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**(1997) 07 MAD CK 0073**

**In the Madras High Court**

**Case No :** W.A. No. 1291 of 1995 and C.M.P. No's. 16988 of 1995

Srinivasan and others

APPELLANT

Vs

Government of India and others

RESPONDENT

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**Date of Decision :** 21-07-1997

**Acts Referred:**

**Citation :** (1999) 1 LLJ 986

**Hon'ble Judges :** P. Thangavel, J;A.R. Lakshmanan, J

**Bench :** Division Bench

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## **Judgement**

A.R. Lakshmanan, J.—This writ appeal is directed against the order of a learned single Judge of this Court made in W.P. No. 21998 of 1993 dated September 13, 1995 dismissing the writ petition filed by the writ petitioners/appellants herein who had retired from service before the scheme in question was introduced. There the learned Judge held that the writ petitioners cannot claim the benefits of the scheme which was not in existence, while they were in service.

2. The Government of India by its Ministry of Industry and the Department of Public Enterprises introduced a new scheme called Death-cum-Retirement Gratuity Scheme for the Employees of Public Sector Enterprises on July 23, 1988. According to the scheme the revised ceiling for payment of gratuity on retirement or in the event of death of the concerned employees is effective from January 1, 1986. The Scheme formulates basic terms and conditions of gratuity scheme for public undertakings. Its clause 4(a) reads thus :

"Gratuity will be equal to 15/26 days" emoluments for each completed year of service or part therefrom in excess of six months subject to a maximum of 16 1/2 times the emoluments or Rs. 1,00,000/- or whichever is less."

One N. Srinivasan who opted for retirement under the MFL Voluntary Retirement Scheme duly serving a notice as per policy on April 1, 1993 and was relieved on June 30, 1993 after notice period. He made some representation for the consideration of the management by his letter dated August 20, 1993 stating

that he was relieved on June 30, 1993, a day after the approval was obtained from the Board and therefore he should not be deprived of the enhanced benefits although the process of obtaining approval was completed during his notice period, and under the above circumstances, he requested the management to consider his case and to arrange payment of gratuity as per revised scheme brought into effect from July 1, 1993. Other employees who have retired from service have also made similar applications to the management for consideration. Thereupon all of them have filed a single writ petition for the following relief :

"..... to issue a writ, order or direction and in particular a writ of mandamus after calling for the records and perusing the same and direct the respondents herein to pay gratuity to the petitioners herein as per the office Memorandum No. 2 (2)/75 B.P.E. (W.C.) Government of India, Ministry of Public Enterprises, dated June 23, 1988 and as per the gratuity scheme approved by the Board of the second respondent for payment of gratuity to persons who are in service as on July 1, 1993 with interest at the rate of 10% per annum.

According to them all the employees of the 2nd respondent management are entitled to gratuity after retirement and that the management is bound to follow the procedure laid down under the scheme and pay the gratuity as per the same memorandum after November 1, 1986. According to the writ petitioners, the gratuity to a retired employee of the public sector undertaking shall be paid in the following manner.

"Gratuity will be equal to 15/26 days" emoluments for each completed year of service or part therefrom in excess of six months subject to a maximum of 6 1/2 times the emoluments or Rs. 1,00,000/- whichever is less."

3. Mr. B. Ramamurthy, learned counsel for the appellant contended that it is mandatory on the part of the second respondent to pay gratuity to all the employees after January 1, 1986 in the manner mentioned in the scheme. However, the management formulated a scheme after several years after receiving the said Memorandum for its supervisory employees for granting gratuity as per the memorandum mentioned above with effect from July 1, 1993 instead with effect from January 1, 1986, the said decision of the 2nd respondent is arbitrary and illegal and opposed to the principles of natural justice. It is also contended that the petitioners and the other employees of the 2nd respondent who retired from January 1, 1986 to July 1, 1993 cannot be treated in a different manner after they having served for a number of years.

4. The writ petition was resisted by the second respondent by filing a detailed counter affidavit. It is contended that under the gratuity scheme gratuity will be granted for good, efficient and faithful servants and whole time employees of public enterprises including chief executives and functional directors and such gratuity will be granted equal to 15/26 days" emoluments for each completed year of service or part thereof in excess of six months subject to a maximum of 16 1/2 times the emoluments or Rs. One lakh whichever is less. It is also

contended that the model gratuity scheme as evolved by the DPE is not per se applicable to the second respondent. The 2nd respondents introduced retirement/terminal benefits to its employees from the year 1974-75 and for the purpose of gratuity coverage, the employees were divided into two categories under a scheme of its own. But, consequent upon the introduction of the proposed gratuity scheme, it was decided to withdraw its earlier group insurance scheme. It was decided by the 2nd respondent to introduce gratuity to all the eligible employees who were not covered by the Payment of Gratuity Act with effect from July 1, 1993 on the guidelines issued by DPE and also to withdraw Group Insurance Scheme in respect of such uncovered employees. Reiterating the stand taken in the counter by the management, Ms. Rita Chandrasekar submitted that this decision was taken by the Board of Directors of the Second respondent in the meeting held on June 27, 1993, and as per the decision of the Board, the gratuity scheme was introduced only with effect from July 1, 1993. Therefore, she contended that it is incorrect to state that all the employees of the second respondent who were in their services prior to that date are entitled to gratuity in accordance with the guidelines issued by DPE.

5. We see much force in the contention of the learned counsel for the 2nd respondent. We have carefully perused the scheme. We are of the view that the employees of the second respondent management are under total misconception that the guidelines contained in the communication of the DPE in regard to the payment of gratuity will automatically apply to the second respondent, even if there being no resolution of the Board of Directors of the 2nd respondent. As directed by the Court, the 2nd respondent management has produced the original minutes of the Board of Directors. We have perused the relevant resolution. The 2nd respondent has accepted the guidelines contained in the letter of the DPE and has introduced the gratuity scheme to the employees with effect from July 1, 1993. Therefore, the scheme formulated by DPE will come into effect in any public sector undertaking only on the approval of the Board of Directors and therefore, it is well within the powers of the Board of Directors to specify the terms and conditions of the implementation of the scheme including the date of commencement of the scheme. We are also of the view that the plea of the writ petitioner that the 2nd respondent management is obliged to pay gratuity to its employees who retired after January 1, 1986 is untenable. As already noticed, the DPE only issues guidelines with regard to the introduction of gratuity scheme for the employees who were outside the purview of the Payment of Gratuity Act, 1972. It is not therefore open to the petitioners to state that the second respondent should introduce the gratuity scheme with effect from January 1, 1986. For the above reasons the 2nd respondent management has decided to introduce the scheme with effect from July 1, 1993 on the lines indicated by D.P.E. The second respondent has also furnished the date of retirement of petitioners and the posts held by them at the time of retirement from the 2nd respondent as below in Annexure-I.

| Sl. | Emp. | Name of the Designation and No. | No. Petitioner | Remarks | Date of |
|-----|------|---------------------------------|----------------|---------|---------|
|-----|------|---------------------------------|----------------|---------|---------|

Separation 1. 0813 N. Srinivasan Asst. Dist. Manager 30-6-93 VRS 2. 0164 V. K. Venkatesan Manager (Imports) 31-7-92 Retmnt. 3. 0933 P. Sreedhar Warehousing Officer 31-10-90 Retmnt. 4. 0443 R. Perumal Raju Manager 31-7-92 Do 5. 0467 K. P. Subramanian Plant Maint. Manager 28-2-92 Do 6. 0900 V. Gopalakrishnan Transportation Officer 7-7-92 VRS 7. 0589 Syed Mohidden Sr. Marketing Officer 31-12-91 Retmnt. 8. 0284 T. C. Varadhan Asst. Manager 30-6-98 VRS 9. 0261 N. Rangarajan Asst. Dist. Manager 30-4-91 Retmnt. 10. 0169 S. Ranganathan Manager Imports 31-7-91 do 11. 0466 R. Viswanathan Asst. Manager 22-12-87 VRS 12. 0593 P. Raghupathy Regnl. Manager 31-8-89 Retmnt. 13. 0150 R. Lakshminarayanan Sr. Marketing Offr. 31-1-90. do 14. 0067 S. Kannan Dy. General Mgr. 31-1-90 do 15. 0205 D. Ganapathy Manager 29-1-88 do 16. 0033 K. Kasthuri Rangan Dy. General Mgr. 28-4-89 VRS 17. 0040 K. V. Rajagopalan Manager Engg. 3-5-90 Resgn.

It is seen from the Annexure-1, almost all petitioners have retired and one has resigned from service before the introduction of the scheme. All the petitioners have settled their accounts with the 2nd respondent consequent upon their retirement of service and have also received all the terminal benefits due to them. For the first time, the petitioners have come forward with a hollow claim they are entitled to gratuity on the lines indicated by DPE. It is only during September 9 to November 18, 1993, the petitioners made request for payment of gratuity to them as per the memorandum of DPE and the second respondent has sent suitable replies to them during October 8 to December 3, 1993. We are of the opinion that it is well open to the second respondent take a policy decision to introduce gratuity scheme to those employees who were outside the purview of Payment of Gratuity Act with effect from July 1, 1993 on the lines indicated by DPE. Such fixation of date for the purpose of introducing gratuity scheme does not affect any of the constitutional or other rights of the petitioners. Consequent upon the superannuation from service the petitioners have received terminal benefits as in Annexure II at the enhanced rate of 10%. Whereas the contribution is 6% towards superannuation and 4 1/2% towards gratuity for the covered employees, in the case of uncovered employees the contribution for superannuation was 10% and 15%. Therefore, the petitioners cannot claim their gratuity benefits.

6. Learned single Judge on a consideration of the entire materials placed before him, came to the conclusion that the introduction of the scheme by the second respondent in the year 1993 cannot be deemed to have come into force in the year 1988. The second respondent being a distinct legal entity is always entitled to take a decision with regard to the introduction of the scheme with reference to particular date. As rightly pointed out by the learned single Judge, the circular issued by the Government of India is only advisory in nature and cannot by itself have the effect of introducing the scheme in that company. The scheme comes into effect in the company only when the company introduces such a scheme. Even though gratuity is paid in recognition of the past satisfactory services, unless the legal right to that payment exists, no payment can be directed merely

on the ground that the petitioners had also worked in the same institution at a time when the gratuity scheme had not been introduced. We are in agreement with the learned single Judge that the benefits can be given only prospectively unless the scheme provides for retrospective operation. Admittedly, the petitioners have retired from service before the scheme was introduced and therefore, they cannot claim benefit of the scheme which was not in existence while they were in service.

7. Mr. D. Ramamoorthy, learned counsel for the appellants cited the following decisions reported in :

1. D.S. Nakara and Others Vs. Union of India (UOI), ;
2. Smt. J.S. Rukmani and Others Vs. Government of Tamil Nadu and Others, ;
3. All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, .

We are of the opinion that all the above decisions are not applicable to the facts and circumstances of this case and those judgments have been rendered by the Court depending upon the facts and circumstances of each case. The principle laid down in those cases have no application to the facts of the case on hand. In our opinion they are not only having no application to this case but also distinguishable on facts.

8. For all the foregoing reasons, the writ appeal fails and is dismissed. No costs. Consequently, CMP. No. 16988 is also dismissed.