IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

WP(C).No. 20685 of 2012 (I)

PETITIONERS:

1. M.J.JOSE
S/O.JOSEPH, MANAVALAN HOUSE, MILLS ROAD
N. PARAVOOR-683 513.

2. M.A.RAPPAI
MALIEKKAL HOUSE, ASOKAPURAM, ALUVA. 683 101.

3. P.K.NARAYANANKUTTY
ASARIPARAMBIL, CHERANELLUR.P.O., KOCHI-34.

4. M.BASHEER
KARIMPINKATTIL, ASHEED MANZIL, VATTAKKATTUPADY
PERUMBAVOOR-683 542.

5. M.N.MURALEEDHARAN
PADMALAYAM, NEDUMTHODE, MUDICKKAL.P.O.
PERUMBAVOOR.

BY ADVS.SRI.A.JAYASANKAR
SRI.MANU GOVIND

RESPONDENTS:

1. INDIAN RARE EARTHS LIMITED
PLOT NO.1207, VEER SAVARKAR MAARG, PRABHADEVI
MUMBAI-400 028
REPRESENTED BY ITS MANAGING DIRECTOR.

2. CHIEF GENERAL MANAGER
INDIAN RARE EARTHS LIMITED, RARE EARTHS DIVISION
UDYOGMANDAL, 683 501.

R1 BY ADV. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA
R1,R2 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R1,R2 BY ADV. SRI.P.GOPINATH
R1,R2 BY ADV. SRI.P.BENNY THOMAS
R1,R2 BY ADV. SRI.K.JOHN MATHAI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

WP(C).No. 20685 of 2012 (I)

APPENDIX

PETITIONERS' EXHIBITS

P1: TRUE COPY OF THE GAZETTE NOTIFICATION DT.18.5.2010

P2: TRUE COPY OF THE ORDER DT.19.2.09 ISSUED BY THE R1.

P3: TRUE COPY OF THE REPRESENTATION SUBMITTED BY 4TH PETITIONER BEFORE R1 ON 23.4.12

P4: TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE R1 ON 3.8.11 BY THE IRE STAFFS.

P5: TRUE COPY OF THE REPLY OF R1 TO THE IRE EMPLOYEES DT.11.7.12

RESPONDENTS' EXHIBITS:

R2(A): COPY OF OFFICE MEMORANDUM ISSUED BY DPE DT.26.11.08

R2(B): COPY OF THE OFFICE MEMORANDUM ISSUED BY DAE VIDE LETTER NO.3/4(5) 2008-PSU/95 DT.19.1.09

R2(C): COPY OF THE GAZETTE OF INDIA DT.24.5.10

RKC

TRUE COPY

PA TO JUDGE.

P.V.ASHA, J.,

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W.P.(C) No.20685 of 2012

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Dated this the 25th day of May, 2015

JUDGMENT

The grievance of the petitioners, who are retired employees of the Indian Rare Earths Limited-the 1st respondent Company, is that the benefit of enhancement of ceiling on gratuity under the the Payment of Gratuity Act, 1972, is not extended to them. All the petitioners retired from service during the period from 1.7.2008 to 23.5.2010. All of them were in the category of workmen under the first respondent Company. Their pay and allowances were revised as per settlement dated 3.7.2010 with retrospective effect from 1.7.2008. Based on this revision, they were paid arrears of wages as well as revised gratuity on the basis of the revised last pay. As per the then existing provisions in the Payment of Gratuity Act, 1972, the maximum amount that can be paid towards gratuity was fixed as ₹3,50,000/. On account of this ceiling, they were paid only a sum of ₹3,50,000/-, even though they were eligible for higher amounts based on the revised wages.

2. While so, by Ext.P1 order, the Payment of Gratuity Act was amended by the Amendment Act, 2010, which came into force with effect from 24.5.2010. By this amendment, ceiling on gratuity was enhanced to ₹10,00,000/- for employees, who retired on or before 1.1.2007.

3. The petitioners did not get the benefit of the enhancement, since they retired from service between 1.7.2008 and 23.5.2010. While so, those who retired as Officers from the 1st respondent Company were granted the benefit of the enhanced gratuity, despite the fact that they had retired from service before the petitioners.

4. Seeing the disparity between the Officers and the Workmen in the grant of gratuity, the petitioners submitted Exts.P3 and P4 representations requesting for extending the benefit of ceiling on gratuity to ₹10,00,000/. But the 1st respondent rejected their request as per Ext.P5 saying that the amendment of the Gratuity Act came into force only with effect from 24.5.2010 and that the workmen of the 1st respondent Company are governed by Payment of Gratuity Act, 1972. They

were paid the benefit of gratuity in accordance with the provisions under the Act at the relevant time. It was stated that there was a pay revision in the case of executives under the 1st respondent in accordance with DPE OM No.2(70)/08-DPE(WC)-GL-VII/09 dated 26.11.2008, which governs ceiling on gratuity also. It is stated that in respect of the workmen under the first respondent Company, they are governed by independent wage settlement. Therefore, there cannot be any comparison either with the officers or with other Companies having different wage structure and wage period.

5. Along with the counter affidavit of the 1st respondent, they have produced the pay revision order issued in respect of the executives under the 1st respondent Company, in terms of the office memorandum issued by the Government of India, Ministry of Heavy Industries & Public Enterprises, by which pay revision was effected with effect from 1.1.2007- Ext R3(a). Clause 13 thereof provides that ceiling on gratuity of the executives and non-unionised supervisors of the Central Public Sector Enterprises would be raised to ₹10,00,000/- with effect

from 1.1.2007. It is therefore pointed out that the Long Term Settlement which governs the wages in respect of the workmen does not contain any clause like clause 13 of Ext.R2(a) order. The existing Long Term Settlement with respect to the 2nd respondent was signed on 3.7.2010 and is effective from 1.7.2008 to 30.6.2013. It does not have any clause regarding gratuity. It is further pointed out that the petitioners have retired from service during the years 2008 to 2010 and they were paid eligible gratuity.

6. I heard the learned counsel appearing for the petitioners as well as the learned standing counsel for the respondents.

7. The only impediment for not extending the benefit of enhancement of gratuity to petitioners is that there is no provision in the Long Term Settlement enabling such enhancement. The fact that enhancement was effected on the ceiling on gratuity and the same has been made applicable to the officers of the 1st respondent Company, is not disputed. It is also not disputed that the benefit of ceiling is extended to the workmen of several similarly situated Companies and Public

Sector Undertakings. Therefore, nothing prevents the respondents from considering the claim of the petitioners, who retired long before the issuance of Long Term Settlement. It is seen that the Long Term Settlement came into force on 3.7.2010, subsequent to the retirement of all the petitioners. Apparently there would not have been any claim raised with regard to their cases in respect of the ceiling on gratuity. Therefore, mere absence of a provision in the settlement regarding the benefit of enhancement of gratuity to those who retired from service with effect from 1.1.2007, cannot be a reason for denying extension of the benefit to them. It is only just and proper that a sympathetic and equitable consideration is extended to the workmen like petitioners who retired from service after 1.1.2007. As they were eligible for gratuity in excess of ₹3.5 lakhs on the basis of their last drawn wages, there will not be any difficulty for extending the benefit of revision to them also.

In the above circumstances, there will be a direction to the 1st respondent to consider the case of the petitioners sympathetically. The petitioners shall submit a representation along with a copy of this judgment, before the 1st respondent within a period of 3 weeks from the date of receipt of a copy of this judgment. The 1st respondent shall consider the same and pass orders after affording an opportunity of hearing to the petitioners or their representatives, within a period of two months.

Sd/-
P.V.ASHA,
JUDGE.

rkc