(2004) 09 GUJ CK 0045

In the Gujarat High Court

Case No : Special Civil Application No''s. 11791 and 13089-13094 of 2003

Tata Chemicals Ltd. APPELLANT

Vs

Ratilal Raghavji RESPONDENT

Date of Decision : 22-09-2004

Acts Referred:

Citation : (2004) 09 GUJ CK 0045

Hon'ble Judges : Ravi R. Tripathi, J

Bench : Single Bench

Advocate : Trivedi and Gupta for Petitioner No. 1-2 in Special Civil application Nos. 11791 and in Special Civil application No. 13089 of 2003, for the Appellant; Rajesh P. Mankad, in Special Civil Application No. 13089, for the Respondent

Final Decision : Dismissed

Judgement

Ravi R.Tripathi, J.—By these petitions, the petitioner-Messrs Tata Chemicals Limited and its Manager have challenged the orders passed

by the controlling authority under the Payment Gratuity Act, 1972 (hereinafter referred to as ""the Act"") in Gratuity Applications No.73 of 2001, 74

of 2001, 75 of 2001, 65 of 2001, 76 of 2001, 88 of 2001 & 64 of 2001 respectively and the orders passed by the appellate authority under the

Act in Appeals No.103 of 2002 to 109 of 2002.

2. Mr. Thaker, the learned advocate appearing for Messrs Trivedi & Gupta submitted that the respondent workmen in Special Civil Applications

No.11791 of 2003, 13089 of 2003, 13092 of 2003 and 13094 of 2003, retired between October to December 1999 by accepting Voluntary

Retirement Scheme (VRS) while respondent workmen in Special Civil Applications No.13090 of 2003, 13091 of 2003 and 13093 of 2003

retired on reaching the age of superannuation between September to December

1999. He submitted that on acceptance of VRS and/ or on

reaching the age of superannuation all these respondents were paid their retirement dues, including ''gratuity'' as was payable under the rules. The

learned advocate submitted that the controversy involved in these petitions is whether benefits flowing from settlement dated 13.11.2000, entered

into between the Union on one hand and the petitioner company on the other on 13.11.2000 will be available to these respondent workmen or

not. It is provided in the settlement itself that, ''the company will be paying a fixed lump sum amount per month mentioned in the table, to all the

employees, on pro-rata basis of attendance''. It is also provided that, ''effective from 01.04.2000 the said amount will stand merged in the basic

wage and new grades will be formed''. These new grades are also provided in the settlement itself. This clause of settlement is in response to

demand no.1, ""to amend the wage scales"". Besides this, the settlement also provides for, ""stand alone lump sum amount"". This was agreed to be

paid, ''with a view to motivate the workers to admit for benchmark of the company''s operations as well as for skill development for self, which

could also benefit the company as well as in further appreciation of wholehearted cooperation extended by the union and the workers, in

restructuring all the workforce at present and during the time to come''. This amount is paid ''one time only'' as ''stand alone, lump sum''.

3. The learned advocate for the petitioner submitted that the amounts payable under the settlement dated 13.11.2000, were not to be paid to the

present respondents but then later on it was agreed to be paid to the present respondents -- the persons who retired either accepting VRS or on

reaching the age of superannuation, during the period in which VRS was in operation. That being so, the settlement as a whole is to be accepted by

them. In the settlement it is specifically provided that,

The lump sum amount mentioned above will not attract any other benefits like provident fund, bonus, gratuity, OT, etc. .. ..

Having received the benefits under the settlement the respondents could not have given a go by to the aforesaid clause and could not have

approached the controlling authority under the Payment of Gratuity Act. It is not in dispute that the company has paid the amount, payable under

the first clause-- '' ''payment of lump sum amount'' and also under ''stand alone lump sum amount'' to the present respondents.

4. The respondents after having received the aforesaid benefits approached the controlling authority under the Act contending that the amount

which is paid to them as lump sum amount is in the nature of wages and hence it is to be taken into consideration for calculation of gratuity

determined on the basis of ''wages last drawn''. The controlling authority upheld the contention of the respondents and directed the company to pay

the difference of gratuity amount which ranges between Rs.8000/-, to Rs.14000/-, to individual workman and the total comes to Rs.70,512/-, in

this group of petitions.

5. Learned advocate Shri Thakar for the company strenuously contended that the controlling authority has committed error in passing the orders

under challenge and the appellate authority has also erred in confirming the same. He submitted that firstly the respondents who had retired on

accepting VRS or on reaching the age of superannuation were not initially out of the purview of the settlement. In fact the benefits under the

settlement were extended to them only as a gesture of good will and therefore, they ought not have raised any such dispute. Besides, the settlement

once accepted was applicable as a whole and there it was agreed that the ''lump sum amount'' will not attract any other benefits like provident

fund, bonus, gratuity, OT, etc. He next submitted that the controlling authority under the Act has erred in holding that the ''lump sum amount'' is to

be added to the wages for arriving at the figure of ''wages last drawn''. He submitted that the amount paid was an ex gratia payment, which was not

required to be added to the wages and ''last drawn wages'' were not required to be calculated on that basis. The learned advocate relied upon two

decisions, namely, (i) in the matter of E.I.D. Parry (India) Ltd. Vs. Regional Commissioner EPF Tamilnadu and Another, and (ii) decision of this

Court in the matter of Associated Cement Co. Ltd. Vs. R.M. Gandhi, Regional Provident Fund Commissioner and Others,

6. This Court having gone through the record of the case is of the opinion that the controlling authority under the Act and the appellate authority

have not committed any error. The decisions cited by the learned advocate has no application to the facts of the present case. Besides, the amount

involved in each of these petitions and the total amount in this group of petitions does not warrant this Court to entertain these petitions.

7. At this juncture, the learned advocate for the petitioner company submitted that dismissal of the petitions may open the pandora''s box for the

petitioner company as other employees drawing inspiration from the result of these petitions may file similar applications even belatedly. The

apprehension of the company is not well placed. As and when such applications are filed, the same will be dealt with on their own merits. Only

because some other applications may be filed, this Court is not inclined to entertain these petitions. Looking to the amount involved in these

petitions, the same are not warranted to be entertained and are dismissed. Rule is discharged. Interim relief is vacated. No order as to costs.

8. Mr.Mankad, the learned advocate for the respondent-workmen submitted that the amount payable under the impugned order is deposited

before the appellate authority. He, therefore, requested that the appellate authority be directed to pay the same. Now that these petitions are

dismissed, the appellate authority under the Payment of Gratuity Act is directed to make payment within three weeks from the date of receipt of a

copy of this judgement.