
(2016) 08 MAD CK 0068
In the Madras High Court
Case No : W.A. Nos. 3037 of 2002

V.S. Ekambaram

APPELLANT

Vs

The Appellate Authority

RESPONDENT

Date of Decision : 03-08-2016

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4, 7(5)

Citation : (2017) 1 CLR 173 : (2016) 151 FLR 695 : (2016) 3 LLJ 719

Hon'ble Judges : Mr. Sanjay Kishan Kaul C.J. and R. Mahadevan, J.

Bench : Division Bench

Advocate : Mr. N.G.R. Prasad for M/s. Row and Reddy, Advocates. in W.A. Nos. 3037 and 3038 of 2002, Mr. K. Sankaran, Advocate. in W.P. No. 9079 of 2002, for the Appellant; Mr. Aravind Kumar, Sr. Panel Counsel for Central Government. in W.A. Nos. 3037 and 3038 of 200

Final Decision : Disposed Off

Judgement

R. Mahadevan, J.—The writ appeals have been filed against the common order dated 22.07.2002 passed by this Court in W.P. Nos.7353 of 1999 and W.P.No.11613 of 2000.

2. W.P.No.9079 of 1999 has been filed to quash the proceedings of the second respondent dated 26.03.1999 in G.A.No.60/98 confirming the order of the third respondent in G.A.No.38/96 dated 02.09.1998.

3. The facts leading to the filing of the writ petitions, from which the present writ appeals have arisen, are as follows:

(i) W.P.No.7353 of 1999 was filed to quash the orders passed by the first respondent dated 11.02.1999 and 04.03.1999 in Gratuity Appeal Nos.3 to 11, 13 to 16 and 50 of 1998 respectively and consequently to compute the amount as prayed for in the gratuity applications before the 2nd and 3rd respondents together with interest at 10% per annum from the date of the application before the 3rd respondent with costs. W.P.No.11613 of 2000 was filed to quash the

order of the first respondent dated 9.2.2000 in G.A.No.2/99 and consequently direct the 2nd respondent to hear and decide the Gratuity Application No.2/99 on merits and in accordance with law.

(ii) In the affidavit filed in support of W.P.No.7353 of 1999, the petitioners state that they were employed by the Imperial Bank of India, which was taken over by the 3rd respondent on 01.07.1955 under the State Bank of India Act, 1955. They retired from State Bank of India on various dates. At the time of their retirement, the Payment of Gratuity Act, 1972 (hereinafter called as the Act) came into force on 16.9.1972. They were paid gratuity as per Section 4 of the Act at the rate of 15 days' salary for every completed year of service subject to the ceiling prevailing at that time. They were not paid the better terms of gratuity according to paragraph 370 of the Labour Appellate Tribunal Award which stood protected under Section 4(5) of the Act. Earlier, the employees of the Imperial Bank of India were covered by gratuity scheme based on two awards of the year 1947-48, one was the Divetia award which was applicable to Imperial Bank employees working in Bombay and Ahmedabad, which provided for payment of gratuity of one month's last drawn basic pay for every one year of service subject to a ceiling and the other was the Gupta award which was applicable to the employees of Imperial Bank of India (Bengal circle) provided for gratuity at the same rate of basic pay on Divetia award but without ceiling and it was made applicable to all the officers of the Imperial Bank of India outside Bombay and Ahmedabad. The Labour Appellate Tribunal gave an award in April, 1954 removing the ceiling on the payment of gratuity only under the Divetia award as it was an anomaly. This modification along with other modifications was incorporated into the Shastri Award by the Industrial Disputes (Banking companies) Decision Act, 1955 (41 of 1955) which was to be in force till 31.3.1959. This Act statutorily protected subsequently under Section 7 of the State Bank of India Act, 1955 which came into force on 01.07.1955 relating to pension, gratuity and the other matters of the Imperial Bank of India, till they are duly altered according to law, but there was no alteration. One P.V.Raju, who retired in April, 1986 filed a case under the Act claiming differential gratuity, which was ordered by the controlling authority in 1992 to be paid by the third respondent-bank, which was confirmed by appellate authority, against which the bank filed a writ petition in W.P.No.16842/94 on the file of the High Court, Andhra Pradesh, which is pending. It was further stated that though the learned Single Judge held the condonation wrong, in W.A.Nos.230 and 253 to 273 of 1996, the Division Bench held that on construction of the Gratuity Central Rules, there was really no delay, which will apply to this case also. The controlling authority subsequently computed the differential gratuity against which the Bank has gone to the High Court by way of appeal. In the light of the above developments, they have filed similar claims for differential gratuity in 1994/95 before the third respondent employer under Rule 10 of the Central Rules. The third respondent neither accepted nor negatived the claim but kept quiet; however, they filed the application for differential gratuity in Form-N within 90

days from the date of their application to the employer claiming differential gratuity. The bank did not take any steps to pay the difference. On such averments, the petitioners filed this writ petition praying for the relief stated supra.

(iii) In the counter filed on behalf of the third respondent in W.P.No.7353 of 1999, it has been submitted that a single writ petition is not maintainable as each and every petitioner has separate right and the cause of action has arisen on different dates. The applications for condoning the delay were filed for the delay of 4 to 23 years. The petitioners were not entitled to claim higher amount claimed by them even under paragraph 370 of the Labour Appellate Tribunal Award. It was further stated that the applications have been rightly dismissed as they were filed out of time and that the delay has not been explained properly.

(iv) In the affidavit filed in support of W.P.No.11613 of 2000, the petitioner would submit that he joined the Imperial Bank of India on 27.7.1950 as an Award Staff i.e. Clerical Staff, which was taken over by the 3rd respondent on 01.07.1955 under the State Bank of India Act, 1955. He retired from State Bank of India on 31.5.1992. At the time of his retirement, the Payment of Gratuity Act, 1972 (hereinafter called as the Act) had come into force on 16.09.1972 and he was paid only a gratuity of Rs. 39,650/- as per Section 4(2) of the Act. He was not paid the higher gratuity of one month salary for every year of service as per para 370 of the Labour Appellate Tribunal Award which stood protected under Section 4(5) of the Act. The difference in gratuity worked out to Rs. 2,44,722/-. Some of his colleagues filed claim petitions for the differential gratuity based on one P.V.Raju's case, who was also a retired Imperial Bank of India employee like him and who had also preferred the claim before the Assistant Labour Commissioner, Hyderabad belatedly. The Assistant Labour Commissioner has condoned the delay and posted the matter for hearing on merits and the matter was taken by way of a writ petition and a Writ Appeal in Andhra Pradesh High Court. The Division Bench of the Andhra Pradesh High Court, in its decision in P. Rama Rao v. Controlling Authority under P.G. Act & ALC (C), reported in 1996 LAB. I.C. 2765, held that the Controlling Authority had rightly condoned the delay if any and the Single Judge of the Andhra Pradesh High Court was not right in reversing the decision of the Authority and accordingly remanded the matter to the Controlling Authority for disposal on merits, with a further direction that the question of delay will be agitated only after a decision upon merits is given by the Controlling Authority. Going by the judgment of the Division Bench, there is also no delay in his case, which can be agitated by the employer. It was also stated in the affidavit that the Division Bench also held that the question of limitation relating to gratuity was only procedural and a claim for gratuity cannot be extinguished because gratuity is a property and the State Bank of India was a State under Article 12 of the Constitution of India.

(v) The petitioner would further submit that on coming to know about the developments based on Raju's case, he put in a claim with the State Bank of

India, the third respondent herein for the differential gratuity on 27.01.1999 and the third respondent bank neither accepted nor rejected his claim, when he had given reasons for the delay. When the employer did not send any reply either entertaining the claim or negating it, he filed an application on 15.02.1999 before the Controlling Authority, the second respondent herein in Form "N", within the period of 90 days as per Rule 10(1) of the Payment of Gratuity (Central) Rules and the second respondent by his order dated 09.08.1999 entertained his claim by condoning the delay. Instead of facing the issue on merits the third respondent has filed an appeal G.A.No.2/1999 under Section 7 of the Payment of Gratuity Act, 1972, before the first respondent, against the order of the Controlling Authority, the second respondent herein and the first respondent Appellate Authority by its order dated 09.02.2000 (Exh."A") reversed the said decision. Aggrieved by the same, he filed this writ petition.

(vi) Counter affidavit was filed by the third respondent in W.P.No.11613 of 2000, denying the averments made by the petitioner and also stating that the gratuity payable under the Gratuity Act, 1972 being Rs. 39,650/- has been paid and accepted by the petitioner, and hence he is estopped in law from filing the application before the second respondent.

(vii) After hearing the arguments advanced on both sides, and the materials placed before this Court, this Court passed an elaborate order dismissing the above writ petitions. Hence, these writ appeals.

4. The facts leading to the filing of W.P.No.9079 of 1999 are as follows:

The petitioner is the Assistant General Manager of the Provident Fund, Pension and Gratuity Department at the Local Head Office of the State Bank of India. The first respondent was employed as Record Keeper in the State Bank of India's Guindy Branch and he retired from service on attaining the age of superannuation on 31.01.1995. Originally he joined service on 15.05.1953 in the erstwhile Imperial Bank of India. At the time of retirement, he was paid a sum of Rs. 1 lakh as gratuity in accordance with the provisions of the Payment of Gratuity Act. While receiving the said sum, he received the same without protest or claim that he is entitled for a higher amount as gratuity. While so, on 28.02.1995, the first respondent submitted an application in Form-N to the third respondent and claimed an additional sum of Rs. 1,69,640/- as additional gratuity, over and above the sum of Rs. 1 lakh paid to him, which was resisted by the petitioner on the ground that as per the service conditions applicable to him and as per the provision of the Awards applicable to him, he is not entitled to any further sum as gratuity. The petitioner, in the counter statement filed before the third respondent, stated that since the first respondent being eligible for pension and draws pension from a pension fund which is non-contributory in character, he is not eligible for gratuity over and above the amount prescribed under the Payment of Gratuity Act. It was also averred that the first respondent having been paid the gratuity is not entitled to claim any amount in excess of the amount prescribed under the Act. However, the third respondent, the Controlling

Authority under the Payment of Gratuity Act, passed an award dated 02.09.1998 in favour of the first respondent. An appeal was preferred by the petitioner herein to the second respondent and the same was confirmed by the second respondent by order dated 26.03.1999, against which the present writ petition has been preferred by the petitioner.

5. Mr. N.G.R.Prasad, the learned counsel for the appellants in the writ appeals submitted that the learned single Judge has erred in dismissing the writ petitions on the ground that there was delay in filing the application for gratuity and that the delay cannot be condoned. He further submitted that the learned single Judge ought to have followed the judgment of the Division Bench of the Andhra Pradesh High Court rendered in 1996 LAB. I.C. 2765 (Rama Rao's case) relating to similar claims against the very same respondent Bank, in which case, with regard to the Payment of Gratuity Act, 1972, and the Rules thereunder, it was held that the Rules are only procedural in nature and they do not extinguish the claim for gratuity which is the responsibility of the employer to pay. He emphasised that the judgment of the Andhra Pradesh High Court, stated supra, is directly to the point and the same ought to have been followed by the learned single Judge. He further submitted that Section 7 of the Payment to Gratuity Act r/w Rule 7(5) of the Payment of Gratuity Rules, expects an employer to pay gratuity, and in case the employer does not pay the gratuity and the employee claims later, their claim does not become invalid on the reason that it was not presented in time. He further submitted that the claims for difference in gratuity is a right to property and the State Bank of India which is an authority within the meaning of Article 12 of the Constitution of India, cannot deprive the employees of this right by the procedural law of limitation. Stating so, the learned counsel submitted that these appeals have to be allowed.

6. Mr. N.G.R. Prasad, who is also appearing for the first respondent in W.P.No.9079 of 1999, contended that the order passed by the second respondent therein dated 26.03.1999 confirming the order passed by the third respondent, is in accordance with law and the same does not require interference and hence the writ petition has to be dismissed.

7. The learned Standing Counsel appearing for the respondents 1 and 2 in the writ appeals and the respondents 2 and 3 in the writ petition, as well as the learned counsel appearing for the third respondent in the writ appeals and the petitioner in the writ petition, have opposed to the submissions made by the learned counsel for the appellants, and reiterated the submissions made by them in the respective writ petitions.

8. Heard the learned counsel on either side and perused the materials available on record.

9. It is seen that the claims of the appellants are based on the plea of a higher amount of gratuity payable under the terms of engagement with the Imperial Bank of India, which was subsequently merged with the respondent bank, ie.,

State Bank of India. The writ petitions in W.P.Nos.7353 of 1999 and 11613 of 2000 were dismissed by the learned single Judge, relying upon various decisions, by observing that the judgments cited in favour of the cases of the Management are not only universal in application for every case that comes before the Court for decision on the point of limitation, but also squarely apply to the cases on hand. The learned single Judge held that there was an inordinate delay of 4 to 23 years depending upon the individual cases of the petitioners and since the petitioners were not able to explain the delay so occurred to the satisfaction of the controlling authority, the authorities had rightly dismissed the delay condonation applications filed on the side of the petitioners. It was also held that since the question of limitation has been decided against the petitioners in the aforementioned manner, there was no necessity to go into the merits of the cases. Thus, without going into the merits of the cases, the writ petitions were dismissed only on the ground of delay.

10. In this regard, it would be appropriate to refer to the judgment of the Andhra Pradesh High Court in *P. Rama Rao v. Controlling Authority* under P.G. Act & ALC (C), reported in 1996 LAB. I.C. 2765. That was a judgment passed in a writ appeal, challenging the order of the learned single Judge of the Andhra Pradesh High Court reversing the judgment of the controlling authority. In that judgment, it was held that the Controlling Authority had rightly condoned the delay if any and the Single Judge of the Andhra Pradesh High Court was not right in reversing the decision of the Controlling Authority. Therefore, the matter was remanded to the Controlling Authority for disposal on merits, with a further observation that the question of delay will be agitated only after a decision upon merits is given by the Controlling Authority. The Division Bench of the Andhra Pradesh, also stated that the rules prescribing for limitation are strictly procedural in nature and do not intend to extinguish the right which is recognised under Section 4 of the Payment of Gratuity Act. Section 7 of the Payment to Gratuity Act r/w Rule 7(5) of the Payment of Gratuity Rules, expects an employer to pay gratuity, and in case the employer does not pay the gratuity and the employee claims later, their claim does not become invalid on the reason that it was not presented in time. The claims for difference in gratuity is a right to property and the State Bank of India which is an authority within the meaning of Article 12 of the Constitution of India, cannot deprive the employees of this right by the procedural law of limitation.

11. In W.A.No.3037 of 2002, the Controlling Authority has not condoned the delay and the same has been confirmed by the Appellate Authority. In W.A.No.3038 of 2002, the Controlling Authority has condoned the delay, but the same has been set aside by the Appellate Authority. In the light of the principles enunciated in the judgment of the Andhra Pradesh High Court in *Rama Rao's* case (cited *supra*), this Court is of the view that the delay has to be condoned in both cases, and accordingly, the delay is condoned. Therefore, the order of dismissal passed by the learned single Judge in W.P.Nos.7353 of 1999 and 11613 of 2000 on the ground of delay, is set aside, and consequently, the orders passed

by the Appellate Authority in Gratuity Appeal Nos.3 to 11, 13 to 16 and 50 of 1998 dated 11.02.1999 and Gratuity Appeal No.2 of 1999 dated 09.02.2000, are set aside, and accordingly, the condone delay petitions shall stand allowed. The matter is remitted to the second respondent-Controlling Authority to decide the Gratuity Applications on merits and in accordance with law, in the light of the observations made in this judgment. The writ appeals are disposed of accordingly. No costs.

12. In respect of the writ petition in W.P.No.9079 of 1999, against the claim made by the first respondent herein, the third respondent allowed his application, directing the State Bank of India, to pay the balance gratuity of Rs. 1,69,640/- to him. While passing the order, the third respondent relied on paragraph-389 of the Sastry Award, wherein it is stated that while payment of gratuity and payment of pension may be exclusive, one such payment at least must be made to the workman in addition to the benefit of a Provident Fund Scheme, subject however to such exceptions are laid down later on. The third respondent, in his order, held that the workmen of Imperial Bank of India were contributing to pension fund at the rate of 5% and as per the Labour Appellate Tribunal Award, and they are entitled to get gratuity at the rate awarded by Sastry Award without any ceiling limit. The third respondent further held that in any case, the first respondent herein is entitled to get gratuity as per Sastry Award as modified by the Labour Appellate Tribunal Award; that Section 4(5) of the Payment of Gratuity Act also enables the first respondent to receive better terms of gratuity under the Award. In such view of the matter, the third respondent allowed the application of the first respondent, as stated supra.

13. Against the order of the third respondent, an appeal was preferred by the petitioner herein, to the Appellate Authority, the second respondent herein, who has dismissed the appeal, confirming the order of the third respondent, by order dated 26.03.1999. While passing the order, the second respondent has relied upon paragraph-403 of the Sastry Award, relating to the gratuity of Imperial Bank of India which specifically provide for payment of special gratuity. The second respondent further relied on Paragraph-370 of the Labour Appellate Tribunal Award, which modified the Sastry Award, and held that the workmen of Imperial Bank of India were contributing to pension fund at the rate of 5% and as per the Labour Appellate Tribunal Award, they are entitled to get gratuity at the rate awarded by Sastry Award without any ceiling limit. The relevant paragraph of the order of the second respondent is extracted hereunder:

"Even if it is accepted, the argument of the respondent counsel that the workmen who were not eligible to be members of the pension fund or who although members of the pension fund do not qualify for pension are entitled to gratuity at the rate of one month basic for each completed year of service and the present applicant is entitled to get gratuity as he was not a member of pension fund in 1955 and could have become member of pension fund only in 1956 after attaining the age of 21 years since he joined in the Imperial Bank of India in

1953 according to the submission made by respondent in para 11 of written argument."

14. The second respondent has dealt with the matter in detail, and came to the conclusion that the first respondent is entitled to get the additional gratuity amount. The reasons given by the second respondent are clear, cogent, convincing and acceptable. The second respondent has considered the case projected by the parties, taking into account the respective pleadings, and after analysing the whole matter, came to a categorical conclusion that the first respondent is entitled for the additional gratuity amount. In such view of the matter, the order passed by the second respondent in G.A. No.60/98 dated 26.03.1999 confirming the order of the third respondent in G.A.No.38/96 dated 02.09.1998, is confirmed and the writ petition is dismissed. No costs.