
(2013) 08 MAD CK 0241

In the Madras High Court

Case No : W.P. (MD) No. 8578 of 2011

Thiruchirapalli City Co-operative Bank Ltd.

APPELLANT

Vs

The Appellate Authority (Gratuity) and Others

RESPONDENT

Date of Decision : 22-08-2013

Acts Referred:

Citation : (2014) LabIC 902

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Judgement

S. Tamilvanan, J.—Heard both the learned counsel appearing for the petitioner as well as the learned Special Government Pleader appearing for the respondents 1 and 2 and the learned counsel appearing for R3 to R5. This writ petition has been filed under Article 226 of the Constitution of India, seeking an order in the nature of writ of certiorari or any other appropriate writ or order calling for the records pertaining to the impugned order, dated 21.03.2011 passed in P.G. Appeal No. 319/2010 on the file of the first respondent and quash the same.

2. It is seen that the third respondent had filed a claim petition, before the second respondent. Regional Manager, LIC of India, stating that a sum of Rs. 1,73,239/- was payable to him towards his gratuity benefit. However, it was opposed by the Bank, stating that an employee, whose service had been terminated is not eligible for gratuity and that he was entitled to the gratuity amount of Rs. 1,73,239/-, which was payable by Life Insurance Corporation of India, as per Section 4A of Payment of Gratuity Act and that the petitioner was not liable to pay any gratuity amount u/s 4 of the Act.

3. Learned counsel appearing for the petitioner submitted that as per the impugned order, it was ordered to pay interest at 10% p.a. for the aforesaid amount. It is further stated that the petitioner challenged the same before the first respondent, however, the appellate authority (Gratuity), (Joint Commissioner of Labour), Trichy mechanically confirmed the order passed by the second respondent herein and dismissed the appeal. Aggrieved by which, the

writ petition has been filed.

4. The writ petitioner has raised a plea that the third respondent herein was dismissed from service, hence, he is entitled to get only P.F., and not gratuity. According to him, the order passed by the second respondent is perverse and further contended that the second respondent has not considered the scope of Section 4A of Payment of Gratuity Act, which reads that the employer has to obtain insurance coverage, for which premium amount has to be paid. According to him, the second respondent ought to have seen that Section 4(6)(b)(ii) mandates that the gratuity payable to an employee may be forfeited, if his service is terminated for any act, which constitutes an offence involving moral turpitude and is committed by him in the course of his employment.

5. Learned counsel appearing for the third respondent submitted that there was no allegation of moral turpitude against the third respondent, since he was terminated from service, on account of his long absence. It is submitted that the third respondent has served for about 32 years and on the date of termination, he was an Assistant Manager in the petitioner's Bank.

6. According to the learned counsel appearing for the petitioner, there were two charges framed against the third respondent by the petitioner Bank.

7. It is seen that the third respondent filed P.G. Case No. 39 of 2006 under the payment of Gratuity Rules, 1973 before the Assistant Commissioner of Labour (Gratuity) and the controlling authority under the payment of Gratuity Act, 1972. The third respondent as appellant has stated that he was an employee under the Special Officer, Tiruchirapalli, City Co-operative Bank Ltd., the writ petitioner herein and he was terminated from service on 19.06.2005, after the completion of 32 years of continuous service under the respondents. The third respondent/applicant submitted an application under Rule 7 of the Payment of Gratuity Act on 29.09.2005 but the above mentioned employer refused to entertain it. It is seen that a duplicate copy of the said notice was also produced.

8. According to the third respondent herein, the writ petitioner/employer paid an amount of Rs. 1,76,761/- towards gratuity on 30-08-2005. The third respondent has further submitted that the writ petitioner/employer has not paid gratuity as per the Act, hence, notice, dated 29.09.2005 was issued on the employer. Having received the same, the writ petitioner/employer has not paid the amount to the third respondent/applicant, the balance of gratuity amount, as per the Act. Hence, the third respondent/applicant filed his claim petition before the Assistant Commissioner of Labour (Gratuity), Tiruchirapalli, the second respondent herein.

9. The third respondent also furnished necessary particulars in the annexure thereto and prayed that the controlling authority, to determine the amount of gratuity payable to the third respondent/applicant and directed the employer to pay the amount to the third respondent herein. In the annexure, the third respondent has stated that his employer, the Special Officer, Tiruchirapalli City Co-operative Bank Ltd., Tiruchirapalli-77 is the writ petitioner. The third

respondent, applicant was Assistant Manager in the deposit section of the petitioner. His date of appointment was 09.07.1993. The third respondent herein has stated that he has served for about 32 years under the writ petitioner Co-operative Bank and was drawing his last pay at Rs. 20,872.97/- p.m. According to him, the total gratuity payable to the employee, the third respondent herein was Rs. 3,50,000/-. Though the said amount was claimed by the third respondent on 30.08.2005, only an amount of Rs. 1,76,761/- was paid, hence, the balance amount to be paid is stated at Rs. 1,73,239/-.

10. In the counter filed before the Assistant Commissioner of Labour, the writ petitioner/employer has not disputed that the third respondent had served for about 32 years and was terminated from service on 19.06.2005. Admittedly, the last pay drawn by the third respondent/employee was Rs. 20,872/- and it is further stated by the writ petitioner/employer that the petitioner had received a sum of Rs. 1,73,239/- from the Life Insurance Corporation of India and the same was paid by the employer of the third respondent and the same was accepted by the third respondent without any protest. When a person is entitled to a larger amount, receiving a portion of the amount cannot be a ground for denial of the balance amount, on the ground that the portion of the amount was received without protest.

11. The writ petitioner has stated in the counter that the claim of the third respondent is highly belated. Since he was dismissed from service on 19.06.2005, he was not entitled to receive the amount. After the enquiry, the Assistant Commissioner of Labour (Gratuity), Tiruchirapalli, passed the order, dated 01.04.2010 in P.G. case No. 39/2006, holding that the third respondent is entitled to receive the amount and the writ petitioner has to pay Rs. 1,73,239/-, since the amount, Rs. 1,76,761/- was already received from the Life Insurance Corporation of India. The writ petitioner, being the employer had to pay a total amount of Rs. 3,50,000/- towards the gratuity payable to the third respondent, out of which, Rs. 1,76,761/- was already paid, hence, balance amount to be paid is Rs. 1,73,239/- and as per Section 7(3)(a) of the Act, the Assistant Labour Commissioner (Gratuity), Tiruchirapalli, held that the writ petitioner is liable to pay the said amount with interest at 10% p.a. and that the balance of gratuity amount is yet to be paid to the third respondent herein. Aggrieved by the said order, the writ petitioner preferred appeal in P.G. Appeal No. 319/10 before the Joint commissioner of Labour, Trichy. The appellate authority, the Joint Commissioner of Labour, Tiruchirapalli, the first respondent herein, by his order, dated 21.03.2011, made in P.G. Appeal No. 319/2010 has confirmed the order passed by the Assistant Commissioner of Labour, Trichy and dismissed the appeal preferred by the writ petitioner herein.

12. It is not in dispute that the third respondent is entitled to the balance amount Rs. 1,73,239/- towards his gratuity payable, u/s 7(3)(a) of the Act.

13. The Assistant Labour Commissioner, second respondent herein has held that the writ petitioner is liable to pay interest at 10% p.a., for the balance of gratuity

amount. It cannot be disputed that the third respondent is entitled to get interest for the balance of gratuity amount, as the amount was not paid in time. However, the Assistant Commissioner of Labour (Gratuity) has fixed interest at 10% p.a., for which there is no details available to justify the interest at 10% p.a., awarded for the balance amount.

14. Considering the prevailing bank rate of interest for senior citizens, and also the fact that the third respondent, being a retired employee of the writ petitioner, this Court is of the view that it would be just and reasonable to direct the petitioner to pay interest at 9.5%, considering the bank rate of interest payable to senior citizens. With the aforesaid modification, in respect of interest, the writ petition is disposed of. Since the matter is pending for a long time, the petitioner is directed to pay the balance of gratuity amount, as decided by the second respondent, confirmed by the first respondent with interest at 9.5% p.a., to the third respondent, within a period of six weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. No costs.