

(1994) 09 OHC CK 0021
In the Orissa High Court
Case No : O.J.C. No. 2648 of 1991

Steel Authority of India

APPELLANT

Vs

Regional Labour Commissioner (Central) and Others

RESPONDENT

Date of Decision : 28-09-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 4

Citation : (1995) 1 LLJ 1007 : (1995) 1 OLR 122

Hon'ble Judges : R.K. Patra, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : J.K. Tripathy and S. Misra, for the Appellant; Party in person, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Patra, J.—Whether a person after he ceases to be an "employee" as defined in Section 2(e) of the Payment of Gratuity Act, 1972. Where in after referred to as ("the Act"), is entitled to receive better terms of gratuity as provided in Sub-section (5) of Section 4 of the Act and, if so, whether the Controlling Authority under the Act is competent to grant such relief? This is the moot question that arised for consideration in this writ petition.

2. The facts which are not in dispute may be briefly stated:

Opp. party No. 3 Gour Mohan Giri came to be appointed as an Accountant-cum-Cashier on August 24, 1955 under the erstwhile Hindustan Steel Limited now renamed-named as Rourkela Steel Plant, Steel Authority of India Ltd., on wages not exceeding Rs. 1600/- per month. When he retired on superannuation (the date being August 31, 1984) he was the Assistant Manager (Admn.) and was drawing a salary of Rs. 2850/- per month. As gratuity was not paid to him after his superannuation, opp. party No. 3 made an application in the prescribed form to the Controlling Authority- opp. party No. 2 for payment of the same from the petitioner. After hearing, the Controlling Authority by order; dated October 19,

1984 at Annexure-1 partly allowed the claim by granting dissatisfied with the rejection of a part of the claim, opp. party No. 3 preferred appeal before the Appellate Authority opp. party No. 1 which allowed the appeal by order dated March 27, 1991 at Annexure-2 holding that opp. party No. 3 is entitled to the entire claim as laid by him. the employer, Rourkela Steel Plant, seeks to quash these two orders, Annexure-1 and 2.

3. We have heard Shri Tripathy, counsel for the petitioner. Opp. party No. 3 himself argued the matter. We have also Heard him at length.

t 4. The petitioner contested the claim before the Controlling Authority on the grounds, inter alia, that opp. party No. 3 was not an "employee" as defined in Section 2(e) of the Act inasmuch as prior to his superannuation, he was in the capacity of Assistant Manager which was a managerial and supervisory post and had been drawing more than Rs. 1600/- per month. The Controlling Authority came to hold that opp. party No. 3 was an "employee" in terms of the definition u/s 2(e) of the Act from August 24, 1955 till December, 1973 when his salary did not exceed Rs. 1600/- per month and accordingly directed payment of the total amount of Rs. 27,303.92. the break-up is as follows:

(i) For the period from August 24, 1955 (date of joining) till December 12, 1979 during which period his salary did not exceed Rs. 1600/- per month. Rs. 19,819.38

(ii) For the period from January 1, 1980 till August 31, 1984 (date of superannuation) when opp. party No. 3 came under SAIL Gratuity Rules. Rs. 7,211.54

5. The Appellate Authority held that the cause of action to receive gratuity arose on the date of superannuation of the opp. party No. 3 on the basis of the contract of the service he had with the employer for the entire period of service of 29 years subject to the limitation laid down u/s 4 of the Act. It held that there is no provision in the Act to compute the amount of gratuity in two different rates for two different periods as has been done by the Controlling Authority. It also held that the opp. party No. 3 is entitled to simple interest on the amount at the rate of 15 per cent per annum from September 1, 1994 till the actual payment.

6. It was argued by Shri Tripathy that opp. party No. 3 having lost the character on "employee" since 1979 (his wages having exceeded Rs. 1600/- per month) the Appellate Authority acted illegally in awarding the whole of the gratuity claimed. The opp. party No. 3 on the other hand submitted that his claim to receive gratuity flows from Sub-section (1) of Section 4 of the Act, consequent upon his superannuation and whatever favourable terms of contract of service he had with his employer on the date of superannuation cannot be taken away in view of Sub-section (6) of Section 4 of the Act.

7. In view of the rival contentions, the basic question first needs to be answered is whether the opp. party No. 3 was an "employee" within the definition of

Section 2(e) of the Act. In other words was he an "employee" throughout his career or was there interruption to it consequent upon enhancement of his monthly wages. Section 2(e) (as amended by Central Act 5 of 1984) so far as relevant, reads as follows:

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

(a) xx xx xx (b) xx xx xx (c) xx xx xx (d) xx x xx (e) "employee" means any person (other than : an apprentice) employed on wages, "not exceeding (one thousand and six hundred rupees) per mensem" in any establishment, factory, mine, oil field."

The counsel for the petitioner does not dispute the factual finding recorded by the Controlling Authority that opp. party No. 3 was an "employee" from August 24, 1955 to December 31, 1979 as he satisfied the definition of "employee". The entire burden of his argument is that the wages of opp. party No. 3 having exceeded Rs. 1600/- per month with effect from January 1, 1980 he cannot be held to be an "employee from that day till his superannuation. Reliance was placed on the following observation of the Supreme Court in *Management Good-Year India Ltd. v. K.G. Devessar*, P. 26;

"... We think only reasonable way of construing Section 4 in the light of the definition of employee in Section 2(e) is to hold that a person whose services are terminated for any of the reasons mentioned in Section 4(1), after the coming into force of the Act is entitled to the payment of gratuity, if he has rendered continuous service for not less than five years,/or that period during which he satisfied the definition of employee u/s 2(e) of the Act..."

8. The sheet-anchor of opp. party No. 3 in Rule 2 of the SAIL Gratuity Rules which states that those rules are applicable to all the employees of the Company except certain specified classes. According to opp. party No. 3, as per the rules the employees are entitled to gratuity irrespective of amount received by them as wages and in view of the provision contained in Section 4(5) of the Act, he cannot be put in an disadvantageous position by denying the gratuity in full merely because from a particular time the wages drawn by him exceeded the ceiling imposed u/s 2(e). Section 4(5) provides that nothing in Section 4 shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer, It means that if under any award or agreement or contract with the employer higher amount of gratuity is available, Section 4 of the Act cannot stand on the way of the employee's right in getting such favourable terms. We may state here that in the case of *Good Year India Limited (supra)* the question as to the entitlement of benefit on the basis of Section 4(5) of the Act did not come for consideration. We have, therefore, to see whether the Controlling Authority is competent to grant relief to an employee basing on the provision of Section 4(5) of the Act. Such question came up for consideration before a Division Bench of the Patna High Court in *Patna Electric Supply Co. Ltd. v. Sri Gopal Banarjee* ILR 1979 Patna 124. Justice

B.N. Singh in his separate judgment in paragraph 18 observed as follows:

"While Mr. Katriar conceded, and I think rightly to that u/s 4(5) an employee has a right to receive higher amount for gratuity as provided u/s 4(5) he has submitted that this right could not be enforced by the Controlling Authority. For the submission learned counsel relied upon Section 7(4)(a) which reads thus:

"7(4)(a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity."

Learned counsel said that the controlling authority was only entitled to decide dispute as to the amount of gratuity payable to an employee under the Act. According to him, as Section 4(5) merely gave the right to an employee to receive a higher amount of gratuity under any award, agreement or contract it was not a right to receive an amount under the Act. I am unable to appreciate this argument for the simple reason that Sub-section 5 or Section 4 also is a right given to an employee for better terms of gratuity under the Act itself and it further provides that such better term is only available to an employee if he bases his claim under any award, agreement or contract."

Same view was taken by a learned Single Judge of Calcutta High Court in *Eastern Coal Fields Ltd. v. Regional Labour Commissioner*. At this stage it would be profitable to note the decision of the Supreme Court in *State of Punjab Vs. Labour Court Jullunder and Others*, wherein it has been held that the Payment of Gratuity Act is a complete code by itself containing detailed provisions covering all the essential features of a scheme for payment of gratuity. For the enforcement of its provisions, the Act provides for appointment of a Controlling Authority who is entrusted with the task of administering the Act. He has been invested with powers for the full discharge of that responsibility. The court further observed.

"Upon all these considerations, the conclusion is inescapable that Parliament intended that proceedings for payment of gratuity due under the Payment of Gratuity Act must be taken under that Act and not under any other. That being so, it must be held that the applications filed by the employee respondents u/s 33C(2) of the Industrial Disputes Act did not lie and the Labour Court had no jurisdiction to entertain and dispose of them."

9. The aforesaid being the gamut of operation of Payment of Gratuity Act which is a beneficial legislation, we cannot deny the opposite party No. 3 his right to claim gratuity and get it adjudicated before the Controlling Authority for the period during which his wages came to be enhanced beyond the ceiling. It would be against the spirit of the Act to drive him to seek this remedy in some other forum. Since the entitlement of the employee- opposite party to get the gratuity is conceded and the only dispute by the employer being that for the subsequent

period, another forum should be approached, we are of the considered opinion that the equitable jurisdiction of this Court should not be invoked under Article 226 of the Constitution. It is well settled that where an inferior tribunal passes a just and correct order, the High Court may not interfere with the same, even if the order may be without jurisdiction. In the facts and circumstances of the present case, it would be wholly unjust and inequitable to require the employee to approach another forum for part of the service period to receive the gratuity.

10. On careful consideration of the submissions made at the Bar, we are not inclined to interfere with the impugned order of the appellate authority at Annexure-2.

11. In the result, the writ petition is dismissed. No costs.

G.B. Patnaik J.

I agree