramin Dak Sevak Mail Carrier;

(v) a Gramin Dak Sevak Mail Packer;

(vi) a Gramin Dak Sevak Mail Messenger;

(vii) a Gramin Dak Sevak Mailman;

(viii) a Gramin Dak Sevak Stamp Vendor.

13. Similarly, Sevak as per Rule 3(i) of the Rules of 2001 means as under:

3. Definitions.

(i) "Sevak" means a person working as a Gramin Dak Sevak.

14. Note II appended to Rule 3 of the Rules of 2001 is of great significance. In particular clauses (v) and (vi) of the Note II clinch the issue.

For ready reference, these clauses are reproduced hereunder:

Note II (i) x x x

(ii) x x x

(iii) x x x

(iv) x x x

(v) A Sevak shall be outside the Civil Service of the Union;

(vi) A Sevak shall not claim to be at par with the servant of the Government.

(vii) x x x

(viii) x x x.

15. Clause (v) of Note II appended to Rule 3 of the Rules of 2001 (supra) specifically postulates that such Sevak is not a member of Civil Service of the Union and thus, clearly does not become a civil servant.

16. Clause (vi) of Note II appended to Rule 3 of the Rules of 2001 (supra) makes the position even further clear as the Sevak is debarred from seeking parity with the holders of civil posts of the Government.

17. When it is established from the very Rules applicable to employee Darshan Ram that he was neither holder of a civil post nor even could claim parity in any matter with the servants of the Government, he was thus very well covered under the definition of an employee under the Gratuity Act and thus, was entitled to payment of gratuity under the Gratuity Act, notwithstanding payment of ex-gratia gratuity and severance allowance made to him earlier under the Rules applicable to him. By no means, payment of ex-gratia gratuity or severance allowance is comparable to the payment of gratuity under the Gratuity Act or would debar him from claiming gratuity under the Gratuity Act.

18. In the impugned judgment, learned Single Judge has taken note of a Division Bench judgment of this Court in case Senior Superintendent of Post Offices v. Smt. Shorn Dulari and others, CWP No. 7576 of 2006 decided on 18.5.2006

whereby payment of gratuity under the Gratuity Act was allowed to similarly situated employees as are the private respondents in the appeals in hand. Decision of the Division Bench judgment of this Court was unsuccessfully challenged by the appellant-employer before the Hon''ble Supreme Court of India though there, the question of law was left open.

19. Counsel for the appellant citing Union of India and others v. Kameshwar Parsad (ibid) has urged that the respondents were holding posts under the Central Government and thus, were not entitled to the benefits under the Gratuity Act. In (his judgment, Hon''ble Supreme Court of India had considered the aspect of applicability of status of such employees vis-?-vis. departmental proceedings only and had held that EDA employees were entitled to protection of Article 311 of the Constitution of India. If the private respondents have been held entitled to the protective umbrella of Article 311 of the Constitution of India in matters of departmental action against them, as is available to civil servants, ipso facto, it would not mean that they are holding civil posts and thus, are disentitled for the benefit of payment of gratuity under the Gratuity Act. The authority Union of India and others v. Kameshwar Parsad (supra) was also considered in the Division Bench judgment of this Court which has been discussed earlier.

20. Viewed from another angle, as per scheme of the Gratuity Act, this statute is not applicable to cases where any other rule or statute is more beneficial than the Gratuity Act. By now, it is evident that the rules applicable to the private respondents were not more beneficial than the Gratuity Act, as even after payment of ex-gratia gratuity to them huge amount is payable to them under the Gratuity Act. In E.I.D. Parry (I) Ltd. v. G. Onikar Murthy 2011 (89) FLR 844 (SC), it was further held that more beneficial enactment is to be made applicable inter alia in matters of payment of gratuity. In Municipal Corporation of Delhi Vs. Dharam Prakash Sharma and Another, it was further held that employees of the Municipal Corporation are entitled to payment of gratuity notwithstanding provision of payment of retrial benefits to them under the CCS (Pension) Rules, 1972 wherein there was provision for payment of pension as well as gratuity to the employees of Municipal Corporation, Delhi. From the totality of facts and circumstances, nothing militating against the impugned judgment of learned Single Judge as also orders of the Controlling Authority as well as the Appellate Authority could be mustered by the appellant. The five appeals being without any merit are, consequently, dismissed.