

(2013) 10 GUJ CK 0190
In the Gujarat High Court

Case No : S.C.A. No. 6883 of 2012 and S.C.A. No. 11445 of 2012

S.L. Oza and Others

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2014) 141 FLR 707 : (2014) 1 LLJ 331 : (2014) 2 LLN 450

Hon'ble Judges : Bhaskar Bhattacharya, C.J.;J.B. Pardiwala, J

Bench : Division Bench

Advocate : V.K. Joshi, for the Appellant; Parth Bhatt, Additional Government Pleader and M.D. Pandya, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—Since common questions of fact and law are raised in both the above captioned petitions, those were taken up for hearing together and are being disposed of by this common judgment and order. The petitioners are retired employees of the respondent No. 2 viz. Gujarat Urja Vikas Nigam Limited, an instrumentality of the State within the meaning of Article 12 of the Constitution of India. They all retired during the period between 1.1.2006 and 30.4.2010.

2. The petitioners have challenged the constitutional validity of the Circular dated 5.6.2010 issued by the respondent No. 2 on the ground that the same is illegal and is contrary to the provisions of the Payment of Gratuity Act, 1972. The petitioners have also challenged the Government Resolution dated 13.4.2009 issued by the Finance Department in connection with the Sixth Central Pay Commission - revision of provisions regulating pension/gratuity/commutation of pension etc. of post 1.1.2006 pensioners/family pensioners.

I. Case of the Petitioners:

3. The Government of Gujarat decided to restructure the Gujarat Electricity Board (for short, "GEB") for the purpose of restoring the operational and

financial viability to meet with the future demand for adequate supply of energy and improving the financial position of the Board as well as for providing satisfactory service to the people at large.

4. In exercise of the powers under the Gujarat Electricity Industry (Reorganization and Regulation) Act, 2003 (enacted by the Legislature of the State of Gujarat), the State Government reorganized the GEB to Gujarat Urja Vikas Nigam Limited (for short, "GUVNL"). The GUVNL is the main corporate and monitoring company having its direct and overall control over its subsidiary companies, viz. (1) Gujarat State Electricity Company, (2) GETCO, (3) UGVCL, (4) PGVCL, (5) MGVCL and (6) DGVCL.

5. All the employees of the aforementioned companies are under the control of the State Government and, therefore, are entitled to all the benefits and allowances declared by the State Government from time to time according to the tripartite agreement entered into between the employees and the State Government dated 13.10.2013.

6. According to the petitioners, during the period between 1.1.2006 and 30.4.2010 in all around 350 to 400 employees working in the cadre of Class-I to Class-IV posts retired on attaining superannuation or by resignation. The petitioners are amongst those who attained superannuation.

7. Pursuant to the recommendations of the Sixth Pay Commission declared by the Central Pay Commission, the State Government accorded sanction to implement such recommendations vide Government Resolution dated 13.4.2009. According to the petitioners, such benefits were extended to the employees of the Corporations and the Panchayats. The petitioners were also extended the benefit of the Sixth Pay Commission with effect from 1.1.2006 including the arrears of pension towards the enhanced salary and allowances.

8. On 18.5.2010, the Payment of Gratuity (Amendment) Act, 2010 came into force by which Section 4 of Act 39 of 1972 came to be amended. In Section 4 of the Payment of Gratuity Act, 1972, in sub-section (3) for the words "three lakhs and fifty thousand rupees", the words "ten lakh rupees" were substituted.

9. Pursuant to such amendment in the Payment of Gratuity Act, the respondent No. 2 issued a Circular dated 5.6.2010 enhancing the ceiling of gratuity from Rs. 3,50,000.00 to Rs. 10,00,000.00 with effect from 24.5.2010 but with a clarification that all those employees who had resigned or retired before 24.5.2010 would not qualify to seek benefit of such enhanced ceiling.

10. The petitioners are aggrieved by such policy decision taken by the respondent No. 2 to give benefit of the enhanced ceiling of the gratuity amount only to those employees who had retired or resigned from service after 24.5.2010.

11. In such circumstances referred to above, the petitioners have challenged the Circular dated 5.6.2010 issued by the respondent No. 2.

II. Stance of the Respondent No. 2:

12. According to the respondent No. 2, the issue whether the employees who had retired from service before 24.5.2010 are entitled to the enhanced ceiling of gratuity has stood concluded in favour of the Board pursuant to many orders passed by this High Court in different petitions.

13. According to the Board, its Circular dated 5.6.2010 is absolutely valid and in no manner could be termed as arbitrary or unreasonable. The cut-off date which has been fixed for its application i.e. 24.5.2010 could not be said to be violative of Article 14 of the Constitution of India.

14. The decision of the Board not to grant benefit of the enhanced ceiling of gratuity to all those cases of resignation/retirement etc. before 24.5.2010 is in consonance with the settlement arrived at between its employees and the language employed in the settlement, more particularly, the words "the maximum financial ceiling on the amount of gratuity payable will be revised on the State Government lines which is at present rupees one lakh" would suggest that a conscious decision would be taken by the State Electricity Board and the revision would not be automatic.

15. Although the Government of Gujarat through its Finance Department may have raised the maximum limit of gratuity to Rs. 10 lac with effect from 1.1.2006 vide Resolution dated 3.4.2009 in lieu of the acceptance of the recommendations of the Sixth Pay Commission, the same is not binding on the respondent No. 2 as it has decided not to implement the recommendations of the Sixth Pay Commission in lieu of the settlement arrived at with the recognized unions and associations of the employees. In furtherance to the same, the GSO-1 dated 1.7.2009 was issued. Under the GSO-1 at Point No. 28, it has been clearly stated that the amount of the gratuity payable will be according to the Payment of Gratuity Act, 1972 as amended from time-to-time.

16. Since the Payment of Gratuity Act, 1972 has been adopted with effect from 6.4.1972, there was no requirement to follow the resolution of the Government of Gujarat dated 13.4.2009 to give effect to the enhanced ceiling of gratuity from Rs. 3,50,000.00 to Rs. 10,00,000.00 with effect from 1.1.2006.

17. In such circumstances, it has been prayed by the respondent No. 2 that there being no merit in this petition, the same may be rejected.

18. Having heard the learned counsel appearing for the respective parties and having gone through the materials on record, the only question that falls for our consideration is, whether the decision of the respondent No. 2 to make available the increased quantum of gratuity only to employees who retired or resigned after 24.5.2010 could be termed as discriminatory and arbitrary.

19. The Parliament thought fit to amend Section 4 of the Act 39 of the Payment of Gratuity Act, 1972, with a view to raise the ceiling of gratuity. Accordingly, the Payment of Gratuity (Amendment) Act, 2010 came to be enacted on 18.5.2010.

In Section 4 of the Payment of Gratuity Act, 1971, in sub-section (3) for the words "three lakhs and fifty thousand rupees", the words "ten lakh rupees" were substituted. Pursuant to such amendment, the respondent No. 2 viz. Gujarat Urja Vikas Nigam Limited issued a Circular dated 5.6.2010 enhancing the ceiling of gratuity in tune with the Amendment Act, 2010. However, it decided to fix a cut-off date for the purpose of application of the Circular and accordingly clarified that cases of resignation/retirement etc. prior to 24.5.2010 would not qualify for such enhanced ceiling.

20. The principal argument on behalf of the petitioners has been on the alleged violation of Article 14 of the Constitution of India. They contend that the decision of the respondent No. 2 to make available the increased quantum of gratuity only to those employees who retired, resigned or died after 24.5.2010 is discriminatory and arbitrary. They also contend that all retirees form a homogeneous class and any discrimination or distinction between retirees prior to 24.5.2010 and those retired/resigned on or after 24.5.2010 had no rationale basis, nor was intended to serve any purpose. However, we are not impressed by such submission canvassed on behalf of the petitioners.

21. From the materials on record, it appears that the State Government vide its Resolution dated 3.4.2009 raised the maximum limit of gratuity to Rs. 10 lac with effect from 1.6.2006 in lieu of the acceptance of the recommendations of the Sixth Pay Commission but the respondent No. 2 decided not to implement the recommendations of the Sixth Pay Commission in view of the settlement arrived at between the recognized unions and associations of the employees working with the respondent No. 2 and its subsidiary companies. The settlement arrived at was with respect to the fixation of pay and entitlement of other benefits including gratuity. Pursuant to such settlement, the GSO-1 dated 1.7.2009 was issued. Under the GSO-1 at point No. 28, it has been stated that the amount of gratuity payable would be according to the provisions of the Payment of Gratuity Act, 1972 as amended from time to time. The enhancement under the Act 1972 has been given with effect from 24.5.2010 and the employees have been extended the benefit of the enhanced amount of gratuity. Since the Payment of Gratuity Act, 1972 has been amended with effect from 24.5.2010, we are of the opinion that the respondent No. 2 was not obliged to follow the resolution of the State Government dated 13.4.2009 for enhancing the ceiling of gratuity from Rs. 3,50,000.00 to Rs. 10,00,000.00 with effect from 1.1.2006.

22. The petitioners have also accepted such position but, according to them, the respondent No. 2 should have entered into a settlement with all recognized unions i.e. in all eight associations, but for the reasons best known, it decided to enter into a settlement with only one of the unions on 30.6.2009 and agreed under Clause 28 of the settlement on the amount of gratuity to be paid according to the Payment of Gratuity Act, 1972 as amended from time to time without taking into consideration the views of the other seven recognized unions of the

respondent No. 2 Company. We are not impressed by such stance of the petitioners because it appears from the materials on record that even during the time of erstwhile Gujarat Electricity Board, the salary, perks, allowances and revision of pay-scales had been arrived at by entering into a bipartite settlement from time to time with the recognized unions. The last revision of pay-scales, salary, perks and allowances had been arrived at by entering into a bipartite settlement u/s 2(p) read with Section 12(3) of the Industrial Disputes Act, 1947, and such settlement would be binding to all the parties concerned.

23. In the aforesaid context, we take note of some of the averments made in the sub-rejoinder filed by the respondent No. 2 to the affidavit-in-rejoinder on behalf of the respondent No. 2 filed by the petitioners. They are as under:

...The contentions of the petitioner raised in para-5 of the rejoinder are not true as during the process of last pay revision all the eight recognised unions were called for discussion and negotiation meetings were carried out for nine times wherein on dated 4.6.2009 the record of discussion held with all recognised union was duly signed regarding the proposed revision of scale and perks for the pay revision. Finally, even in spite of calling all the recognised union, only the major recognised union representing about 40% membership out of total strength of employees, appeared for signing the settlement before the Conciliation Officer. The settlement was arrived with the biggest recognised union on 30.6.2009 wherein vide Clause No. 28 pertaining to gratuity it was agreed as under:

The maximum financial ceiling on the amount of gratuity payable will be as per the Payment of Gratuity Act, 1972 as amended time-to-time.

24. In addition to the same, I further submit that all the employees have accepted the terms and conditions of the settlement and the GSO-1 by signing the option form as the acceptance of the terms and conditions of the said settlement. This includes even the office bearer of all the recognised unions. In lieu of the settlement a considerable amount of Rs. 700 crore has also been paid to the employees of the Gujarat Urja Vikas Nigam Limited and its subsidiary companies in the form of arrears for the period from 1.1.2006 to 30.6.2009 and now suddenly a group of retired employees have raised the dispute regarding the payment of gratuity which is not justifiable and tenable in the eyes of law and hence the petition requires to be dismissed.

...Subsequent to the enactment of the Payment of Gratuity Act, 1972, the Board vide Resolution No. 305 dated 16.12.1972 had adopted the provisions of Payment of Gratuity Act and the General Standing Order No. 228 to that effect was issued on 8.2.1973.

I say that the erstwhile GEB, thereafter had consistently followed up amendments in the Payment of Gratuity Act, 1972 except only on one occasion when the settlement was arrived between erstwhile GEB and recognised unions on 24.7.1988. At Clause No. 24 of the said settlement, it was provided that the

Payment of Gratuity will be on the State Government lines which is at present Rs. 1 lac and that this will have effect from 1.10.1987, the tenure of the said settlement expired on 31.12.1990.

I say that it is also true that the reason behind the acceptance of the benefit for the Payment of Gratuity on the State Government lines was better than the existing scheme of GEB at the relevant time but by no stretch of imagination it can be said that the Gratuity Ceiling of GoG was accepted on the same principle.

...I further beg to submit that the outer ceiling of the gratuity was raised from Rs. 1 lakh to Rs. 2.5 lakh by the Government of India vide its Notification dated 24.9.1997 and the erstwhile GEB revised the upper ceiling of gratuity from Rs. 1 lakh to Rs. 2.5 lakh, with effect from same effective date as mentioned in Notification issued by the Government of India dated 24.9.1997 under the Payment of Gratuity Act, 1972, vide Establishment Circular No. 610 dated 19.12.1997.

Subsequent to the above revision of upper limit of payment of gratuity by the Government of India from Rs. 2.5 lakh to Rs. 3.5 Lakh w.e.f. 24.9.1997, the erstwhile GEB governed by the provisions of the Payment of Gratuity Act, in terms of its GSO 228, also revised the upper ceiling of gratuity from Rs. 2.5 lakh to Rs. 3.5 lakh w.e.f. 24.9.1997 on the line of Notification of the Government of India under the Payment of Gratuity Act, 1972 enhancing the upper limit of gratuity. Lastly the upper ceiling of gratuity was enhanced from Rs. 3.5 lakh to Rs. 10 lakh on the line of Notification in Official Gazette by the Government of India under the Payment of Gratuity Act, 1972 dated 17.5.2010 effective from 24.5.2010 as per the said Notification vide Circular No. 1254 dated 5.6.2010.

25. In *State Government Pensioners' Association and Others Vs. State of Andhra Pradesh*, , the order in question provided that retirement gratuity may be one-third of the pay drawn at the time of retirement for every six-monthly service, subject to maximum of 20 months' pay limited to Rs. 30,000. This order was made effective from 1.4.1978. The petitioners, who were government employees and had retired before 1.4.1978, contended that the gratuity, being a part and parcel of the pensionary benefits, they were also entitled to the same retrospectively. On behalf of the State, it was pointed out that the gratuity which had accrued to the petitioners prior to 1.4.1978, was calculated on the then existing rules and pay, and such petitioners formed a distinct class, for the purpose of payment of gratuity, from others who retired after 1.4.1978, the date from which the revised pension rules were made applicable by the Government. The Supreme Court held that the upward revision of gratuity which took effect from a specified date i.e. 1.4.1978 with prospective effect, was legal and not violative of Article 14 of the Constitution.

26. In *Ramrao and Others Vs. All India Backward Class Bank Employees Welfare Association and Others*, the Supreme Court has held that, even for the purpose of effecting promotion, fixing of a cut-off date was neither arbitrary,

unreasonable nor did it offend Article 14 of the Constitution. The Supreme Court further observed as under:

32. If a cut-off date can be fixed, indisputably those who fall within the purview thereof would form a separate class. Such a classification has a reasonable nexus with the object which the decision of the Bank to promote its employees seeks to achieve. Such classifications would neither fall within the category of creating a class within a class or an artificial classification so as to offend Article 14 of the Constitution of India.

33. Whenever such a cut-off date is fixed, a question may arise as to why a person would suffer only because he comes within the wrong side of the cut-off date, but, the fact that some persons or a Section of society would face hardship, by itself cannot be a ground for holding that the cut-off date so fixed is ultra vires Article 14 of the Constitution.

27. In *State of Bihar and Others Vs. Bihar Pensioners Samaj*, the Supreme Court held as under:

17. We think that the contention is well founded. The only ground on which Article 14 has been put forward by the learned counsel for the respondent is that the fixation of the cut-off date for payment of the revised benefits under the two notifications concerned was arbitrary and it resulted in denying arrears of payments to certain sections of the employees. This argument is no longer *res integra*. It has been held in a catena of judgments that fixing of a cut-off date for granting of benefits is well within the powers of the Government as long as the reasons therefore are not arbitrary and are based on some rational consideration.

28. In *State of Punjab and Others Vs. Amar Nath Goyal and Others*, the Supreme Court explained the principle of classification and fixation of cut-off date. In the said case, the Central Government issued an O.M. dated 14.7.1995, whereby the dearness allowance linked to the All India Average Consumer Price Index 1201.66 (as on 1.7.1993), was treated as reckonable part of dearness allowance for the purpose of calculating the death-cum-retirement gratuity under the Central Civil Services (Pension) Rules, 1972. The said benefit was actually made available to the employees who retired or died on or after 1.4.1995 i.e. the cut-off date suggested by the Fifth Central Pay Commission in its Interim Report. Following the aforesaid O.M. issued by the Central Government, the Government of Punjab also issued an order dated 13.12.1996 granting the same benefit fixing the said cut-off date.

29. A large number of employees, both of the Central Government as well as the State Governments of Punjab and Himachal Pradesh, who had retired prior to 1.4.1995, applied for getting the additional benefits of increased quantum of death-cum-retirement gratuity up to the increased limit of Rs. 2.5 lac. Their claims were rejected in some cases and in other cases, the CAT and the High Court took the view that such of the employees who had retired between 1.7.1993 and 31.3.1995 were also eligible for the aforesaid benefits. The

employees whose cases were wholly rejected or partly rejected and partly granted, as well as the Union of India and the State Governments preferred appeal before the Supreme Court. The employees argued that there was violation of Article 14 of the Constitution. They contended that the decision of the Central Government/State Governments to make available the increased quantum of gratuity (with revised ceiling) only to employees, who retired or died on or after 1.4.1995, was discriminatory and arbitrary. They also contended that all retirees/dead persons formed a homogeneous class and any discrimination or distinction between retirees/dead persons prior to 1.4.1995 and those who retired/died on or after 1.4.1995 had no rational basis, nor was intended to serve any purpose.

30. Rejecting the said contentions, the Supreme Court held:

It is difficult to accede to the argument that a decision of the Central Government/State Governments to limit the benefits only to employees, who retire or die on or after 1.4.1995, after calculating the financial implications thereon, was either irrational or arbitrary. Financial and economic implications are very relevant and germane for any policy decision touching the administration of the Government, at the Centre or at the State level..... In the present case, the cut-off date has been fixed as 1.4.1995 on a very valid ground, namely, that of financial constraints. Consequently, the contention that fixing of the cut-off date was arbitrary, irrational or had no rational basis or that it offends Article 14, is liable to be rejected.

31. Although in the case before the Supreme Court the classification and the fixation of the cut-off date was sought to be justified on financial and economic implications, which has not been pleaded before us so far as the case in hand is concerned, but the principle explained could definitely be made applicable even to the facts of the present case. Applying such principle as explained by the Supreme Court in the case of *State of Punjab and Others v. Amar Nath Goyal and Others* (supra), it could not be said that the cut-off date fixed by the respondent No. 2 is arbitrary, irrational or that it offends Article 14 of the Constitution of India.

32. In *Union of India Vs. P.N. Menon and others*, while implementing the recommendations of the Third Pay Commission with regard to dearness pay linked to Average Index Level 272, which was to be counted as emoluments for pension and gratuity under the Central Civil Services (Pension) Rules, 1972, the Central Government had fixed a certain cut-off date and directed that only officers retiring on or after the specified date were entitled to the benefits of the dearness pay being counted for the purpose of retirement benefits. This was challenged as arbitrary and violative of Article 14 of the Constitution. This Court turned down the challenge and observed:

Not only in matters of revising the pensionary benefits, but even in respect of revision of scales of pay, a cut-off date on some rational or reasonable basis, has

to be fixed for extending the benefits. This can be illustrated. The Government decides to revise the pay scale of its employees and fixes the 1st day of January of the next year for implementing the same or the 1st day of January of the last year. In either case, a big section of its employees are bound to miss the said revision of the scale of pay, having superannuated before that date. An employee, who has retired on 31st December of the year in question, will miss that pay scale only by a day, which may affect his pensionary benefits throughout his life. No scheme can be held to be foolproof, so as to cover and keep in view all persons who were at one time in active service. As such the concern of the Court should only be, while examining any such grievance, to see, as to whether a particular date for extending a particular benefit or scheme, has been fixed, on objective and rational considerations.

33. What is discernible from the aforementioned decisions of the Supreme Court is that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. There is no mathematical or logical way of fixing a cut-off date precisely and the decision of the legislature or its delegate must be accepted unless it can be said to be absolutely unreasonable. For the foregoing reasons, we do not find any merit in both the petitions and the same are accordingly rejected. However, in the facts and circumstances of the case, there shall be no order as to costs.