

(2005) 08 KL CK 0039

In the High Court Of Kerala

Case No : W.A. No. 1584 of 2002 and O.P. No. 23514 of 1998

Syndicate Bank and Others

APPELLANT

Vs

Celine Thomas and Others

RESPONDENT

Date of Decision : 08-08-2005

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 12(2), 19
Constitution of India, 1950 — Article 14
Payment of Gratuity Act, 1972 — Section 4, 5, 7
Payment of Gratuity Regulations — Regulation 4(1)

Citation : (2006) 2 LLJ 413

Hon'ble Judges : K.A. Abdul Gafoor, J;K. Hema, J

Bench : Division Bench

Advocate : M.P. Ashok Kumar, for the Appellant; Mohan Jacob George, for Respondents 1, 3 and 4, for the Respondent

Judgement

K.A. Abdul Gafoor, J.—Entitlement to gratuity payable on retirement reckoning the pay revision which came into effect after such retirement with retrospective effect is the moot question arising in this case. Facts are not in dispute, a Memorandum of Understanding (MoU) was arrived at between the Indian Bank Association representing the Nationalised Banks and the organisations of the officers of such Nationalised Banks on June 23, 1995 concerning wage revision and other attendant benefits. The wage revision did have retrospectivity, as per the MoU, with effect from November 1, 1992. It was provided that the actual monetary benefit on account of such revision will be made available only to those who were in service on July 1, 1993 and afterwards. Different dates also were mentioned in respect of revision of H.R.A., D.A., Provident Fund, Compensatory Allowance etc. It was also made clear that in respect of those who retired between November 1, 1992 and October 31, 1994, the benefits of pay revision will not be reflected in payment of gratuity which had by that time been settled.

2. The writ petitioners retired during the said interregnum. They were entitled to

pay revision with effect from July 1, 1993. They drew the benefits of higher salary. Can that higher rate of salary be ignored for the purpose of computation of gratuity payable in terms of Clause 46 of the Regulation for Payment of Gratuity framed u/s 19 read with , Sub-section (2) of Section 12 of the Banking " Companies (Acquisition and Transfer of Undertakings) Act, 1970. The bank denied the claim for higher rate of gratuity. The respondents in W.A. No. 1584 of 2002 approached the controlling authority designated in terms of Payment of Gratuity Act, 1972 successfully. But, on appeal by the Syndicate Bank, the appellant in the said Writ Appeal, the order of the controlling authority was reversed leaving open the question of payment of gratuity to other adjudication. It was in the above circumstances, O.P. No. 3502 of 2000 leading to W. A. No. 1584 of 2002 was filed. The writ petitioners in O.P. No. 23514 of 1998 directly approached this Court. O.P. No. 3502 of 2000 was allowed by the learned single Judge holding that the petitioners would be entitled to gratuity on the basis of the whole pay that they had drawn on the respective date of their retirement. This is assailed in W.A. No. 1584 of 2002. As the issue arising in O.P. No. 23514 (sic) of 1998 is one and the same, it has been directed to be posted along with W.A. No. 1584 of 2002.

3. It is the admitted position that the gratuity payable in terms of the Regulation mentioned above are the benefits arising under Payment of Gratuity Act, 1972. In terms of Sections 4 5 and 7 of the said Act, if a person is eligible for payment on better terms than that provided under the Act, then such beneficial terms would be applicable. Therefore, though the petitioners in O.P. No. 3502 of 2002 failed in the proceedings initiated under the said statute, it cannot be detrimental to them.

4. It is also seen that what was much heavily relied upon by the petitioners in Exhibit P1 Scheme promulgated by the Syndicate Bank in the year 1965 for payment of gratuity. It is now agreed by both sides that the said statutory regulations have replaced the Scheme.

5. The said statutory regulations provide, Payment of Gratuity, in Clause 46 as follows:

Gratuity:

46.1) Every Officer, shall be eligible for gratuity on:

- a) Retirement,
- b) Death,
- c) Disablement rendering him unfit for further service as certified by a Medical Officer approved by the Bank,
- d) Resignation after completing ten years of continuous service, or
- e) Termination of service in any other way except by way of punishment after completion of 10 years of service.

2) The amount of gratuity payable to an Officer shall be one month's pay for every completed year of service, subject to a maximum of 15 months' pay.

Provided that where an officer has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years.

Provided further that pay for the purpose of Gratuity for an Officer who ceased to be in service during the period July 1, 1993 to October 31, 1994 shall be with regard to scale of pay as specified in Sub-regulation (1) of Regulation 4.

When we come to the case of Central Bank of India, the only difference is that the last proviso is absent. Payment of Gratuity in terms of this provision is a statutory benefit. That cannot be disputed. A person becomes eligible for gratuity; (a) on retirement, (b) on death, (c) on disablement, (d) on resignation and (e) on termination of service and the amount payable "shall be one month's pay for every completed year of service, subject to a maximum of 15 months' pay." There is further provision with regard to payment of gratuity in respect of those who completed service of more than 30 years.

6. Therefore, gratuity shall have to be computed on the basis of monthly pay eligible for an employee. Whether that is the pay as on the date of retirement actually drawn by him or the pay to which he becomes entitled, in case a revision takes place with retrospective effect is the point to be considered. It is contended based on a clause contained in the Memorandum of Understanding dated June 23, 1995 that in respect of those who retired from service between November 1, 1992 and October 31 (sic), 1994, gratuity paid would not be revisable, on account of pay revision ordered with retrospective effect from November 1, 1992, with corresponding monetary benefit on July 1, 1993.

7. Memorandum of Understanding can not meddle with the statutory prescriptions. Nobody can agree by way of a settlement at the behest of an organisation taking away the benefit conferred on individuals by way of statutes or statutory rules. There need not have any authority to substantiate this. Statutory prescriptions crystallize the rights in favour of the subjects of that statute. It cannot be varied to their disadvantage unless otherwise by amendment to the statute. Of course, in the case of regulation governing the employees of the Syndicate Bank, the regulation has been amended as provided in the last proviso to Clause 46 quoted above. But, that amendment had been incorporated far later than the date of retirement of the petitioners in O.P. No. 3502 of 2002 and no provision in the parent statute enabling retrospective amendment is brought, to our notice. Therefore, such amendment can have only prospective effect affecting those who retired later than such amendment. But going by the words contained in that provision it cannot affect even such persons. So, that amendment will not adversely affect any of the statutory benefit entitled to the petitioners in O.P. No. 3502 of 2000.

8. So far as the employees of Central Bank is concerned, there is no such

amendment even. The only emphasis is on the clause contained in the Memorandum of Understanding, which cannot modify the benefits assured to individuals as per the statutory rules.

9. In both these cases, to reinforce the contention that the amount of gratuity is not liable to be revised, the decisions reported in *State Government Pensioners' Association and Others Vs. State of Andhra Pradesh*, *State of West Bengal and Another Vs. West Bengal Government Pensioners Associations and Others*, *Union of India (UOI) Vs. All India Services Pensioners' Association and Another*, and *Krishena Kumar and Others Vs. Union of India and others*, are relied on. It is contended that gratuity is only a one-time payment which shall be based on the pay drawn on the date of actual retirement. So, entitlement has to be considered as on the date of retirement and with reference to the pay drawn on that date. It is always a one time payment and the transaction is complete when the payment is made. Any subsequent revision in the pay with retrospective effect, even though pay is the criterion for quantifying the gratuity amount, cannot give rise to revision of quantum of gratuity once paid, the Banks contend.

10. On the other hand, it is submitted by the writ petitioners that going by the statutory regulations, the gratuity has to be quantified based on the pay. Pay means pay entitled as on the date of retirement. When a subsequent pay revision with retrospective effect has come into effect and payment has been accorded in terms of such retrospective pay revision, the pay to be reckoned for the purpose of quantifying gratuity shall be such revised pay which has been actually paid to them by the employer. It is further submitted that even on the date of retirement pay revision was on the anvil by reason of the discussion with the association. Any delay in arriving at an understanding cannot on any account transgress into the statutory entitlement for gratuity. Therefore, whatever clauses contained in the Memorandum of Understanding for revision of pay to restrict the quantum of gratuity only to those retired on or before November 1, 1994 cannot have any binding effect. It is further contended that even though the Memorandum of Understanding was arrived at on June 23, 1995, in respect of those bank employees retired between November 1, 1994 and June 23, 1995, the revised gratuity is paid. So in such circumstances, those who retired between November 1, 1992 and October 31, 1994 should not have been excluded from this benefit. This amounts to mini classification of homogenous class violating the rights enshrined under Article 14 of the Constitution. So, the learned single Judge was perfectly justified in directing payment of gratuity based on revised scale of pay.

11. Much has also been argued based on *D.S. Nakara and Others Vs. Union of India (UOI)*. It is in respect of revision of pension with effect from April 1, 1978 and the Supreme Court found fixation of date arbitrary. In the decision reported in *State Govt. Pensioners' Association v. State of A.P. (supra)* from out of the illustration made out therein it is clear that it was a claim for revised gratuity raised by the employees who retired far earlier than the date of effect of pay

revision. It was in the above circumstances, the Supreme Court came to the conclusion that:

If upward pay revision cannot be made prospectively on account of Article 14, perhaps no such revision would ever be made. Similar is the case with regard to gratuity which has already been paid to the petitioners on the then prevailing basis as it obtained at the time of their respective dates of retirement. The amount got crystallized on the date of retirement on the basis of the salary drawn by him on the date of retirement. And it was already paid to them on that footing. The transaction is completed and closed.

This finding is entered into in respect of those who retired long ago taking the analogous position of those who retired in the year 1950, 1960 or even 1970 in respect of a revision which came into effect on March 26, 1980. Therefore, the Supreme Court was considering the effect of pay revision on the persons retired prior to the date of giving effect to the pay revision and not with respect to the pay drawn on the date of retirement. Therefore, the respective Banks cannot improve their case based on the said decision.

12. The other decisions cited are also to the similar effect and therefore cannot come to their aid. Of course, in the decision reported in *Krishena Kumar v. Union of India* (supra), the Supreme Court has considered the differential treatment meted out to the regular monthly pensioners and the PF pensioners. They belong to separate classes and therefore could not be found to have been discriminated each other. Therefore, the dictum laid down therein has no application to the facts situation of this case.

13. The mini classification, which is complained of, is a serious one. Even admittedly by the Banks concerned, though they have entered into Memorandum of Understanding only on June 23, 1995, revised gratuity based on the revised pay had been given to those who retired prior to June 23, 1995, but on or later than November 1, 1994. At the same time revision of pay scales takes effect from November 1, 1992. In such circumstances, denial of the very same benefits to those who retired between November 1, 1992 to November 1, 1994 amounts to mini classification offending the mandate of Article 14 of the Constitution of India. No nexus is pointed out for bringing any classification between those who retired between April 1, 1992 and October 31, 1994 and those who retired between November 1, 1994 and June 23, 1995. Both these artificial groups of retirees had retired from service prior to the date of arriving at the Memorandum of Understanding, but after the date of retrospectivity to the MoU. They therefore form themselves into one class as all of them retired later than the giving effect to the pay revision by the Memorandum of Understanding. When persons forming same class are treated differently it violates Article 14 of the Constitution denying them equal protection of law and equality before law. Denial of gratuity to the writ petitioners is therefore discriminatory. Consequently, on that reason alone, we have to sustain the view taken by the learned single Judge.

14. Consequently, W.A. No. 1584 of 2002 stands dismissed and O.P. No. 23514 of 1998 stands allowed with consequential direction to pay the respective employees the amount of gratuity payable based on the revised pay as entitled to them. The payment shall be effected within four months from the date of receipt of a copy of this judgment.