(2015) 08 KL CK 0005

In the High Court Of Kerala

Case No : W.P. (C) No. 3060 of 2015

Sunil Kumar S. APPELLANT

Vs

Assistant Registrar of Co-Operative Societies and Others RESPONDENT

Date of Decision : 17-08-2015

Acts Referred:

Payment of Gratuity Act, 1972 — Section 7, 7(3A), 8

Citation : (2015) 4 KLJ 154 : (2015) 4 LLN 737

Hon'ble Judges : Dama Seshadri Naidu, J.

Bench : Single Bench

Advocate : George Abraham, for the Appellant; R. Gireesh Varma and G. Gopakumar, GP, for the Respondent

Judgement

Dama Seshadri Naidu, J.—Heard the learned counsel for the petitioner, the learned Government Pleader and the learned counsel for the respondent Bank, apart from perusing the record. The petitioner, having joined the respondent Bank in 1995, served it until January 2012, when he secured employment in the District Co-Operative Bank. In the course of time, the petitioner submitted representations to the second respondent to get the gratuity amount due to him paid. The second respondent, however, turned down the petitioner''s request, through Ext. P12 dated 20.07.2012, which was assailed in W.P.(C) No. 21250 of 2014.

2. In fact, this Court disposed of W.P.(C) No. 21250 of 2014 through Ext. P9 judgment directing the respondent authorities to consider the petitioner''s claim for gratuity. In compliance with the Ext. P9 judgment of this Court, the second respondent issued Ext. P11 order dated 21.01.2015 rejecting the petitioner''s claim. Aggrieved, the petitioner has filed the present writ petition impugning Ext. P11.

3. This Court on 10.06.2015 issued the following interim directions:

"The first respondent shall see to it that eligible gratuity is disbursed to the petitioner by the second respondent Bank within a period of one month."

4. The learned counsel for the petitioner has submitted that in compliance with the interim direction dated 10.06.2015, the respondent Bank paid the entire amount of gratuity due to the petitioner on 08.07.2015.

5. It is very evident from the interim direction extracted above that there is no mandatory direction from this Court that the petitioner should be paid the gratuity. This Court, on the contrary, has only observed that the petitioner be paid the ''eligible'' gratuity. In that context, the counter affidavit filed by the second respondent needs to be examined.

6. The respondent Bank has gone on record saying that once the petitioner had been relieved from the respondent Bank on 18.01.2012, the Bank transferred his pension account and was willing to pay all the amounts due to him. At that juncture, the audit team, which visited the respondent Bank, orally instructed the respondent Bank that the petitioner''s case would not come under the expression ''retirement'' as stipulated in Rule 59 of the Kerala Co-Operative Societies Rules.

7. Though the respondent Bank sought a clarification from the first respondent, he has, nevertheless, not given any clarification. It appears that the respondent Bank having heard the petitioner in person, once again, addressed Ext. R3(a) communication to the first respondent seeking directions, especially in the light of the interim direction given by this Court. Unfortunately, the first respondent does not seem to have responded to Ext. R3(a) either.

8. The learned counsel for the respondent Bank has, at any rate, submitted that the respondent Bank has considered the case of the petitioner on merits, rather than going by the interim direction given by this Court. But for the oral instructions issued by the audit team, the respondent Bank, contends the learned counsel, would have paid the gratuity due to the petitioner.

9. The learned counsel for the petitioner has submitted that though the respondent Bank has paid the entire amount of gratuity to the petitioner, there is a delay of forty one months and nineteen days. Drawing my attention to relief No. (iii) in the writ petition, the learned counsel would contend that the petitioner is eminently entitled to interest on the delayed payment of gratuity, in terms of Section 7 of the Payment of Gratuity Act, 1972 (''the Act'' for brevity), and also the definitive judicial pronouncement of the Hon''ble Supreme Court in H. Gangahanume Gowda Vs. Karnataka Agro Industries Corpn. Ltd., .

10. In response, the learned counsel for the respondent Bank has submitted that the delay, if any, has not occurred because of the deliberate inaction on the part of the respondent Bank, but it was due to the oral instructions given by the audit team. He has further pointed out that the respondent Bank''s repeated efforts to get clarification in this regard from the first respondent did not bear any fruit.

11. Be that as it may, the statutory mandate of Section 7 of the Act is quite explicit, admitting of no ambiguity. It is, thus, profitable to extract the relevant

portion of the said provision, which reads as follows:

"(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall, pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground."

12. A perusal of the above provision makes it manifestly clear that interest would be denied to the petitioner only if the delay could be attributed to him, rather than to the employer.

13. It is further relevant to examine the ratio of H. Gangahanume Gowda (supra). The Supreme Court, placing reliance on State of Kerala and Others Vs. M. Padmanabhan Nair, and Charan Singh Vs. Birla Textiles and Another, has observed that earlier there was no provision in the Act for payment of interest on the delayed payment of gratuity. In fact, it is on the acceptance of the position that there was a lacuna in the law that Act 22 of 1987 brought about the incorporation of Sub-section 3(A) in Section 7 . That provision has prospective application.

14. In H. Gangahanume Gowda (supra), the Hon''ble Supreme Court has gone on to observe further that there is a clear mandate in the provisions of Section 7 of the Act to the employer to pay gratuity within time and to pay, otherwise, interest on the delayed payment of gratuity. There is also provision to recover the amount of gratuity with compound interest in case amount of gratuity payable was not paid by the employer in terms of Section 8 of the Act. It is, in fact, the specific observation of the Apex Court that once the employer does not satisfy the mandatory requirements of the proviso to Section 7(3A) , no discretion is left to deny the interest to the beneficiary on belated payment of gratuity.

15. In the present instance, the petitioner has nothing to do with the oral instructions said to have been given by the audit team. Nor has the petitioner any opportunity of laying challenge against any validly issued orders denying the pension to the petitioner. The delay that has occurred is essentially an administrative delay, for which the petitioner cannot be blamed.

16. In the facts and circumstances, essentially going by the ratio of the Hon''ble Supreme Court in H. Gangahanume Gowda (supra) as well as the statutory mandate under Section 7(3A) of the Payment of Gratuity Act, 1972, this Court declares that the petitioner is entitled to interest. As can be seen, Section 7(3A) of the Payment of Gratuity Act entails the beneficiary to have simple interest at

the rate not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits. Both the learned counsel have been in unison in submitting before this Court that 9% is the interest on long-term deposits.

It is, therefore, further directed that the respondent Bank shall pay interest at the rate of 9% on the delayed payment beginning from the date the amount has become payable till the date of actual payment of the gratuity amount.

