
(2012) 09 BOM CK 0182

In the Bombay High Court

Case No : Writ Petition No. 2668 of 2002 and Writ Petition No. 1541 of 2008

Shri. Jeevan Kashinath Patil

APPELLANT

Vs

State of Maharashtra and District Judge, District Court, Beed

 Shri. Navinchandra Brijaratnlal Shah Vs State of
Maharashtra and District Judge, District Court, Ahmednagar

RESPONDENT

Date of Decision : 25-09-2012

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4, 4(1)

Citation : (2012) 6 ALLMR 582 : (2013) 1 BomCR 770 : (2013) 136 FLR 185 :
(2012) 6 MhLj 888

Hon'ble Judges : V.K. Tahilramani, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : V.P. Patil with Mr. Piyush Shah in Writ Petition No. 2668 of 2002 and Mr. V.P. Patil in Writ Petition No. 1541 of 2008, for the Appellant; J.S. Saluja AGP for State and Mr. R.S. Datar for Respondent Nos. 2 and 3 in Writ Petition No. 2668 of 2002, Mr. J.S. Saluja AGP for State and Mr. V.S. Kapase for Respondent No. 2 in Writ Petition No. 1541 of 2008, for the Respondent

Judgement

A.M. Khanwilkar, J.—Both these petitions can be disposed of together as the issues raised therein are identical. In Writ Petition No. 1541 of 2008 additional relief regarding pension claim is also prayed. However, during the arguments, counsel for the petitioner, on instructions of the petitioner who is present in Court, stated that both these petitions will be pressed only in respect of claim of gratuity in respect of each of the petitioner.

2. Briefly stated, it is not in dispute that the petitioners joined service as Judicial Officers in the State of Maharashtra as Civil Judge Junior Division and Judicial Magistrate First Class. The petitioner in the first petition was in continuous service for more than 17 years. The petitioner in the second petition was in continuous service for around 12 years. Both the petitioners tendered resignations which were accepted by the High Court. Thus, they stood relieved from service thereafter. Each of the petitioner has been making representation

for grant of gratuity amount due and payable to them as they had completed more than five years of continuous service. The appropriate authority, however, informed the petitioners that their claim for gratuity amount cannot be taken forward as they did not fulfill the qualifying service specified in Rule 46 of the Maharashtra Civil Services (Pension) Rules.

3. In view of the admitted position that each of the petitioner had completed continuous service for not less than five years, by virtue of Section 4 of the Payment of Gratuity Act, 1972 they were entitled for commensurate gratuity amount. Section 4 of the Payment of Gratuity Act, 1972 reads thus:

4. Payment of Gratuity.- (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-

(a) on his superannuation, or

(b) on his retirement or resignation,

(c) on his death or disablement due to accident or disease;

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement.

[Provided further that in case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is minor, the share of such minor, shall be deposited with the Controlling Authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority].

Explanation.- For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of [an employee who is employed in a seasonal establishment, and who is not so employed throughout the year], the employer shall pay the gratuity at the rate of seven days' wages for each season.

[Explanation.- In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by

twenty six and multiplying the quotient by Fifteen.]

(3) The amount of gratuity payable to an employee shall not exceed [three lakhs and fifty thousand] rupees.

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(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.

(6) Notwithstanding anything contained in sub-section (i),-

(a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

(b) the gratuity payable to an employee [may be wholly or partially forfeited]

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part; or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

4. On a bare reading of this provision, it is noticed that the person retiring from service by specified modes except removal or dismissal, is entitled for payment of gratuity. Suffice it to observe that both the petitioners admittedly tendered resignations and their resignations were accepted by the competent authority. Resignation is one of the modes specified in Section 4 of the Act. As a result, each of the petitioner would be entitled for payment of gratuity commensurate with their length of service as per the extant Regulations. This claim, however, has been negated by the Department on the specious reasoning by invoking Rule 46 of the Maharashtra Civil Services (Pension) Rules. Rule 46 reads thus:

46. Forfeiture of service on resignation.

(1) Resignation from a service or a post entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent under the Government where service qualifies.

(3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any

kind due to the Government servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to him.

(4) the appointing authority consider the request of a person who had earlier resigned his post under Government, to take him back in service in the public interest on the following conditions, namely:-

(a) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation;

(b) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper;

(c) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days;

(d) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.

(5) Request for taking him back in service shall not be accepted by the appointing authority where a government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(6) When an order is passed by the appointing authority allowing a person to be taken him back in service and to resume duty the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service.

5. In the first place, the provisions of Pension Rules cannot be applied for considering the claim for payment of gratuity. No provision has been brought to our notice which predicates that the claim of payment of gratuity must be considered on the basis of the provisions of the Pension Rules, in particular, specifying the qualifying service. Both these claims are mutually exclusive and are required to be processed under the respective Act and Rules. There is no deeming provision or any provision in these enactments, at least brought to our notice, which provides that the stipulations for grant of pension claim will apply mutatis mutandis for payment of gratuity in cases of resignation before the qualifying service by invoking doctrine of incorporation. Indubitably, the claim under the provisions of Payment of Gratuity Act matures upon completion of continuous service for not less than five years, subject to fulfilling other

requirements thereunder. Suffice it to observe that the Department has committed manifest error in denying the gratuity claim of the Petitioners with reference to inapplicable provision. The petitioners claim for grant of gratuity ought to have been processed and considered on the basis of provisions of the Gratuity Act, being a case of resignation upon completion of continuous service not less than five years, as it is not a case of termination of their services by modes other than Section 4(1) of the Gratuity Act.

6. The counsel for the petitioners has rightly relied on the exposition of the Supreme Court in *J.K. Cotton Spinning and Weaving Mills Company Ltd. Vs. State of U.P. and Others*, wherein the Apex Court has observed that "voluntary retrenchment of a workman or the retrenchment of the workman on reaching the age of superannuation can hardly be described as termination, by the employer, of the service of a workman". Applying the underlying principle, in a case of a valid resignation accepted and acted upon, it would indubitably be a case covered by Section 4(1) of the Payment of Gratuity Act and more particularly, when Section 4 recognizes resignation as one of the mode for snapping the relationship between an employer and employee.

7. The appropriate authorities however, have completely glossed over the distinction between the claim of gratuity and claim of pension being mutually exclusive and governed by different Enactments and Rules. A priori, the reason invoked by the appropriate authority for denying the claim for gratuity to the respective petitioners, to say the least, cannot stand the test of judicial scrutiny. That opinion of the appropriate authority deserves to be quashed and set aside and as a necessary consequence, the appropriate authority is directed to expeditiously process the claim for payment of gratuity amount to each of the petitioner in conformity with the provisions of the Payment of Gratuity Act. The decision on the respective proposals be taken and communicated to each of the petitioner, not later than eight weeks from today.

8. Considering the fact that the appropriate authority has wrongly denied the claim of the respective petitioner regarding payment of gratuity amount, on the basis of inapplicable provisions for considering the claim for gratuity, we have no hesitation in taking the view that the State Government must pay reasonable interest rate on the amount payable to each of the petitioner. We quantify the interest payable to the petitioners on the outstanding dues towards payment of gratuity at the rate of 8% per annum from the date of acceptance of resignations and/or date of retirement of the concerned petitioners pursuant to the said resignations. The principal amount towards gratuity payable to the respective Petitioner along with interest accrued thereon be made over to them within six weeks from the date of decision on the concerned proposal, failing which the Petitioner(s) would be at liberty to claim further interest on the entire payable amount till its realization. Petitions disposed of accordingly. In the facts of the present case, no order as to costs.