

(2013) 05 AHC CK 0378

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No"s. 26118 of 2011 with 18968, 19004, 19007, 19009, 19011, 19013 and 19015 of 2010

U.P. Power Transmission Corporation Ltd.

APPELLANT

Vs

Jagdish Narain Rawat and Others

RESPONDENT

Date of Decision : 30-05-2013

Acts Referred:

Payment of Gratuity Act, 1972 — Section 14, 4, 5

Citation : (2013) 6 ALJ 555 : (2013) 6 AWC 5563 : (2013) 138 FLR 605 : (2013) 4 UPLBEC 2863

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Arvind Kumar, for the Appellant; Bushra Maryam, for the Respondent

Final Decision : Partly Allowed

Judgement

Tarun Agarwala, J.—The erstwhile UP. State Electricity Board vide its boards meeting dated 26th December, 1963 passed a resolution for adopting the U.P. Government Rules and Regulation regarding Classification and Control Rules, Government Servant Conduct Rules, T.A. Rules, Medical Attendance Rules and Pensionary Rules as amended from time to time. Pursuant to the said resolution, the U.P. State Electricity Board adopted the U.P. Retirement Benefits Rules, 1961 read with U.P. New Family Pension Scheme, 1965. Under the Pension Rules, a composite scheme was provided for payment of GPF, gratuity and pension, which according to the petitioner gave better benefits than the Central Provident Fund Scheme and gratuity payable under different gratuity schemes. In 1972, the Payment of Gratuity Act came into existence, and under the said Act, it became obligatory on the employers to pay gratuity. Accordingly, an office memorandum dated 3rd April, 1976 and 5th May, 1976 was issued directing its employees to either opt for the pension Rules under the U.P. Retirement Benefit Rules, 1961 or for payment of gratuity under the Act of 1972. It was clarified that if the employee opts for the benefit under the Payment of Gratuity Act, 1972, he would

not be entitled to pensionary benefits as provided under the U.P. Retirement Benefit Rules, 1961. Based on the aforesaid office memorandum, a further office memorandum was issued on 17th February, 1982 and 21st June, 1983 directing the employees to give the option either to opt for the U.P. Retirement Benefits Rules, 1961 read with U.P. New Family Pension Scheme, 1965 or opt for the benefits of gratuity payable under the Payment of Gratuity Act. Subsequently, an office memorandum dated 19th September, 1984 was issued clarifying its earlier office memorandums indicating therein that employees of the U.P. State Electricity Board, were no longer required to submit their option for being allowed benefits admissible under the U.P. Retirement Benefit Rules, 1961 and the New Family Pension Scheme, 1965. It transpires that pursuant to the office memorandum dated 17th February, 1982, the workman in question, gave an option to take the benefits under the U.P. Retirement Benefit Rules, 1961. The workman retired on 30th September, 1994 and received GPF and gratuity amounting to ` 5,91,121/-, which he received without any protest and also started receiving pension under the said Rules.

2. After 9 long years, the workman filed an application under the Payment of Gratuity Act before the Controlling Authority praying that he is entitled for gratuity under the said Act. The petitioner's objected saying that since a composite scheme had been framed by the Government of Uttar Pradesh, which had been adopted by the U.P. State Electricity Board, which the workmen had opted, it was no longer permissible for the workmen to claim gratuity under the Act. The Controlling Authority, after considering the matter, passed an order dated 7th August, 2010 directing the petitioner to pay the difference of the gratuity amount along with interest at the rate of 6% per annum. The petitioner, being aggrieved, filed an appeal, which also met the same fate. The petitioner has now filed the present writ petition.

3. Heard Sri Arvind Kumar, the learned Counsel for the petitioner and Ms. Bushra Maryam, the learned Counsel for the respondent.

4. The admitted facts which emerges is, that a composite scheme has been given under the U.P. Retirement Benefit Rules, 1961 and New Family Pension Scheme, 1965, which has been adopted by the U.P. State Electricity Board. It is alleged that this composite scheme provides for payment of gratuity, GPF and pension, which is more beneficial to the workers than other schemes. The workman has also opted to receive the benefits under the Rules of 1961 and the Family Pension Scheme of 1965.

5. The question which is required to be answered is, whether the option given by the workman is binding on him and whether he is entitled to claim the balance gratuity amount under the Payment of Gratuity Act.

6. In order to appreciate the submissions of the learned Counsel for the parties, it would be appropriate to refer to a few provisions of the Act. Section 4 of the Payment of Gratuity Act, 1972 provides that gratuity would be payable to an

employee on termination of his employment after he has rendered continuous service for not less than 5 years on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease. Sub-clause (5) of section 4 provides as under:--

4(5). Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract of the employer.

7. A perusal of the aforesaid indicates that nothing would affect a right of the employee to receive better terms of gratuity from the employer.

8. Section 5 provides power to exempt the provisions of the Act by the appropriate Government, if in the opinion of the appropriate Government it is found that the employees are in receipt of gratuity or pensionary benefits/which are more favourable than the benefits conferred under the Act. Section 5 is extracted hereunder:--

5. Power to exempt.--[(1)] The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act if, in the opinion of the appropriate Government, the employees in such establishment, factory, mine, oilfield, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

[(2)] The appropriate Government may, by notification and subject to such conditions as may be specified in the notification, exempt any employee or class of employees employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act, if, in the opinion of the appropriate Government, such employee or class of employees are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.]

[(3)] A notification issued under sub-section (1) or sub-section (2) may be issued retrospectively a date not earlier than the date of commencement of this Act, but no such notification shall be issued so as to prejudicially affect the interests of any person.]

9. Section 14 of the Act reads as under:

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.

10. A perusal of the aforesaid indicates that the provisions of Payment of Gratuity Act will have effect notwithstanding anything inconsistent therewith

contained in any other enactment.

11. From the aforesaid, it is clear that gratuity is payable to an employee u/s 4, if the employee meets the conditions mentioned therein. This payment is mandatory. If a scheme is floated by the employers, which is more beneficial than the benefit granted under the Payment of Gratuity Act then the provisions of the Act can be exempted by the appropriate Government u/s 5 upon an application filed by the employers in such purposes failing which, the provision of section 14 will override any other enactment made, which is inconsistent with the Payment of Gratuity Act.

12. In the instant case, the respondents are giving the benefits as per the U.P. Retirement Rules, 1961 read with New Family Pension Scheme, 1965. The question is, whether the workman was still liable to be paid the gratuity under the Act of 1972. The learned Counsel for the petitioner contended that once the workers gave their option and had exercised their right to receive the benefit under the Rules of 1961 read with the New Family Pension Scheme, 1965, it was no longer permissible for them to receive gratuity under the Act of 1972.

13. The submission of the learned Counsel for the petitioner cannot be accepted. The Court finds that the office memorandum of 1982 was subsequently clarified by another office memorandum dated 19th September, 1984, in which it was clarified that the employees were no longer required to submit their option for receiving the benefits under the U.P. Retirement Benefit Rules, 1961 read with New Family Pension Scheme, 1965.

14. In the light of the aforesaid, the option exercised by the workers was an exercise in futility and it did not bind them for not receiving better benefits payable under the Act.

15. Nothing stopped the workman from receiving the benefits under the Payment of Gratuity Act, 1972 in view of sub-clause (5) of section 4 of the Act, which clearly indicates that the right of the employee to receive better terms of gratuity under any award or agreement would not be affected by section 4 of the Act to receive payment under the said Act.

16. In *Municipal Corporation of Delhi Vs. Dharam Prakash Sharma and Another*, the Supreme Court held that since no steps were taken by the employer to seek exemption u/s 5 of the Payment of Gratuity Act and in view of the overriding provision of section 14 of the said Act, the provisions of gratuity payable to the employees under the pension Rules would have no effect and that the employees would be entitled to payment of gratuity under the Payment of Gratuity Act. The said decision is squarely applicable in the instant case.

17. Similarly, in *Allahabad Bank and Another Vs. All India Allahabad Bank Retired Emps. Assn.*, the Supreme Court held that gratuity payable under the Payment of Gratuity Act is a statutory right and the same cannot be taken away except in accordance with the provisions of the Act.

18. In the instant case, it was open to the employers to seek exemption u/s 5 of the Payment of Gratuity Act, which has not been done and so long as the exemption is not granted by the appropriate Government, the provisions of the Gratuity Act will remain applicable upon the petitioner.

19. The learned Counsel for the petitioner has relied upon the decision of the Supreme Court in D.T.C. Retired Employees Association and Others Vs. Delhi Transport and Others etc. etc., wherein the Supreme Court held that the appellants, who were the retired employees and had opted for the pension scheme, which was introduced by the employer corporation through which they were paid gratuity could not avail the benefit of both the pension and gratuity and that it was not open to the Court to interfere with the pension scheme that was implemented by the employers. The said decision is squarely distinguishable and is not applicable in the instant case, inasmuch as the provision of sections 5 and 14 of the Payment of Gratuity Act was not considered nor noticed.

20. In the light of the aforesaid, the Court is of the opinion that the order of the Prescribed Authority directing the petitioners" to pay the difference of the gratuity was justified. However, the Court finds that the order of payment of interest was not justified. The workman did not stir in the matter for 9 long years and, thereafter, filed the claim application. The Court is of the opinion that on account of the fault of the workman, the payment of the interest liability cannot be fastened upon the employers. In the light of the aforesaid, the writ petition is partly allowed. The order of the Controlling Authority is modified to the extent that the employers, namely, the petitioners are only liable to pay the difference of the gratuity amount under the Payment of Gratuity Act and that no interest would be payable. Since the entire amount has been deposited, the Controlling Authority would disburse the payment of the gratuity amount to the workers and the interest component would be refunded to the petitioners.