
(2012) 04 KL CK 0047

In the High Court Of Kerala

Case No : Writ Petition (C) No. 33378 of 2007 (W)

State Bank of Travancore

APPELLANT

Vs

Assistant Labour Commissioner (Central), Controlling
Authority (Payment of Gratuity Act), Trivandrum and others

RESPONDENT

Date of Decision : 11-04-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)
Payment of Gratuity Act, 1972 — Section 4, 4(6)(b)

Citation : (2012) 134 FLR 515 : (2012) 4 LLJ 580 : (2013) LLR 83 : (2012) LLR 955

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : P. Ramakrishnan, for the Appellant; Sajeew Kumar K. Gopal, H.B. Shenoy, B. Ashok Shenoy, Lakshmi B. Shenoy, Abu Mathew, Thomas P. Makil, Anil Kurian Thomas, Sobhan George and P. Parameswaran Nair, for the Respondent

Final Decision : Dismissed

Judgement

S. Siri Jagan, J.—The petitioner herein is the employer in a gratuity claim filed by the 3rd respondent before respondents 1 and 2. The 3rd respondent was dismissed from service on charges of misconduct involving riotous and disorderly behaviour. Although originally, punishment of dismissal from service was proposed, the punishment imposed on the 3rd respondent was discharge from service with superannuation benefits as eligible without disqualification for future employment. That punishment was upheld by the Industrial Tribunal, Alappuzha in an industrial dispute raised by the 3rd respondent. Subsequently, the 3rd respondent submitted an application for gratuity before the petitioner. That application was rejected on the ground that by an order passed on 15.11.2001, the petitioner had already ordered forfeiture of the gratuity payable to the 3rd respondent in accordance with the sub-section (6) (b) of section 4 of the Payment of Gratuity Act. The 3rd respondent filed a claim for gratuity before the

1st respondent-Controlling Authority, who upheld the contention of the 3rd respondent and ordered payment of gratuity as calculated in Ext.P1 order. The petitioner challenged the same before the 2nd respondent-appellate authority, who, by Ext.P2 order upheld the order of the Controlling Authority. The petitioner is challenging Exts.P1 and P2 orders in this writ petition.

The petitioner's contention is that since the petitioner had already invoked its powers u/s 4(6) (b) of the Act to pass the order dated 15.11.2001 the 3rd respondent is not entitled to any gratuity at all. Of course, it is admitted that although the order forfeiting gratuity was stated to have been passed on 15.11.2001, it was served on the 3rd respondent only on 16.1.2006, after the 3rd respondent submitted an application for gratuity on 19.12.2005. The petitioner raises two contentions. The first is that whether the order forfeiting gratuity was after hearing the petitioner or not or whether the order was communicated to him immediately after passing the same, the existence of the order cannot be denied. Therefore, unless and until the same is validly challenged before an appropriate authority, which, according to" the petitioner, is not the Controlling Authority, the 3rd respondent cannot claim gratuity. The second is that the gratuity calculated is in accordance with the higher rate applicable in accordance with the agreement between the Management and the Union and not in accordance with the rate fixed in the Payment of Gratuity Act, for doing which the Controlling Authority is not competent.

The 3rd respondent would oppose the contentions of the petitioner. He would submit that first of all the question of forfeiture of gratuity does not arise, since the punishment imposed on the 3rd respondent is discharge from service with superannuation benefits as eligible which includes gratuity as well. He further points out that the other retirement benefits have already been paid to the 3rd respondent and therefore, there is no question of forfeiture of gratuity. He would contend that even otherwise the order forfeiting gratuity is no order at all, insofar as that order had never been served on the 3rd respondent prior to his application for gratuity. However, the discretion u/s 4(6) (b) can be exercised only after issuing a show-cause notice to the 3rd respondent proposing forfeiture of gratuity, which has not been done. Therefore, that order is non est and cannot be pressed into service for denying the 3rd respondent gratuity after the 3rd respondent applied for gratuity. As far as the contention regarding competence of the Controlling Authority to decide eligibility for higher rate of gratuity, the 3rd respondent contends that insofar as the Payment Gratuity Act itself saves the entitlement for higher terms of gratuity in accordance with the agreement between the employer and the employee, that question also can be considered by the Controlling Authority under the very same Act, especially when the entitlement of the 3rd respondent for the higher rate is not disputed by the petitioner.

2. I have considered the rival contentions in detail. At the outset, I must note that the Payment of Gratuity Act is a beneficial legislation intended for the

benefit of employees. The same has to be interpreted as far as possible in favour of the employee. In this case, admittedly, the punishment imposed on the 3rd respondent by the petitioner was discharge from service with superannuation benefits. After imposing such a punishment, which does not bar payment of superannuation benefits, I do not think that the petitioner can thereafter turn around and invoke section 4(6) (b) of the Payment of Gratuity Act, forfeiting the gratuity. Even apart from that, admittedly, the order stated to have been passed is dated 15.11.2001 and admittedly, the same was communicated to the 3rd respondent only on 16.1.2006, after the 3rd respondent filed an application for gratuity on 19.12.2005. An order not communicated to the person against whom that order has been passed is no order at all and it should be construed as non est. Therefore, I am not inclined to accept the contention of the petitioner that the petitioner had validly forfeited the gratuity payable to the 3rd respondent by invoking section (6) (b) of the Payment of Gratuity Act. As far as the other question regarding competence of the Controlling Authority to consider the eligibility for payment of higher rate of gratuity as per agreement between the employer and the employee, the learned Counsel for the petitioner relies on a decision of this Court in *Ayyappan v. Joint Labour Commissioner*, 1999 (2) LLJ 1351 wherein a learned Judge of this Court has held that the Controlling Authority can order payment of gratuity only in terms of the Act and any other claim under terms of service conditions will have to be agitated before the appropriate authority. The learned Counsel for the petitioner also relies on the decision of the Bombay High Court in *Pune District Central Co-operative Bank Limited Vs. Shivajirao Dinkarrao Jadhavrao*, Deputy Commissioner of Labour and Appellate Authority under the Payment of Gratuity Act, 1972 and The Controlling Authority, Payment of Gratuity Act, Assistant Labour Commissioner, in support of that contention. The learned Counsel for the 3rd respondent would rely on the Orissa High Court's decision in *Steel Authority of India v. Regional Labour Commissioner (Central) and others*, 1995 (1) LLJ 1007 = 1995 (1) LLN 345 (Ori.) to the contrary. I am not inclined to exercise my discretionary jurisdiction to deny the benefit of Exts. P1 and P2 order to the 3rd respondent in the peculiar facts and circumstances of the case especially in view of the fact that the petitioner does not dispute the entitlement of the 3rd respondent for higher rate of gratuity calculated as per the impugned orders. Their only contention is that the Controlling Authority under the Payment of Gratuity is not the authority competent to order higher terms of gratuity. I do not think that when the eligibility is admitted, the 3rd respondent should be driven to the remedy by way of approaching the Labour Court u/s 33-C (2) of the Industrial Disputes Act for claiming balance gratuity as per the better terms of gratuity agreed upon between the employer and the employee. Even otherwise, I am of opinion that when the Act itself recognizes the eligibility for better terms of gratuity as per the contract between the employer and the employee, the employee should not be driven to a different Forum for claiming that better terms of gratuity, which will have the effect of the employee being driven to separate Forums for claiming gratuity as per the Payment of Gratuity Act and also gratuity as per the

conditions of service agreed between the employer and the employee. Therefore, I deny my discretionary jurisdiction to the petitioner in respect of that contention. In view of the above findings, I do not find any merit in this writ petition and accordingly, the same is dismissed.