

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP(C) No.2254/2002

Reserved on: 7th August, 2009

Pronounced on: 13th August, 2009

SAIL EX-EMPLOYEES ASSOCIATION Petitioner

! Through: None

VERSUS

\$ STEEL AUTHORITY OF INDIA LTD AND ANR.

.....Respondents

^ Through: Mr. Anukul Chandra Pradhan,
Advocate, for the Respondent No.1.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?yes
3. Whether the Judgment should be reported in the Digest? yes

V.K.Jain, J.

The Petitioner No.1 is an Association of retired employees of Steel Authority of India Limited (hereinafter referred to as 'SAIL') and is concerned with their welfare. Petitioner No.2 is the patron of petitioner No.1. The employees of SAIL are divided into two

categories, viz. (a) Executives (b) non-executives. The Executives are either promoted from non-executive cadres or appointed directly. Vide Notification dated 1.2.1996, Government of India raised the ceiling on the amount of gratuity payable to the employees from Rs.1 lakh to Rs.2.5 lakhs for the Executives. This ceiling was further raised to Rs.3.5 lakhs with effect from 1.1.1996 and according to the petitioners, it was applicable to all Government employees of Public Sector Undertakings/Enterprises. However, this enhanced ceiling on gratuity was adopted by Respondent-SAIL only with effect from 22.9.1997.

2. Another grievance of the Petitioner is that the ceiling on gratuity is applicable only to those employees who are in Executive cadre and there is no ceiling in case of non-executive employees. The Petitioners have sought setting aside of the lower ceiling fixed by SAIL and have further sought removal of distinction between Executives and non-executive employees in the matter of gratuity. They have also sought payment of difference in gratuity amount along with interest at the rate of 24 per cent per annum.

3. The Petition has been contested by the Respondent-Steel Authority of India Limited. It has been stated in the Counter Affidavit that Respondent No.1 is an independent Company having its own policy and rules for its employees and is not a department of Government of India and, therefore, the decisions of Government

of India in respect of Government employees are not applicable to it. It has been further alleged that as per clause 3.2.1 of SAIL Gratuity Rules, the amount of gratuity in respect of employees governed by the Memorandum of Agreement, arrived at in the National Joint Committee for Steel Industry, is to be decided as per the terms of the agreement. Even the fixation of salary and other benefits in respect of the non-executives is based on the agreement arrived at National Joint Committee for Steel Industry. The Memorandum of Agreements signed at the National level are implemented by entering upon by-partite settlement at the plant/unit level with the local management and local Union representing the non-executives and the workmen. The Memorandum of Agreement of Joint Wage negotiating Committee for Steel Industries which was signed in October, 1970, provided that there shall be no ceiling or limit on the amount of gratuity payable. In all subsequent NJCS Agreements, it has been provided that the benefits given under the previous Agreements will continue and, therefore, upper limit on payment of gratuity has become non-operative in case of non-executive employees.

4. It has also been alleged by the respondent that Executives being Officers/Managers at various levels are different and distinct class, compared to non-executives who constitute workmen. It has also been pleaded that since promotions from non-executives posts

to executives post were accepted by the members of the Petitioner-Association, at the terms and conditions applicable to the Executives, they are stopped from raising a grievance on this count. It has also been stated that Executive enjoys several benefits and allowances which are not available to non-executives and there cannot be any comparison since the two are distinct class categories. It has further been stated in Counter Affidavit that vide Government of India Ordinance dated 24.9.1997, under payment of Gratuity Act, the amount of ceiling was increased from Rs.1 lakh to Rs.2.5 lakhs and further vide Payment of Gratuity (Amendment) Act, 1998 dated 23.6.1998, the ceiling was raised to Rs.3.5 lakhs. The Rules of the Company were amended accordingly so as to raise the ceiling from the date of amendments.

5. Let me first take up the grievance of the petitioners regarding distinction between Executives and non-Executives in the matter of payment of gratuity. Section 4(2) of the Payment of Gratuity Act, 1972 provides that for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of 15 days wages based on the rate of wages last drawn by the employee concerned. Sub-section 5 of Section 4 before its amendment with effect from 24.9.1997, provided that the amount of gratuity payable to an employee shall not exceed Rs. 1 lakh. It was increased first to Rs.2.5 lakhs and

then to Rs. 3.5 lakhs. The ceiling of Rs. 3.5 lakhs was prescribed by Payment of Gratuity (Amendment) Act, 1998, with effect from 24th September, 1997. Therefore, as far as Section 4 (4) of Payment of Gratuity Act, 1972 is concerned, the upper sealing was Rs.1 lakh prior to 24th September, 1997, which was fixed at Rs.3.5 lakhs with effect from 24.9.97.

6. Section 4(5) of the Payment of Gratuity Act, 1972 reads as under:-

“Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.”

Thus, despite the upper sealing prescribed by sub-section 4, the employees are entitled to receive higher gratuity if it is so agreed under any award or an agreement or contract between the employer and the employees.

7. As disclosed in the counter affidavit, the salary and other benefits of non-executive employees of Steel Industry were fixed under an agreement arrived at the level of National Joint Committee for Steel Industry, which was followed by by-partite agreement at plants/unit level between the local management and the local unions representing the workmen. The counter affidavit shows that a Memorandum of Agreement of Joint Wage Negotiating Committee for steel industry signed in October, 1970 provided that

there was to be no ceiling or limit on the amount of gratuity payable. It further shows that in all subsequent NJC's agreements, it was provided that the benefits provided under the previous agreement would continue. Thus, in view of the agreement between the respondent and its workmen, there is no ceiling on the amount of gratuity payable to the non-executive employees and such an agreement is specifically permitted by Section 4(5) of the Payment of Gratuity Act, 1972.

8. It is true that differential treatment is being meted out by the respondent/SAIL to its employees forming part of the executive cadres and the employees who are non-executives/workmen. But, such a differential treatment is not without authority of law and is expressly permitted under Section 4(5) of The Payment of Gratuity Act, 1972. The Constitutional validity of Section 4(5) of Payment of Gratuity Act, 1972 has not been challenged by the petitioners. They have also not challenged the agreement between the respondent and its non-executive employees. So long as there is a subsisting agreement between the respondents and its non-executive employees to the effect that there will be no ceiling on the gratuity payable to the workmen and such an agreement is permissible in law, no fault can be found with the respondent treating its employees forming part of executive cadres differently

from the employees who are workmen, in the matter of Payment of Gratuity.

9. Even otherwise, the employees who are workmen, constitute an altogether different class from the employees who are Managers and officers, being members of various executive cadres of the respondent/company. The pay structure, allowances and service conditions of employees forming part of managerial/officer cadres are altogether different from the pay structure, allowances and service conditions of employees constituting non-executive cadres. Those who belong to executive cadres get not only higher salary but also better allowances, more perks and more favourable service conditions. In fact, executive cadres and non-executive cadres are altogether different classes and cannot be compared with each other. Differential treatment based on intelligible differentia is permissible under the Constitution so long as it has a reasonable nexus with the objective sought to be achieved in this behalf. Only those who are similarly situated are entitled to equal treatment. Since the employees forming part of managerial cadres belong altogether to a different class, they cannot claim, as a matter of right, the same treatment which is given to the non-executive employees on account of a binding agreement between them and the respondent company. Therefore, this is no violation of Article 14 of the Constitution in payment of gratuity to the Executives as

per their statutory entitlements while paying gratuity to the Non-Executives in terms of the agreement between them and the management.

10. Another important aspect in this regard is that while taking promotion from non-executive cadres to executive cadres, these employees knew that once they are promoted to the executive cadres, they will receive gratuity only as per their statutory entitlement and not in terms of the agreement between the management and the workmen. Having accepted the promotion, knowing fully well its implication on their gratuity, they cannot now claim the same gratuity which is payable to the non-executive employees.

11. The issue of differential treatment to executive and non-executive employees, in the matter of payment of gratuity came up for consideration before this court in CWP No.486/1995 decided on September 13, 1996. This court, after considering the provisions of Payment of Gratuity Act and the agreement of the respondent with its non-executive employees repelled the contentions that fixation of higher gratuity to the non-executive class under the agreement was inconsistent with the provisions of the Payment of Gratuity Act, 1972. This court also held that the two categories, namely, the executives and the non-executives belong to two different and distinct classes, and there was a rationale relationship with the

object sought to be achieved in extending better terms of gratuity to the non-executive employees in pursuance of the agreement and in terms of sub-section 5 of Section 4 of the Payment of Gratuity Act, 1972.

12. The respondent amended its Gratuity Rules as and when there was amendment in the provisions of the Payment of Gratuity Act, 1972 and those rules applied to all employees irrespective of whether they are from executive cadres or from non-executive cadres. The non-executives are getting gratuity without any ceiling not on account of Rules but on account of their agreement with the management.

13. For the reasons given above, I find no merit in the contention that the executives are entitled to Payment of Gratuity without any ceiling, as is being paid to the non-executive employees.

14. Coming to the plea that Government of India had increased the ceiling on the amount of gratuity from Rs.1 lakh to Rs.2.5 lakhs with effect from 1st April, 1995 and then to Rs. 3.5 lakhs with effect from 1st January, 1996 and the enhanced ceiling was applicable not only to Government employees but also to the employees of public sector undertakings/enterprises, I find that the petitioner has not placed on record any order or notification of Government of India revising the ceiling for payment of gratuity to the employees of all the public sector undertakings, to Rs. 2.5 lakhs with effect from 1st

April, 1995 and then to Rs. 3.5 lakhs with effect from 1.4.96. In ***Steel Authority of India Ltd. V. Shri Ambica Mills Ltd & Ors.*** AIR 1998 Supreme Court 418, the Hon'ble Supreme Court specifically held that Steel Authority of India was not a department of the Government of India. In taking this view, the Hon'ble Supreme Court relied upon its earlier judgments, namely, ***Dr. S.L. Agarwal vs. The General Manager, Hindustan Steel Ltd.*** AIR 1970 SC 1150; and ***Western Coalfields Ltd. vs. Special Area Development Authority, Korba*** AIR 1982 SC 697.

Since neither the respondent is a department of Government nor its employees are government employees, the ceiling fixed by Government of India in respect of its employees does not *ipso facto* apply to the employees of public sector undertakings. The respondent is a company duly registered under Companies Act and it has framed its own Rules in the matter of Payment of Gratuity to its employees. The employees of the respondents are, therefore, entitled to Payment of Gratuity only in terms of Payment of Gratuity Act, 1972 and the Gratuity Rules framed by the respondent company. In the absence of any order, notification or direction from Government of India, for applying the same ceiling, in payment of gratuity, to the employees of all the public sector undertakings, as is fixed by it in respect of its own employees, the employees of the respondent cannot claim that the ceiling

prescribed for Government employees should be applicable in their case as well.

15. Coming to the effective date from which the revised ceiling was applied by SAIL, I find that the Gratuity Rules were amended by the respondent with effect from 24.9.97. Since the provisions of Payment of Gratuity Act, 1972 were amended with effect from the same date, it cannot be said that the aforesaid date was fixed arbitrarily and was without any basis. In ***State of H.P. & Anr. Vs. Piar Singh*** JT 2002 (8) SC 260, the State of Himachal Pradesh framed Demobilised Armed Forces personnel (Reservation of Vacancies in Himachal State Non Technical Services) Rules, 1972 to provide for reservation of vacancies to released army personnel, who were commissioned to the army on or after 1.11.62. The cut off date was challenged as arbitrary. The Hon'ble Supreme Court found that the cut off date had a direct bearing with the date on which country faced disturbance on account of war with China. In ***State of West Bengal Etc. Vs. Ratan Behari Dey & Ors.*** JT 1993 (4) SC 501, the Hon'ble Supreme Court held as under:-

“the power of the State to specify a date with effect from which, the Regulations framed, or amended, as the case may be shall come into force is unquestioned. A date can be specified both prospectively as well as retrospectively. The only question is whether the prescription of the date is unreasonable or discriminatory.”

In ***State of Bihar & Ors. Vs. Ramjee Prasad & Ors.*** AIR

1990 SC 1300, the Hon'ble Supreme Court held as under:-

“the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless the circumstances show it to be capricious and whimsical. When it is necessary for the Legislature or authorities to fix a line or a date and there is no mathematical or logical way of fixing it precisely, the decision of the Legislature or authority must be accepted unless it is shown to be capricious or whimsical or wide off the reasonable mark.”

The effective date fixed by the respondent being based upon the date of amendment of Payment of Gratuity Act, I find no merit in the contention that the date of 24th September, 1997 for the purpose of revising the ceiling of gratuity was fixed arbitrarily.

For the reasons given above, I do not find any merit in the petition and the same is hereby dismissed.

(V.K. JAIN)
JUDGE

August 13, 2009.

sn/sk