HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.16150 OF 2002

ORDER:

The respondent herein filed MP.No.75 of 1999, on the file of Labour Court-I, A.P., Hyderabad under Section 33 C(2) of the Industrial Disputes Act, 1947 (*for short 'the Act')*, praying for computation of certain monetary benefits with regard to Voluntary Retirement i.e.Gratuity, Wage Revision arrears and also H.M.T.Employees Death-cum-Service Mutual Benefit Fund of Retirement, which are due to him to a tune of Rs.66,231/- with interest @ 18% p.a. and the Labour Court vide order dated 17.06.2002, allowed the same granting an amount of Rs.66,231/- along with interest @ 18% from the date of petition till the date of payment. The same is being challenged by the petitioner who is the Employee of the respondent, in this writ petition, as the award is passed in favour of respondent herein.

Learned counsel for the petitioner submits that the H.M.T.Employees Death-cum-Service Mutual benefit Fund of Retirement is being managed by a separate body which is registered under Societies Registration Act, 1861; and the petitioner has nothing to do with the same; and that the said Society is not a party in the petition filed by the respondent under Section 33 C(2) of the Act before the Labour Court, as such, the respondent is not entitled for the said amount. He further submits that the Labour Court has not taken the same into consideration though the petitioner herein raised specific contentions in its counter filed before the Labour Court. In support of his contention he relied on the Judgment dated 12.07.2006, rendered by this Court in WP.No.12754 of 1999.

He also submits that payment of 18% interest is not contemplated even as per the Gratuity Act and the Supreme Court in ***D.D.Tewari v. Uttar Haryana Bijli Vitran Nigam Limited and Others*** has granted only 9% interest. He also relied on the Judgment of Karnataka High Court in ***General Manager, Yellamma Cotton, Woollen & Silk Mills, Tolahunse, Davanagere v. Regional Labour Commissioner (Central) and Appellate Authority under Payment of Gratuity Act, 1972, Bangalore & Others*** wherein it is held that a trainee, not being an employee, will not be entitled to gratuity for the period when he was imparted training by the employer.

On the other hand Sri A.K.Jayaprakash Rao, learned counsel for the respondent contends that the Labour Court has taken into account the clarification issued by the petitioner organisation and also as per definition of 2(e) Payment Gratuity Act, trainees are entitled for payment of gratuity though they are excluded from the definition of employee. He also contends that the Labour Court has considered the issue elaborately and this Court cannot interfere with the same by exercising the power of judicial review under Section 226 of the Constitution of India.

In the instant case, the Labour Court has granted the relief on three counts. As far as payment of amount in respect of wage revision arrears from 01.01.1992 to 31.03.1995 is concerned, the payment of the said amount during the pendency of the writ petition is not disputed by the learned counsel for the petitioner. As such, the said issue need not be adjudicated in the writ petition.

As far as payment of the benefits arising out of H.M.T.Employees Death-cum-Service Mutual benefit Fund of Retirement is concerned, admittedly the same is managed by a separate independent body which is registered under the Societies Act and in similar circumstances this Court in WP.No.12754/1999, held that since the Death-cum-service Monetary benefit Fund has to be paid by a separate body which is registered under the Societies Registration Act and that the respondent company is nothing to do with payment of the same and that since the said society is not made a party, no finding can be given on the aspect of Death-cum-Service Monetary Benefit Fund. In view of the same, the relief granted by the Labour Court in respect of the H.M.T.Employees Death-cum-Service Mutual benefit Fund, is liable to be set aside.

With regard to the amount claimed under the head Voluntary Retirement Exgratia and gratuity is concerned, since the said amount is being claimed under Payment of Gratuity Act, it cannot be said that petition under Section 33 C(2) is not maintainable. Further, as per payment of exgratia and gratuity is concerned, Section 2(e) of the Payment of Gratuity Act reads as follows;

> 2(e): “employee” means any person (other than an apprentice) employed on wages in any establishment, factory, mine, oil filed, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, (and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity).

With regard to payment of exgratia and gratuity the Labour Court also relied on the Circular dated 04.11.2000, issued by the petitioner organisation wherein a clarification was given as to whether the training period in cases of employees who are termed as trainees but are drawing their Basic Pay, D.A., H.R.A. on part with regular employees could be reckoned for computation of VRS compensation. With regard to the same the petitioner organisation clarified that the period of training of the said employees can be reckoned for computation of VRS compensation subject to fulfilling of the following criteria:

> “The employees termed as ‘Trainees” but draw the emoluments i.e., Basic Pay, D.A., H.R.A., C.C.A., etc. in the regular grade while on ‘on-the-job-training’ on par with other regular employees instead of consolidated training stipend.”

In the present case admittedly, while the respondent was trainee, he used to get Basic Pay, D.A., H.R.A., C.C.A., on par with the regular grade. As such, as per the definition under Section 2(e) of the Act and as per the Circular, dated 04.11.2000, the respondent is entitled for counting of the service for payment of gratuity. In view of the definition and also circular dated 04.11.2000, issued by the petitioner organisation, it cannot be said that the respondent is not entitled for counting of service rendered by him in the training period. For all the purposes, the respondent was held to be the employee of the petitioner organisation. In view of the same, the contention raised by the petitioner has no legs to stand.

In the Judgment of Karnataka High Court in **General Manager v. Regional Labour Commissioner' case** it has not properly considered the definition of workmen under the Payment of Gratuity Act and the same is held to be ***per incurium*** with great respect.

In view of the above facts and circumstances, it cannot be said that the Labour Court has committed any error in awarding the amount under the head of Payment of Gratuity and Exgratia to the petitioner during training period.

However, with regard to grant of interest is concerned even as per the Judgment of Supreme Court in ***D.D.Tewari v. Uttar Haryana Bijli Vitran Nigam Limited's case*** 9% interest was granted.

As such, the order of Labour Court is modified and the respondent is only entitled for payment of Rs.39,540/- towards Voluntary Retirement compensation and gratuity along with interest @ 9%. The grant of amount towards H.M.T.Employees Death-cum-Service Mutual Benefit Fund of Retirement, is set aside, giving liberty to the respondent to agitate his right against the said fund as per law; and the grant of wage revision arrears is concerned the same need not be adjudicated in this writ petition as stated above.

The respondent is entitled to withdraw the amount already deposited before the Labour Court and the said amount shall be given credit to, to the amount payable by the petitioner.

The writ petition is allowed to the extent indicated above. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending shall stand closed.

A.RAJASHEKER REDDY, J

18.09.2015

tk