(2015) 02 KAR CK 0359

In the Karnataka High Court

Case No : Writ Petition No. 72935/2012 [L-KSRTC]

Shaikh Mehaboob APPELLANT

Vs

The Divisional Controller, NEKRTC and Others RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Citation : (2015) 02 KAR CK 0359

Hon'ble Judges : Aravind Kumar, J.

Bench : Single Bench

Advocate : Anant P. Savadi, for the Appellant; J.S. Shetty, Advocates for the Respondent

Final Decision : Allowed

Judgement

Aravind Kumar, J.—Heard Shri Anant P. Savadi, learned counsel appearing for petitioner and Shri J.S. Shetty, learned counsel appearing for respondent No. 1 and Shri Ravi V. Hosamani, learned AGA appearing for respondent No. 2. Perused the case papers.

2. Petitioner has called in question order passed by 2nd respondent in Appeal No. SR-04/2010-11 dated 28.06.2012 Annexure-F, whereunder respondent No. 1 has been directed to pay Rs. 2,960/-with interest of Rs. 1,135/- towards the arrears of gratuity.

3. Petitioner''s husband was an employee of 1st respondent - Corporation and on attaining the age of superannuation, he retired from service on 30.04.2002. He had put in 35 years 8 months service. Since the extant Regulations governing the settlement of gratuity was more beneficial than the provisions of Gratuity Act, applying said Regulations, 1st respondent determined the gratuity payable to the employee without taking into account the Dearness Allowance component.

4. Grievance of the employee was that Corporation had entered into an agreement with the Employees Union on 16.02.1978 under which it was made clear that from 01.01.1977 basic pay would be merged with Dearness Allowance

and on account of non-merger of basic pay with Dearness Allowance said component is to be taken into consideration for the purpose of calculation of gratuity payable and by taking the said component to basic pay multiplying the same with number of years of service, gratuity payable to an employee ought to have been determined and on account of said procedure having not been adopted, employee filed an application for determination of Gratuity before the Controlling Authority, who by order dated 26.02.2010 directed 1st respondent to pay a sum of Rs. 1,98,203/- vide Annexure-E.

5. Being aggrieved by this order, Corporation filed an appeal before Appellate Authority in Appeal No. SR-04/2010-11 who adjudicated the appeal and by order dated 28.06.2012 Annexure-F allowed the appeal and held that circular No. 9/2007 showing merger of 71% of Dearness Allowance is not applicable to the claim of employee and as such, had modified the order of Controlling Authority and held that Corporation is liable to pay a sum of Rs. 2,960/- with interest of Rs. 1,135/-.

6. As to whether Dearness Allowance component is to be merged along with basic pay for the purpose of calculating the gratuity was the subject matter of consideration before the Co-ordinate Bench of this Court in Krishna Reddy''s case which order passed by this Court came to be affirmed and Corporation as well as State made a submission in similar matter before this Court in W.P. Nos. 67313-329/2011 connected with W.P. No. 66136/2011 to contend that law laid down in Krishna Reddy''s case was not applicable in respect of employees retiring after 01.04.1998. This Court having noticed that if the Corporation subsequently by circular No. 9/2007 had itself extended the merger of Dearness Allowance with basic pay and paid the gratuity to its employees it cannot contend that Dearness Allowance is not required to be merged. As such, this Court rejected the contention of Corporation as well as State by order dated 28.06.2012. It has been held by this Court to the following effect:

"26. As already noticed herein above in Krishna Reddy''s case, it has been held that when the settlement categorically provides for extension of all the benefits given by Government to its employees would also apply to Corporation employees and when said Government Order specifically provides for merger or addition of Dearness Allowance with basic pay for the purpose of calculating the gratuity, then petitioners would be legitimately entitled to contend that benefit of Government order should also be extended to them.

27. Shri Shivakumar S. Badawadagi would not dispute the fact that Corporation by Circular No. 09/2007 dated 11.07.2007 has merged the Dearness Allowance, yet against with the basic pay from 01.04.2006 by adding 71% Dearness Allowance to the basic pay. Said circular which has been made available by him during the course of arguments would clearly indicate that employees who have retired on or after 01.04.2006 would be entitled to claim gratuity on such merger of Dearness Allowance with the basic pay. Thus, incidental question that would arise would be: whether on account of there being no merger of Dearness

Allowance between the date of retirement of petitioners till the next merger took place i.e., up to 01.04.2006, whether such employees would also be entitled to seek for merger of Dearness Allowance with basic pay and claim for payment of gratuity, the answer will have to be necessarily in the affirmative. When the employees who had retired from 01.01.1996 to 01.01.1998 had been deprived of this benefit of merger of Dearness Allowance with basic pay by Corporation, they had approached this Court and contention of Corporation came to be negatived by the coordinate Bench and affirmed by Division Bench as already noticed herein above. Hence, Corporation cannot now take a contrary stand particularly when the issue involved in the present writ petition having been laid to rest in Krishna Reddy''s case and said issue being no more res integra . Hence, point No. 2 came to be answered in affirmative i.e., in favour of petitioners and impugned endorsements are liable to be set aside."

7. In view of dicta laid down by this Court in W.P. Nos. 67313-329/2011 connected with W.P. No. 66136/2011 as noticed herein above, issue involved in the present writ petition has to be held as no more res integra and as such, this Court is of the considered view that petitioner has to succeed.

Hence, I proceed to pass the following:

ORDER

(i) Writ petition is hereby allowed.

(ii) Order passed by 2nd respondent dated 28.06.2012 Annexure-F is hereby quashed and order passed by Controlling Authority dated 26.02.2010 Annexure-E is hereby restored.

(iii) 1st respondent to pay gratuity to petitioner as ordered by Controlling Authority on 26.02.2010 - Annexure - E within a period of six weeks from the date of receipt of copy of this order.

