(2011) 02 MAD CK 0422

In the Madras High Court

Case No : Writ Petition No. 8621 of 2009

The National Textile Corporation Ltd. APPELLANT

Vs

The Controlling Authority under Payment of Gratuity Act, 1972, R. Rajammal and Others and The General Manager, Shri Bharathi Mills/Swadeshi Cotton Mills RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:

Payment of Gratuity Act, 1972 — Section 13, 14, 4, 4(1), 7(3A)

Citation : (2011) 3 LLJ 703

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : C.V. Vijayakumar, for T.R. Rajaraman, for the Appellant; M.A. Abdul Wahab, for R2, V. Velmurugan, for D. Sreenivasan, GP (Pondy) for R3, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner is the National Textile Corporation Limited represented by its General Manager (P & IR), Southern Regional Office, Coimbatore. They have filed the writ petition, challenging the order passed by the first Respondent Controlling Authority under the Payment of Gratuity Act, 1972 cum Labour Enforcement Officer, Puducherry, dated 20.03.2009.

2. The writ petition was admitted on 30.04.2009. Pending the writ petition, this Court granted an interim stay. The contesting Respondents, who are 424 workers sought to be made as a party second Respondent in the writ petition. It is shown in the cause title that the second Respondent is one R. Rajammal and other 423 workers represented by B. Mohan Dass of Swadeshi-Bharathi Panchalai Thozhilalar Urimai Padukappu Sangam.

3. It is seen from the records that 424 workers belonging to the third Respondent Shri Bharathi Mills, Puducherry moved the Controlling Authority under the Gratuity Act claiming unpaid gratuity amount as well as the interest

accrued there under with various gratuity applications. The applications filed by them were registered as separate gratuity applications and tried by the first Respondent, who issued notice to the Petitioner Mill. Subsequently, the authority computed the gratuity amount payable to the workmen which amounted toRs.12,27,282.60 and Rs. 37,67,566.50 totallingRs.49,94,849.10 as due and payable to the ex-employees, who were engaged by Shri Bharathi Mills. The Petitioner Management was directed to pay the amount failing which they were asked to show cause as to why a certificate of recovery should not be issued to the District Collector for recovering the amount due.

4. Before the Controlling Authority, the second Respondent (Shri Bharathi Mills) sent a reply stating that the Mills which were working as Units of National Textile Corporation (TN &P) up to 31.03.2005 and from01.04.2005, was taken over by the Government of Puducherry as per Memorandum of Understanding dated 01.04.2005 signed between the Government of Puducherry and NTC (TN &P) Ltd., Coimbatore. The Claim Form filed by the Authorized Representative was on the basis of orders passed by the Controlling Authority in the P.G. Cases filed by the workers of Swadeshi Cotton Mills/Bharathi Mills during the NTC Management period i.e. before 01.04.2005. The liability arising out of the payment of gratuity only vest with the NTC.

5. In the meanwhile, the workmen who were represented by Swadeshi-Bharathi Panchalai Thozhilalar Urimai Padukappu Sangam represented by its President Mohandass filed a writ petition before this Court being W.P. No. 49773 of 2006, seeking for a direction to the Government of Puducherry, recovering the amount from the Petitioner Management for the amount computed by the Controlling Authority. In that writ petition, the Petitioner Management (who was cited as 4th Respondent) filed a counter statement stating that the order passed by the Controlling Authority was erroneous and they are bound to pay the amount only towards gratuity and not interest since the workmen have given individual undertaking seeking to forego the said interest.

6. In that writ petition, this Court by a final order dated 12.12.2008 directed the Labour Enforcement Officer viz., the fifth Respondent to hear the office bearers of the Trade Union and one representative of Respondents 1 to 4 and to pass orders thereafter. Pursuant to the direction issued by this Court, the Petitioner wrote to the first Respondent by a communication dated 04.03.2009 and informed that the workmen have given individual undertaking to forego the interest and had received the gratuity portion of the amount. The Act do not prohibit any individual workman to agree to scale down the amount payable under the head gratuity.

7. The Trade Union of the workmen also sent a reply dated 12.03.2009 informing the first Respondent that the424 employees have gone on Voluntary Retirement Scheme(VRS) and it was accepted by the Management. They were also relieved from service. They were informed by the Management that they can receive gratuity and ex-gratia payment from the Management in person after 30 days.

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When the workmen approached the Administration, the gratuity had not been calculated in accordance with law. They had kept the cheques ready for lesser amount and got signatures in the acknowledgment from the workers stating that they are giving up interest portion. It was also claimed by them that question of waiver of such interest will not arise. They should honor the order passed by the authorities. Written submissions were also given by the Petitioner Management. It is on the basis of these materials, the first Respondent passed the impugned order dated 20.03.2009.

8. The first Respondent held that it is not a case where the workers have rejected the package under v. The only question was that whether the non-payment of gratuity will result in payment of interest to the workmen. The gratuity itself was distributed by the Petitioner Management after two years. Therefore, there was no impediment in ordering the interest as per Section 8 of the Payment of Gratuity Act. It is this order, which is under challenge in the writ petition.

9. The learned Counsel for the Petitioner Management contended that since the workmen have accepted receipt of gratuity and executed an undertaking for voluntary waiver of interest towards the payment of left over gratuity, they cannot claim any further gratuity. Further, the Mills have been taken over by the Puducherry Textile Corporation Limited with effect from 01.04.2005 and the Petitioner Corporation has paid its entire liability towards gratuity. Therefore, the impugned order is not valid.

10. In the present case, it must be noted that the necessary parties are not imp leaded before this Court. The workmen numbering 424 went to the first Respondent with different gratuity applications for claiming the balance of gratuity as well as the interest. The authority after computing the amounts issued a further show cause notice dated 18.09.2006 directing the Petitioner Management to pay the amount failing which revenue recovery proceedings will be initiated. Though, it is the workmen who went to the Court seeking for a recovery of the amount, in which, this Court directed the authority to pass a speaking order. The necessary and proper parties are those 424 workers. Merely because they were represented by an authorized representative before the authority does not mean that they have no right to be either shown as parties or right to represent their own case in their individual capacity. In payments of gratuity, there is no scope for any Trade Union to come into the picture. The claims have always made either individually or as a group petition. But in the present case, the claims were made by the individuals. Thereafter, a consolidated order was passed. Though uncertain circumstances, a single writ petition may be allowed to challenge a common order passed but that does not absolve the Management from making all the individual workers as a necessary party Respondent to the writ petition. In the present case inasmuch as the Petitioner Management wanted to set aside various gratuity applications filed by the workmen dated 20.03.2009 and they have not made the necessary workers as

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party Respondent, the writ petition is liable to be rejected on the ground of non-joinder of proper and necessary parties.

11. Apart from the lacuna in the maintainability of writ petition, it must be noted that u/s 13 of the Payment of Gratuity Act, the gratuity payable under the Act is not liable for any attachment even pursuant to a civil court''s decree. Therefore, the gratuity cannot be attached for any dues payable.

12. Similarly, Section 14 of the Payment of Gratuity Act has an overriding effect. It is necessary to refer to Section 14 of the Act, which is as follows:

14. Act to override other enactments, etc.-The provisions of this Act or any rule made there under shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.

13. The Supreme Court while considering the scope of Section 14 in Allahabad Bank and Another Vs. All India Allahabad Bank Retired Emps. Assn., , in Paragraphs 36 and 38, it was observed as follows:

36. The Appellant being an establishment is under the statutory obligation to pay gratuity as provided for u/s 4 of the Act which is required to be read along with Section 14 of the Act which says that the provisions of the Act shall have effect notwithstanding anything inconsistent therein contained in any enactment or in any instrument or contract having effect by virtue of any enactment other than this Act. The provisions of the Act prevail over all other enactments or instruments or contracts so far as the payment of gratuity is concerned. The right to receive gratuity under the provisions of the Act cannot be defeated by any instrument or contract.

38. There is no material placed before us that the employees while opting for the pension scheme at the time of their superannuation/retirement either expressly or impliedly waived their statutory right to claim payment of gratuity under the provisions of the Act. In the circumstances we find no merit in the submission made by the learned Counsel for the Appellant in this regard. For the aforesaid reasons we find no merit in the appeal. 2010 2 SCC had rejected a similar contention.

14. The gratuity becomes payable on any one of the contingencies that may fall u/s 4(1) of the Act. In the present case, the workmen have voluntarily retired pursuant to v. and therefore their gratuity becomes payable within 30 days from the said contingency. Since the workmen were paid the difference in gratuity only after two years, automatically interest become payable in the light of Section 7(3A) r/w Section 8 of the Payment of Gratuity Act.

15. It is necessary to refer to Section 7(3A) of the Act, which reads as follows:

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,

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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.

16. Section 8 of the Act reads as follows:

Recovery of gratuity.-If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority, shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon [at such rate as the Central Government may, by notification, specify] from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto.[Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

17. Further, as against the order passed by the Controlling Authority, the Petitioner has a right of appeal to the Appellate Authority u/s 7(7) of the Act. The Petitioner Management has not questioned the same before an Appellate Authority. They cannot take advantage of the direction issued by this Court in a writ petition filed by the Trade Union in which the authority was directed to pass orders after hearing all the parties as a cause of action to challenge the said order. Such an opportunity came to be issued because the proviso to Section 8 itself talks about an opportunity before issuing a certificate for revenue recovery. But in the present case, the substantive order has been passed by the authority earlier and the proviso to Section 8 is only a show cause notice against the revenue recovery. Inasmuch as the substantive order of the authority is not under challenge, the writ petition is liable to be rejected on this score also.

18. In the light of the above, the writ petition stands dismissed. The Petitioner is hereby directed to disburse the amount payable to the workmen pursuant to the impugned order within a period of eight weeks from the date of receipt of a copy of this order. No costs.

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