

(2015) 09 KAR CK 0074

In the Karnataka High Court

Case No : Writ Petition Nos. 65079-65080/2009 (S-R)

The New India Assurance Company Limited

APPELLANT

Vs

Y.A. Mulla

RESPONDENT

Date of Decision : 10-09-2015

Acts Referred:

Payment of Gratuity Act, 1972 — Section 14, 4, 4(6), 5(1)(a)(i)

Citation : (2015) 09 KAR CK 0074

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : Pradeep S. Sawkar, Advocate, for the Appellant; S.K. Hegde, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—Heard the learned counsel for petitioner Shri Pradeep Sawkar and the learned counsel appearing for respondent, Shri S.K. Hegde.

2. It is the case of the petitioner that the respondent was working as an Assistant Branch Manager at the Hubli branch -II in the petitioner Company. During the year 1991 he is said to have committed certain irregularities in respect of which a charge sheet dated 01.12.2003 was issued to him. An enquiry was thereafter conducted in accordance with the General Insurance (Conduct. Discipline and Appeal) Rules, 1975 (hereinafter referred to as "1975 Rules", for brevity), wherein he was found guilty of the charges. Thereafter, the competent authority by an order dated 22.06.2005 imposed a penalty of recovery of Rs. 57,600/- from the terminal dues payable by the respondent being the loss caused to the petitioner Company and also ordered a cut in the pension in a sum of Rs. 1,000/- per month, for a period of one year from the date of commencement.

3. The respondent had issued yet another charge sheet dated 18.03.2004 for certain irregularities committed while he was working as a Branch Manager at

the Karwar branch of the petitioner Company during the year 2001. After a duly conducted enquiry, the Disciplinary Authority by an order dated 30.06.2005 imposed a penalty of recovery of Rs. 3,48,000/- from the terminal dues payable to the respondent and a permanent cut in the pension in a sum of Rs. 2,000/- per month, from the date of commencement. The said orders had attained finality. The respondent is said to have retired from service of the petitioner Company and he was relieved with effect from 28.02.2005.

4. There were two other charge sheets dated 12.01.2005 and 06.03.2006 respectively. After an enquiry in respect of the same, punishment of recovery of Rs. 1,06,984/- was ordered and a reduction in pension by a sum of Rs. 2,000/- per month, for a period of two years and punishment of reduction in basic pension of Rs. 1,500/- per month permanently was ordered, respectively. Though there was an order for recovery of Rs. 5,80,000/- in the last of the enquiries pursuant to the charge sheet dated 06.03.2006, no recovery was made since the respondent had attained the age of superannuation and had retired from service and the petitioner had only recovered Rs. 5,12,584/- as against an actual loss of Rs. 26,75,384/- in the above instances. In any event the controversy that is the subject matter of this petition, pertains to the recovery sought to be made from out of the gratuity payable to the respondent.

5. It is pertinent to note that insofar as the recoveries ordered are concerned, pursuant to the charges dated 12.01.2005 and 06.03.2006, the same were said to be pending as on the date, the respondent attained the age of superannuation. Therefore, recoveries could be made only out of the pension that was granted to the respondent and an order was passed in this regard in terms of paragraph 45 of the General Insurance Employees Pension Scheme, 1995 (hereinafter referred to as "1995 Scheme", for brevity).

6. In this background, the respondent had approached the Controlling Authority seeking a direction to the petitioner to pay the gratuity due to him. The competent Authority by an order dated 30.10.2006 had directed the petitioner to pay Rs. 3,50,000/- being the gratuity amount. Against which an appeal was filed before the Appellate Authority. The Appellate Authority, in turn, disposed of the appeal by an order dated 30.03.2009, affirming the order of the Controlling Authority, and therefore, the present petition.

7. The point that arises for consideration is :

"Whether the petitioner was in a position to invoke paragraph 45, particularly sub paragraph (2) of paragraph 45 of the General Insurance Employees Pension Scheme, 1995 in seeking recovery of the amounts claimed, from the gratuity amount payable to the respondent?"

8. In this regard though several grounds are urged in the writ petition, Shri Pradeep Sawkar, the learned counsel appearing for the petitioner would very fairly submit that the issue stands covered against the petitioner in view of the judgment of the Apex Court in the case of Y.K. Singla Vs. Punjab National Bank

and Others, . While the learned counsel for the respondent would also draw attention to the judgment in Allahabad Bank and Another Vs. All India Allahabad Bank Retired Emps. Assn., .

9. In Singla's case the appellant was an employee of the Punjab National Bank and there was a criminal case filed against the appellant when he was in service. He had attained the age of super annuation even when the case was pending. The Bank chose to with hold the gratuity due to the appellant in view of the criminal case pending against him, invoking a provision, which was in pari materia with paragraph 45 of the 1995 Scheme, which is under consideration in the present petition.

10. It transpires that the appellant Singla, was ultimately acquitted and thereafter became entitled to gratuity, which was with held. Though the Bank had paid the gratuity after his acquittal, the Bank had denied him interest for the period during which the gratuity was with held, pending disposal of the criminal case. It was this, which was in controversy and the matter having reached the Apex Court, the Apex Court considered whether the provision under which the Bank had with held the gratuity could override the express provision of the Payment of Gratuity Act, 1972, and held as follows:

"22. In order to determine which of the two provisions (the Gratuity Act or the 1995 Regulations) would be applicable for determining the claim of the appellant, it is also essential to refer to Section 14 of the Gratuity Act, which is being extracted hereunder:--

"14. Act to override other enactments, etc. - The provisions of this Act or any rule made thereunder 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. "

A perusal of Section 14 leaves no room for any doubt that a superior status has been vested in the provisions of the Gratuity Act, vis-?-vis, any other enactment (including any other instrument or contract) inconsistent therewith. Therefore, insofar as the entitlement of an employee to gratuity is concerned, it is apparent that in cases where gratuity of an employee is not regulated under the provisions of the Gratuity Act, the legislature having vested superiority to the provisions of the Gratuity Act over all other provisions/enactments (including any instrument or contract having the force of law), the provisions of the Gratuity Act cannot be ignored. The term "instrument" and the phrase "instrument or contract having the force of law" shall most definitely be deemed to include the 1995 Regulations, which regulate the payment of gratuity to the appellant."

11. Therefore, the learned counsel, Shri Sawakar, would submit that the present case also would turn on the same point of law, and hence, the petition may have to be dismissed and the gratuity payable to the petitioner cannot be with held.

12. Insofar as the decision in Allahabad Bank's case is concerned, the question

that arose in that case was, whether the retired employees of the appellant Bank, namely, the Allahabad Bank were entitled to payment of gratuity under the provisions of the Payment of Gratuity Act, 1972?

13. The retired employees of the Bank having formed an Association, which included the officers and subordinate staff, who had issued a legal notice to the appellant Bank on 27.11.1988 requiring it to release the amount of gratuity to its members in accordance with the provisions of the said Act. The case set up by the Association was that its members were being illegally deprived of their statutory right to receive gratuity under the provisions of the Act on the pretext that they had opted for pensionary benefits in lieu of gratuity. The question was answered as follows -

"36. The appellant being an establishment is under the statutory obligation to pay gratuity as provided for under Section 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."

14. Yet another decision, which may be relevant to the point of law involved in this case was, *P. Rajan Sandhi Vs. Union of India (UOI) and Another*, . In that case, the appellant was an Assistant Editor in Mathrubhumami Printing and Publishing Company Limited, which was a newspaper publishing company. The appellant was charge-sheeted for making false allegations against the Managing Director of respondent No. 2 and for using discourteous language and for other misconduct. An enquiry having been conducted, he was found guilty. The appellant was dismissed from service. An industrial dispute was raised and the Industrial Tribunal upheld the order of dismissal. The appellant had challenged the order of the Industrial Tribunal by filing a writ petition before the High Court, which was dismissed. Thereupon, it was challenged in an appeal unsuccessfully, and then a Special Leave Petition was filed before the Supreme Court. The question was, whether the provisions of the Payment of Gratuity Act, 1972 would over ride the provisions of the Working Journalists Act, 1955. The Apex Court on an examination of the relevant provisions held thus -

"11. It may be seen that there is a difference between the provisions for denial of gratuity in the Payment of Gratuity Act and in the Working Journalists Act. Under the Working Journalists Act gratuity can be denied if the service is terminated as a punishment inflicted by way of disciplinary act, as has been done in the instant case. We are of the opinion that Section 5 of the Working Journalists Act being a special law will prevail over Section 4(6) of the Payment of Gratuity Act which is a general law. Section 5 of the Working Journalists Act is only for working journalists, whereas the Payment of Gratuity Act is available to

all employees who are covered by that Act and is not limited to working journalists. Hence, the Working Journalists Act is a special law, whereas the Payment of Gratuity Act is a general law. It is well settled that special law will prevail over the general law, vide G.P. Singh's Principles of Statutory Interpretation", 9th Edition, 2004, pp. 133, 134.

12. The special law, i.e., Section 5(1)(a)(i) of the Working Journalists Act, does not require any allegation or proof of any damage or loss to, or destruction of, property, etc. as is required under the general law i.e. the Payment of Gratuity Act. All that is required under the Working Journalists Act is that the termination should be as a punishment inflicted by way of disciplinary action, which is the position in the case at hand. Thus, if the service of an employee has been terminated by way of disciplinary action under the Working Journalists Act, he is not entitled to gratuity."

15. In the above view of the matter, in the present case on hand, as the provisions of the Payment of Gratuity Act, 1972 would over ride paragraph 45 of the 1995 Scheme under which the petitioner chose to with hold the gratuity, the impugned orders are in accordance with law, and hence, the petition is dismissed.

16. The petitioner, in the meanwhile, has deposited the amount, before the Controlling Authority, and hence, the respondent is permitted to withdraw the same.