
(2001) 09 MAD CK 0081

In the Madras High Court

Case No : Writ Petition No"s. 17350 to 17354 of 1994

Vaithyanathan V. and Others

APPELLANT

Vs

Deputy Commission of Labour and Another

RESPONDENT

Date of Decision : 27-09-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 18, 18(1)
Payment of Gratuity Act, 1972 — Section 14

Citation : (2002) 3 LLJ 922

Hon'ble Judges : R. Jayasimha Babu, J

Bench : Single Bench

Advocate : S. Soundararajan, for the Appellant; S. Jayakumar, S. Ravindran for T.S. Gopalan, for the Respondent

Final Decision : Dismissed

Judgement

R. Jayasimha Babu, J.—The respondent-company was a sick undertaking and had been closed down in the year 1986, For four years, payments had not been made to the workmen who had been employed therein. In the year 1990, an investor was found to take over the sick undertaking, and the unions having agreed that some sacrifice on the part of the workmen was also necessary to revive the undertaking, they entered into settlement in the year 1990 inter alia scaling down the amount of gratuity payable to the retired workmen to 85 per cent of the amount. The concerned workmen also entered into such settlement with the management. Thereafter, the amount was paid to the concerned workmen.

2. Petitioners are some of those who had signed such a settlement. It is the finding of the authority that they had retired in 1990, or prior thereto, that they were willing parties to the settlement, that they were bound by it that that settlement is not inconsistent with the provisions of the Payment of Gratuity Act and, therefore, the petitioners were not entitled to any further sums by way of gratuity.

3. The Payment of Gratuity Act in Section 14, provides that the Act shall override

other enactments to the extent of any inconsistency contained in any other such enactments. The settlement entered into by the workmen with the management was u/s 18(1) of the Industrial Disputes Act. There is no inconsistency between Section 18 of the Industrial Disputes Act and the provisions of the Payment of Gratuity Act. A settlement can be arrived at by a workman with the management u/s 18(1) of the Industrial Disputes Act in respect of matters which are subject to the provisions of the Industrial Disputes Act and on which the parties have reached an agreement. Section 18(1) of the Industrial Disputes Act provides thus:

"A settlement arrived at by agreement between the employer and the workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement."

4. It is not the case of the workmen that they were coerced into signing a settlement or that the settlement is vitiated in any manner. The execution of the settlement is undisputed. The receipt of the amount thereunder is also undisputed.

5. Section 14 of the Payment of Gratuity Act, in the circumstances, cannot, be of any assistance to the petitioners to contend that despite such a settlement having been arrived at, the workmen are nevertheless entitled to claim what they had in fact given up under that settlement. The reason for giving up the part of their dues was on account of the sacrifice in order to revive the undertaking, so that, it could continue to be a source of employment to others.

6. The Payment of Gratuity Act does not anywhere provide that it is impermissible for a workman to agree to scale down the amount of gratuity payable to him in the circumstances like the present, or in any other circumstance. The Act imposes an obligation on the employer to pay gratuity to those eligible under the Act the amounts, calculated in accordance with the provisions of the Act. If the workman, who is entitled to receive those amounts, willingly agrees to give up a portion of that amount in the background of the sickness of the undertaking and the need for revival which would, entail heavy financial investment by the person who had come forward to revive the undertaking, it cannot be said that the provisions of the Act is violated by reason of that agreement which they have entered into u/s 18(1) of the Industrial Disputes Act.

7. Any agreement solemnly entered into is meant to be binding on the parties, unless the agreement is vitiated by any factor recognised by law. No such vitiating factor has been demonstrated to have existed, and the authorities below have rightly acted upon that agreement. The findings of fact recorded by them show that the workmen had in fact received the amounts in full quit of all their claims towards gratuity.

8. Counsel for the workman submitted that though the operations ceased in the year 1986, nevertheless, for the period up to 1990, the gratuity was payable.

The receipt of payment of the gratuity and final settlement. It was obvious that at the time when the workmen signed the receipt, they were well aware that the period of four and half years was not being treated as a period for which there was liability for payment of gratuity, and that even if there were to be a liability, petitioners had agreed not to claim that gratuity for that period.

9. There is, therefore, no warrant for interfering with the impugned order. The writ petitions are, therefore, dismissed.