

(2002) 02 OHC CK 0040
In the Orissa High Court
Case No : A.H.O. No. 14 of 2001

Steel Authority of India Ltd.

APPELLANT

Vs

Assistant Labour Commissioner (Central) and Controlling
Authority under Payment of Gratuity Act and Others

RESPONDENT

Date of Decision : 21-02-2002

Acts Referred:

Payment of Gratuity (Central) Rules, 1972 — Rule 10(1)
Payment of Gratuity Act, 1972 — Section 4(3), 4(5)

Citation : (2002) 94 FLR 278 : (2002) 2 LLJ 229 : (2002) 1 OLR 336

Hon'ble Judges : P.K. Balasubramanyan, C.J;A.S. Naidu, J

Bench : Division Bench

Advocate : J. Patnaik, A.K. Panda, T.K. Patnaik, B. Mohanty and P.P. Mohapatra, for the Appellant; D.C. Mohanty, Standing Counsel (C), S.K. Sangneria and P.C. Patnaik, for the Respondent

Judgement

A.S. Naidu, J.—Aggrieved by the Judgment and order of the Hon"ble single Judge in O. J.C. No. 8236 of 1999 the appellant has filed this Letters Patent Appeal.

2. The case has a chequered career. Respondents 2 to 166 are the retired employees of the appellant, Steel Authority of India (for short, the "SAIL"). Though initially, they were holding non-executive posts, by efflux of time, they were promoted to executive posts. They retired, on attaining the age of superannuation, prior to September 24, 1997, when the Payment of Gratuity Act was amended. The SAIL paid one lakh rupees to each of the respondents Nos. 2 to 166 towards their gratuity in consonance with Section 4(3) of the Payment of Gratuity Act, 1972 (hereinafter referred to as "the Act". Being aggrieved by such payment, applications were filed under Rule 10, sub-rule (1) of the Payment of Gratuity Rules before the Assistant Labour Commissioner and Controlling Authority under the Act (Respondent No. 1) inter alia, claiming that they are entitled to receive an amount of Rs. 3,00,617.30 paise towards gratuity and praying for issuance of a direction to SAIL to pay the balance sum of Rs. 2,00,617.30 paise being the differential amount. The appellant took a stand

before the Competent Authority that, Respondents 2 to 166 being Executives are only entitled to a sum of one lakh rupees. It is further submitted that the Steel Executive Federation of India (for brevity, the "SEFI") had filed a writ application in the Delhi High Court being CPW No. 486 of 1995 challenging the validity of the provisions of the SAIL Gratuity Rules and praying for a declaration to apply the said Rules to the Executives as are applicable to the non-Executives, by removing restrictions prescribed under the Act and the Rules. The prayer made in the said writ application is identically same to the prayer made before the Controlling Authority. The Delhi High Court, by a well discussed Judgment dismissed the writ petition. The respondent Nos. 2 to 166 are members of the Rourkela Steel Plant Executive Association which is affiliated to SEFI and are bound by the judgment. In that view of the matter, the proceeding before the Competent Authority, on the self-same grounds, is no more maintainable and is hit by the principles of res judicata. The appellant prayed to reject the petition as not maintainable. The Controlling Authority, however, refused to pass any order with regard to maintainability and proceeded to hear the matter on merit. The appellant approached this Court in O.J.C. No. 1076 of 1999 and O.J.C. No. 5998 of 1999. This Court disposed of the said writ applications by directing the Controlling Authority to decide the question of maintainability first by a speaking order and further directing that, till the question of maintainability is decided, the matter shall not proceed further. Pursuant to the orders passed by this Court, the Controlling Authority heard the matter, and by a reasoned order dated June 28, 1999 (Annexure-5), held that the proceeding is not barred by the principles of res judicata and the applications filed under the Act and the Rules are maintainable. The said order was impugned before this Court in O.J.C. No. 8236 of 1999. The Hon'ble single Judge, by order dated December 21, 2002, arrived at a conclusion that the prayers made in the writ applications filed by SEFI before the Delhi High Court and the prayer made in the applications filed by respondent Nos. 2 to 166 are not identically same. There is also no material to reveal that SEFI had taken consent of the present respondents 2 to 166 for filing the writ application before the Delhi High Court on behalf of the Association, and that, simply because, the Association of respondents 2 to 166 is affiliated to the SEFI, it cannot be said that the acts of the SEFI are also the acts of the present Association. On the basis of such conclusion the Hon'ble single Judge dismissed the writ application with an observation that, while disposing of the proceeding, the Controlling Authority shall consider the applicability of the judgment delivered by the Delhi High Court to the claim of the present respondents 2 to 166. The said judgment, as stated earlier, is impugned in this Letters Patent Appeal.

3. The learned counsel for the appellant, relying upon the amended provisions of Section 4(3) of the Payment of Gratuity Act which was introduced on September 24, 1997, submitted that the ceiling with regard to gratuity payable to the Executives is rupees one lakh. All the respondents 2 to 166 having admittedly retired while holding the posts of Executives are entitled only to an amount not

exceeding one lakh rupees towards gratuity. He further contended that, as there is no agreement or contract inter se between the Management and the Officers belonging to the Executive rank, the provisions of Section 4(5) of the Act shall not be applicable. Section 4(5) of the Act reads as follows:

"4. Payment of gratuity

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(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer."

The learned counsel for the appellant strenuously placed the judgment of the Delhi High Court in Civil Writ Petition No. 486 of 1995, xerox copy of which is annexed as Annexure-3 to the writ petition. Paragraph 12 of the judgment reads as follows:

"12. I have given my thoughtful consideration to the submission made by the counsel for the parties, It is seen from the provisions of Section 4 that although the maximum limit of the amount of gratuity payable to an employee at the time of retirement has been fixed at Rs. 1 lakh, a right is provided for both the employer and the employee to arrive at an agreement or contract for payment/receipt of better terms of gratuity. Therefore, when an agreement is arrived at between the employer and the employee for payment of an amount for more than an amount exceeding Rs. 1 lakh, such an enhanced amount of gratuity could be paid and received by the employer and the employee respectively. Although under the Gratuity Rules of the respondent, the amount of gratuity payable to an employee has been fixed at a maximum of Rs. 1 lakh in terms of the provisions of sub-section (3) of Section 4 of the Payment of Gratuity Act. But in view of the Memorandum of agreement provided for no ceiling or limit in the amount of gratuity payable in case of non-executive employees the non-executive employees have been receiving better terms of gratuity. In view of the aforesaid agreement entered into between the non-executive employees and the employer, the respondent such better terms of gratuity under the agreement could be paid by an employer to its employees and such payment is also protected under the provisions of Subsection (5) of Section 4 of the Act. Therefore, the submission of the learned counsel for the petitioner that fixation of higher amount of gratuity payable to the non-executive class under the agreement is inconsistent with the provisions of Payment of Gratuity Act, has no merit and the same is rejected."

The Delhi High Court further held that the Executives being Officers/Managers of various levels, constitute a different class from non-Executives, which constitute workmen having protection under the Labour Laws. The persons belonging to the two classes namely, the Executives and the non-Executives are unequal and cannot be said to constitute one class. The learned counsel for the appellant further submitted that a similar claim was also made before the Madhya Pradesh High Court by the Executives and was negatived. It is forcibly contended that as

the issue in dispute has been finally adjudicated inter se between the parties by the Delhi High Court, the applications filed by respondents 2 to 166 before the Controlling Authority are not maintainable and are hit by the principles of res judicata.

4. Mr. Sanganerla, learned counsel for respondents 2 to 166, drew our attention to Clause 3.2.1 of the SAIL Gratuity Rules and submitted that the calculations stipulated therein should be followed for the purpose of computation of Gratuity in respect of both the Executives and non-Executive employees. It is pertinent to mention here that the SAIL Gratuity Rules came into force from August 8, 1978 and the respondents 2 to 166 retired in 1996. Mr. Sanganerla relying upon para 9 of the writ petition filed before the Delhi High Court in Civil Writ Petition No. 486 of 1995 vide Annexure-2, submitted that an agreement, existed between the management and the Executive and Chapter X of the memorandum of agreement lay down the method of computation of retirement gratuity. It is submitted that a copy of the agreement is annexed as Annexure-A to the said writ petition and that the said agreement is still subsisting. The copy of the so-called agreement is not available in records of the case. The respondents also failed to produce a copy of the same for our perusal. Thus, it is not possible for us to appreciate the submissions made by the learned counsel in proper perspective. The learned counsel for the respondent relied upon the decision of the case of Steel Authority of India Vs. Regional Labour Commissioner (Central) and Others, contended that the employees who had initially joined as non-Executives but retired as Executives, are entitled to payment of gratuity in consonance with Section 4(5) of the Payment of Gratuity Act. It is pertinent to mention here that though the said proposition was advanced in the case referred to (supra), the same was not specifically answered. Be that as it may, in view of the clear enunciation of law by the Delhi High Court, with which we respectfully agree, we are not persuaded to accede to the submissions made by Mr. Sanganeta, the learned counsel for the respondents.

5. At the outset we must express that precedents which enunciate rules of law, form the foundation of administration of justice under our system. This is a fundamental principle which every Presiding Officer of a Judicial Forum ought to know inasmuch as, consistency in interpretation of law alone can lead to public confidence in our judicial system. It is no more res integra that precedent law must be followed by all concerned; deviation from the same should be only based on a procedure known to law. A subordinate Court is bound by the enunciation of law made by the superior Courts (see S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others, In the case of Government of Andhra Pradesh and Ors. v. A.P. Jaiswal and Ors. AIR 2001 SC 499, the Hon"ble Supreme Court has observed as follows:

"Consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve

consistency in judicial pronouncements, the Courts have evolved the rule of precedents, principles of stare decisis etc. These rules and principles are based on public policy and if these are not followed by Courts then there will be chaos in the administration of justice, which we see in plenty in this case."

6. We are in agreement with the reasons enunciated by the Delhi High Court (supra) and reiterate that the Executives being Officers, constitute a different class than the non-Executives which constitute workmen and that the classification is based on intelligible differentia which distinguishes persons put together from those left out of the group. The differentia is also clearly distinguishable and has a rational relationship to the object sought to be achieved by that statute inasmuch as, the non- Executives have the protection under the Labour Laws and clearly distinguishable. The payment of gratuity of the non-Executive employees is made in terms of the Payment of Gratuity Act, 1972: the Rules framed thereunder, the SAIL Gratuity Rules, read with the Agreement arrived at National level, whereas, the Executive employees are entitled to receive gratuity in terms of Section 4(3) of the Payment of Gratuity Act in the absence of any agreement.

7. Obviously, before opposite party No. 1, the Tribunal created by the Statute, the validity of the Statute cannot be questioned. It is bound to proceed on the basis of the Statute unless it is brought to its notice that the provision has been struck down as un-Constitutional by a Court of competent jurisdiction. In that situation the only question, it can ask itself, is whether an agreement in terms of Section 4(5) of the Act is proved by the claimants before it. Here also, the Tribunal cannot ignore the judicial precedent, wherein the Delhi High Court has found that there exists no such agreement in respect of employees holding executive posts. Whether the applicants are entitled to prove the existence of such an agreement, and if they are entitled to, whether they have, in fact, proved its existence and the terms of such an agreement are the questions it has to consider.

8. In view of the discussions made in the preceding paragraphs while not interfering with the impugned judgment passed by the Hon"ble single Judge, we direct the Competent Authority, Respondent No. 1 to dispose of the applications filed before it in accordance with the observations made above. Accordingly, this A.H.O. stands disposed of.

P.K. Balasubramanyan, C.J.

I agree.