(2006) 05 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Sr. Supdt. of Post Offices APPELLANT

Vs

Smt. Sham Dulari and Others RESPONDENT

Date of Decision : 18-05-2006

Acts Referred:

Constitution of India, 1950 — Article 311

Payment of Gratuity Act, 1972 — Section 1, 14, 2, 5

Citation : (2007) 2 SLJ 274

Hon'ble Judges : M.M.S. Bedi, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The Senior Superintendent of Post Offices, Hoshiarpur has challenged order dated 21.8.2003 (Annexure P.3) of the Controlling Authority appointed under the Payment of Gratuity Act, 1972 whereby he has been directed to pay a sum of Rs. 12,286/- as gratuity alongwith interest @ 10 percent from 25.12.2001 till the date of payment to the claimant. The aforementioned order has been upheld by the Appellate Authority i.e. Regional Labour Commissioner (Central), Chandigarh, vide its order dated January 5, 2006 (P-6).

2. Brief facts of the case are that one Shri Ram Murti was appointed as Extra Departmental Agent (EDA) on 4.9.1982 and he retired from service on 24.11.2001 after rendering 18 years 9 months and 25 days of continuous service who is now represented by his widow. After one month he died and had nominated his wife (hereinafter to be referred as respondent-workman). The department of the Post Office represented through the petitioner had paid him an amount of Rs. 16,520/- as gratuity in accordance with the Post and Telegraph Extra Departmental Agent (Conduct) Service Rules, 1964 (for brevity EDA Rules). However, his widow has claimed gratuity under Sub-rule 1 of Rule 10 of the Payment of Gratuity (Central) Rules, 1972. She has claimed a sum of Rs. 57,692/- for the period of service rendered by her husband (18 years 9 months

and 25 days). Despite representation made to the petitioner department for grant of balance amount of gratuity under the Payment of Gratuity Act, 1972 (for, brevity ''the Gratuity Act'') the same has not been paid to the respondent workman. The Controlling Authority came to the conclusion that the case of the respondent-workman was covered by the definition of expression ''employee'' as used in Section 2(e) of the Gratuity Act. It was also admitted by the petitioner-department that services of the respondent-workman has been considered out of the purview of Central Civil Service Rules. Placing reliance on Section 14 of the Act, the Controlling Authority held that payment of gratuity to any person cannot be denied on the ground of any other provision in any other Act/Statute or Rules. Therefore, the plea that under the EDA Rules the gratuity is payable and the same would take the case of the respondent-workman out of the purview of the Gratuity Act has been rejected. Accordingly, an amount of Rs. 28,806/- has been calculated to be payable amount as gratuity under the Gratuity Act by taking into account the service period of 19 years of the respondent-workman. As the amount of Rs. 16,520/- stands already paid, the balance amount of Rs. 12,286/- has been worked out. Accordingly a direction was issued for payment of the aforementioned amount. The order of the Controlling Authority was challenged by the petitioner-department before the Appellate Authority-cum-Regional Labour Commissioner who rejected the argument that the services of the workman were regulated by the Central Civil Service Rules according to the judgment of the Supreme Court rendered in the case of Union of India v. Kameshwar Prasad, (1997) 11 SCC 650 by observing that Hon''ble the Supreme Court did not hold that EDA employees were holding the post under the Central Government. It was in fact held that they were civil servants and were entitled to protection of Article 311(2) of the Constitution. The view of the Appellate Authority is evident from the concluding two paras of the order and the same reads as under:

In this case, it is transparently clear that the post held by the husband of the respondent/applicant was a post not governed under CCS (Pension) Rules. The respondent/employee was Extra Departmental Branch Postmaster in the establishment of postal departmental and as such he was not holding a post under the Central Government. The service condition of the workman was governed under provisions of Extra Departmental Agents now known as Grant in Dak Sewaks but the provisions of the act are less favourable than the Payment of Gratuity Act, 1972. Hence, the Id. Controlling Authority has rightly held that the respondent/employee is an employee within the purview of Section 2(e) of the Payment of Gratuity Act, 1972.

ORDER

In view of the above findings, this Appellate Authority after affording the opportunities to the parties hereby confirmed the decision dated 21.8.2003 of the Id. Controlling Authority-cum-Asstt. Labour Commissioner (C) Chandigarh.

3. Mr. M.S. Guglani, learned Counsel for the petitioner has submitted that an

employee has been defined in Section 2(e) of the Gratuity Act and it does not cover any such person who is governed by some other rules of the department. According to the learned Counsel, the EDA Rules, 1964 which are now known as Gramin Dak Sewak (Conduct and Employment) Rules, 2001 regulate the payment of gratuity to the workman and, the Gratuity Act would not be applicable. Accordingly, gratuity has to be paid to them in accordance with the EDA Rules. Therefore, the view taken by the Controlling Authority or the Appellate Authority accepting the workman-respondent as an employee under the Act is absolutely incorrect. Learned Counsel has further submitted that under the EDA Rules, the workman respondent has already been paid the gratuity amounting to Rs. 16,520/- and no further gratuity is payable as the provisions of the Gratuity Act do not apply to the instant case.

4. We have thoughtfully considered the submissions made by learned Counsel for the petitioner-department and regret our inability to accept the same because the definition of expression ''employee'' in Section 2(e) has to be read with Sections 5 and 14 of the Gratuity Act. The aforementioned provisions of Sections 2(e), 5 and 14 are extracted below for facility of reference:

2. Definitions.-In this Act unless the context otherwise requires, -

(e) "employee" means any person (other than an apprentice) employed on wages, (* * *) in any establishment, factory, mine, oilfield, 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.

5. Power to exempt.-[(1)] The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway, company or shop to which this Act applies from the operation of the provisions of this Act if, in the opinion of the appropriate Government, the employees in such establishment, factory, mine, oilfield, plantation, port, railway, company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

[(2) The appropriate Government may, by notification and subject to such conditions as may be specified in the notification, exempt any employee or class of employees employed in any establishment, factory, mine, oilfield, plantation, port, railway, company or shop to which this Act applies from the operation of the provisions of this Act, if, in the opinion of the appropriate Government, such employee or class of employees are in receipt of gratuity or pensionary benefits nor less favourable than the benefits conferred under this Act.]

[(3) A notification issued under Sub-section (1) or Sub-section (2) may be issued retrospectively from a date not earlier than the date of commencement of this Act, but no such notification shall be issued so as to prejudicially affect the interest of any person.

14. Act to override other enactments, etc.-The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.

5. According to the definition of expression employee, any person who is employed on wages in any establishment, factory, mine, etc., who may be performing the duty of a skilled, semi-skilled, or unskilled, supervisory, technical or duties of clerical nature, has been included in the expression ''employee''. However, the expression ''employee'' is not to include a person who holds a post under the Central Government or State Government and is governed by any other Act or by any Rules providing for payment of gratuity. The respondent-workman is not governed by Central Civil Services (Classification, Control and Appeal) Rules, 1965, as has been expressly held by Hon''ble Supreme Court in para 3 of the judgment in Kameshwar Parshad''s case (supra). It has further been held that the Extra Departmental Agent are entitled to the protection of Article 311(2) of the Constitution and they are governed by separate set of Rules, namely, the EDA Rules. Therefore, it does not follow that the Extra Departmental Agent hold a post under the Central Government for the purposes of pension and gratuity. In other words, within the meaning of Section 2(e) of the Gratuity Act, the respondent-workman cannot held to have held a post under the Central Government for the purposes of pension and gratuity. Paras 3 and 4 of the judgment is extracted below for the facility of reference:

3. The Extra Departmental Agents are Government servants holding a civil post and are entitled to the protection of Article 311(2) of the Constitution (See: Supdt. of Post Offices v. P.K. Rajamma). They are governed by separate set of rules, viz., the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 (hereinafter referred to as "the Rules"). The Central Civil Services (Classification, Control and Appeal) Rules are not applicable to this category of employees in view of the notification dated 28.1.1957 issued by the Government of India under Rule 3(3) of the said Rules.

4. In Rule 4 of the Rules it is provided that the employees shall not be entitled to any persisting. Rule 5 relates to leave. Rule 6 deals with the termination of services. Rule 7 prescribes nature of penalties that can be imposed. Rule 8 prescribes the procedure for imposing a penalty. Rule 8-A specifies the cases in which the provisions of Rule 8 would not be applicable.

6. We are further of the view that the scheme of the Gratuity Act indicates that it is not applicable to cases where any other rule or statute is more beneficial than the Gratuity Act. For the aforementioned proposition, reliance may be placed on a judgment of the Supreme Court in the case of E.I.D. Parry (I) Ltd. Vs. G.

Omkar Murthy and Others, . The converse would also be true that in cases where the Gratuity Act is more beneficial than the Rules, Regulations or any statute then the Gratuity Act would apply. It is evident that Section 5 of the Gratuity Act expressly requires an order of exemption in favour of any organisation exempting it from the operation of the Gratuity Act in respect of any establishment etc., to which this Act applies. Sections further lays down that the declaration is given in cases where the gratuity or pensionary benefits are not less favourable then the benefits conferred under this Act. A perusal of Section 14 makes it obvious that the provisions of the Act and the Rules framed thereunder ought to have the effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act. This non-obstante clause also excludes the application of any other rules. The aforementioned view is fully supported by a judgment of the Supreme Court in the case of Municipal Corporation of Delhi Vs. Dharam Prakash Sharma and Another, . The short question which was considered by their Lordships was, whether an employee of the Municipal Corporation, Delhi was entitled to payment of gratuity under the Gratuity Act when the Corporation itself had adopted the provisions of Central Civil Service (Pension) Rules, 1972, which provide both for payment of pension as well as of gratuity. The Hon''ble Supreme Court rejected the argument of the Corporation, namely, that when the Central Civil Service (Pension) Rules, 1972, provide a package by itself, which has been applied to the employees of the Corporation then the provisions of Gratuity Act were not applicable and held as under:

We have examined carefully the provisions of the Pension Rules as well as the provisions of the Payment of Gratuity Act. The Payment of Gratuity Act being a special provision for payment of gratuity, unless there is any provision therein which excludes its applicability to an employee who is otherwise governed by the provisions of the Pension Rules, it is not possible for us to hold that the respondent is not entitled to the gratuity under the Payment of Gratuity Act. The only provision which was pointed out is the definition of "employee" in Section 2(e) which excludes the employees of the Central Government and State Governments receiving pension and gratuity under the Pension Rules but not an employee of the MCD. The MCD employee, therefore, would be entitled to the payment of gratuity provided for under the Payment of Gratuity Act. The mere fact that the gratuity is provided for under the Pension Rules will not disentitle him to get the payment of gratuity under the Payment of Gratuity Act. In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect. Possibly for this reason, Section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act, if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. Admittedly, MCD has not taken any steps to invoke the power of the Central Government u/s 5 of the Payment of Gratuity Act. In the aforesaid premises, we are of the considered opinion that the employees of the MCD would be entitled to the payment of gratuity under the Payment of Gratuity Act notwithstanding the fact that the provisions of the Pension Rules have been made applicable to them for the purpose of determining the pension. Needless to mention that the employees cannot claim gratuity available under the Pension Rules.

7. The aforementioned observation in fact squarely apply to the facts of the present case. There is no declaration u/s 5 exempting the application of the Gratuity Act to Extra Departmental Agents. Moreover, the EDA Rules, are not more beneficial than the benefits which are available to the respondent-workman under the Gratuity Act. Such a declaration could not have been given by the Competent Authority exempting the Extra Departmental Agents from the operation of the provisions of the Gratuity Act. Therefore, on principle as well as on precedents, we have reached the conclusion that the view taken by the Controlling Authority as well as Appellate Authority are not open to any attack in law and it does not furnish any opportunity to interfere with the same. Therefore, we are inclined to uphold the order dated August 21, 2003 (P-3) passed by the Controlling Authority and the order dated January 5,2006 (P-6) passed by the Appellate Authority.

8. The argument of the learned Counsel that the respondent-workman is not covered by the definition of expression ''employee'' as used in Section 2(e) of the Gratuity Act does not require any detailed consideration because of the view expressed by the Hon''ble Supreme court in Dharam Parkash Sharma''s case (supra). In that case also Central Civil Service (Pension) Rules, 1972 were adopted by the Municipal Corporation, yet the Hon''ble Supreme. Court held that the Gratuity Act would apply in view of Section 5 read with Section 14 of the Gratuity Act, Therefore, we have no hesitation in rejecting the argument raised on behalf of the petitioner-department.

9. For the reasons aforementioned, this petition fails and the same is dismissed.

10. Accordingly, we direct that the respondent-workman be paid her dues within a period of one month from today, failing which the respondent-workman shall be entitled to interest at the rate of 9% per annum from the date, the amount became due till the date of actual payment.

11. The office is directed to send a copy of this order to the respondent-workman for information and further necessary action.

