(2010) 03 MAD CK 0303

In the Madras High Court

Case No : Writ Petition No. 6469 of 2000

The Madurai District Central Co-operative Bank Limited — APPELLANT

Vs

The Joint Commissioner of Labour (Appellate Authority under the Payment of Gratuity Act), The Assistant Commissioner of Labour (Controlling Authority under the Payment of Gratuity Act) and V.M. Pany — RESPONDENT

Date of Decision : 31-03-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 18
Payment of Gratuity Act, 1972 — Section 14, 4(2), 7(7)

Citation : (2010) 03 MAD CK 0303

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R. Parthiban, in W.P. No. 6469/2000 and N. Umapathy, in W.P. No. 39594/2002, for the Appellant; Anitha, G.A. for R1 and R2 and S. Krishnasamy, for R3 in W.P. No. 6469/2000 and R3, R4, R6 to R12 in W.P. No. 39594/2002, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Both the writ petitions were filed by the petitioner Management.

2. In the first writ petition, challenge was to the order passed by the first respondent Appellate authority under the Payment of Gratuity Act, 1972 (for short P.G. Act) dated 29.12.2009 made in PG. Appeal No. 45/99 affirming the order of the second respondent dated 18.12.1999 in P.G.36/98.

3. The writ petition was admitted on 11.04.2000. pending the writ petition, this Court granted an order of interim stay. Subsequently, when a vacate stay application being filed and when the matter came up on 20.09.2000, this Court recorded that the petitioner had already deposited the disputed amount namely Rs. 36,290.50 with the respondent. It was directed that the amount should be invested by the respondent in some approved security and the third respondent

will be entitled to withdraw the interest once in six months.

4. Thereafter, the same bank filed another writ petition being W.P. No. 39594 of 2002, challenging the common order made in various appeals and confirming the order of the second respondent. The writ petition was admitted on 28.10.2002. Pending the writ petition, this Court granted an order of interim stay. Though a vacate stay application was filed in WVMP No. 445 of 2003, no order was passed.

5. In the first case, the third respondent retired as Manager from the petitioner Bank and his last drawn pay was Rs. 11,910/- per month. As per the ceiling available at that time, the maximum gratuity payable to him was Rs. 1,00,000/-. The Management computed the maximum amount of gratuity without any restriction and paid him 20 months salary as gratuity. On 17.02.1997, the Management entered into a settlement, wherein, it mutually agreed to continue the existing benefit of gratuity without any limitation of settlement. Subsequently, on 24.09.1997, the limitation under the Act was enhanced to Rs. 2,50,000/- with effect from 02.06.1998. The gratuity ceiling was further enhanced to Rs. 3.50,000/- with effect from 02.06.1998. Therefore, the petitioner Management contended that the contesting respondents cannot claim gratuity based upon the settlement dated 17.02.1997. Since the parliament itself has amended providing for higher rate as the employee had retired as on 31.10.1996. The contesting respondents had received the gratuity by a cheque dated 27.12.1996. It was subsequently after the settlement was effected on the basis of the revised salary, he also received a sum of Rs. 52,275/-. Gratuity has been paid on the basis of the salary arrived at Rs. 14,523/-. But he claims that he worked for 39 years and his gratuity should be calculated based upon that. Therefore, the claim of the contesting respondents to claim extra gratuity was resisted on these lines. But the contesting respondents moved the Controlling Authority and filed Gratuity Applications demanding the difference.

6. The Controlling Authority who entertained the applications allowed the prayer made by the contesting respondents and directed the difference in gratuity to be paid. Thereafter, the petitioner Bank filed an appeal u/s 7(7) of the P.G. Act in all these matters. They raised similar contention holding that the settlement dated 17.02.1997 will not apply to employees who were on the rolls on 30.06.1994. It was also stated that there was no understanding that the settlement will apply to ex- employees. Therefore, the Controlling Authority had exceeded its jurisdiction. As condition precedent for filing appeal, they had also deposited the amount with the second respondent Controlling Authority. The Appellate Authority issued notice to the contesting respondents. On their filing a counter statement and written arguments, he finally rejected the appeal. The appellate authority held that there is no difficulty in holding that the workmen''s salary can be calculated as per the 12(3) Settlement and if it is divided by 26 days, his days wages can be calculated and that can be divided by 15 and multiplied by number of years of service, his gratuity can be worked out. Though the Management contended that if such sums are arrived at, they have the liberty to pay the lesser amount was

not accepted. It was also held that the contesting respondents are entitled to have the benefit of the settlement without any limitation and Section 14 of the P.G. Act helps the workers to receiver better gratuity. Similarly in the other writ petition, the same stand was taken by the authorities.

7. The learned Counsel for the third respondent relied upon the judgment of a Division bench of this Court in Indian Overseas Bank Vs. The Regional Labour Commissioner (C) and Appellate Authority Payment of Gratuity Act Ministry of Labour, The Assistant Labour Commissioner (C)-I and Controlling Authority under the Payment of Gratuity Act Ministry of Labour and N. Venkatasubramanian, . In that case, the Division Bench in paragraphs 18 to 21 observed as follows:

18. In P. Selvaraj v. Management of Shardlow India Ltd., Chennai (supra), a Division Bench of this Court consisting A.P. Shah, J. (as he then was) and K. Chandru, J., when a similar argument was advanced that at the time of retirement of employee, the retiral benefits were given and the gratuity accounts was settled and the long term practice of the management settling the gratuity only on the basis of the figures available on the date of death, retirement, etc., The said contentions was rejected in the following lines:

35. ...We are not impressed with this line of argument. The Gratuity Act is a beneficial piece of legislation and it should receive an interpretation consistent with the principles of equity and fair play. Therefore, the term "last drawn wage" found in Section 4(2) of the Gratuity Act should receive its full meaning and it cannot give any fractured interpretation. Further, the settlement provides as to what should be the wages that should be paid to a workman and that the management cannot adopt an artificial interpretation with reference to the term "wages". It is in this context, the term "wages" which is defined under the Gratuity Act, must include not only what is paid but also what is payable to a workman....

19. It is brought to our notice that recently in similar circumstances, K. Chandru, J. In W.P. No. 6746/1999 by order dated February 2, 2009 has also taken the same view and we are in agreement of the view of the learned Judge.

20. In view of the established legal position, the judgment of the Supreme Court in Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Others, which relates to the Industrial Disputes Act and the settlement u/s 18 of the said Act, that too, between two unions, on which reliance was placed by Thiru N.G.R. Prasad, learned Counsel for the appellant has no application to the facts of the case.

21. In these circumstances, the contention of the learned Counsel for the appellant that in the Settlement entered into in respect of revision of salary, a subsequent cut-off date viz., November 1, 1994 was fixed for the purpose of gratuity claim and hence, the third respondent is not entitled to claim more than what he was granted as gratuity cannot be countenanced especially when the third respondent was an employee within the meaning of Payment of Gratuity

Act, 1972, even after its amendment dated April 25, 1994. Further, the agreement entered into cannot take away the rights of parties, particularly when a better benefit is given to the employees. In such view of the matter, it is not possible to accept the contention of the learned Counsel for the appellant and we find no reason to interfere with the order of the learned Judge.

8. In the light of the above, this Court is not inclined to interfere with the orders passed by the Appellate Authority under the P.G. Act namely, the first respondent confirming the order of the second respondent. Hence, both the writ petition will stand dismissed. No costs.

9. In view of the dismissal of the writ petitions, the contesting respondents are entitled to withdraw the amounts lying in deposit with the second respondent to the credit of respective gratuity applications together with interest if any accrued there under.