

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.01.2016

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

WP.Nos.23577 to 23579 of 2015
& MP.Nos.1 to 1 & 2 to 2 of 2015
& W.P.No.25708 2015
& M.P.No.2 of 2015

Union of India,
Rep by Administrative Officer-III,
Heavy water plant,
Department of Atomic Energy,
Government of India,
Tuticorin-628 007. ..Petitioner in all WPs.

Versus

1.The Regional Labour
Commissioner(Central) Cum
Appellate Authority Under
the payment of Gratuity Act1972,
Office of the Regional
Labour Commissioner,
No.26, Haddows Road,
Shastri Bhavan,
Chennai-600 006.

2.The Assistant Labour Commissioner
(Central) and
Controlling Authority Under the
payment of Gratuity Act 1972,
Ministry of Labour & Employment,
Government of India,
New No.5, Old No.1-A, (IInd Floor),
Lady Doak Collage Road,
Chinna Chokkikulam,
Madurai-625 002. ..1st & 2nd respondents in all WPs.

3.B.Ponnambalam	.. 3rd respondent in W.P.No.23577 of 2015
4.P.Chinnamani	..3rd respondent in W.P.No.23578 of 2015
5.L.Joseph Mascrenhas	..3rd respondent in W.P.No.23579 of 2015
6.A.J.Chelliah	..3rd respondent in W.P.No.25708 of 2015

Writ petitions are filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus:-

(i) to call for the records relating to the order passed by the first respondent herein in GA No.12 of 2014 dated 20.04.2015 and the order of the second respondent in GA No.24 of 2011 dated 12.08.2013 quash the same and further direct the second respondent herein to refund of Rs.95,396/- deposited by the petitioner(W.P.No.23577 of 2015).

(ii) to call for the records relating to the order passed by the first respondent herein in GA No.7 of 2014 dated 20.04.2015 and the order of the second respondent in GA No.16 of 2011 dated 28.06.2013 quash the same and further direct the second respondent herein to refund of Rs.1,10,479/- deposited by the petitioner(W.P.No.23578 of 2015).

(iii) to call for the records relating to the order passed by the first respondent herein in GA No.6 of 2014 dated 20.04.2015 and the order of the second respondent in GA No.15 of 2011 dated 28.06.2013 quash the same and further direct the second respondent herein to refund of Rs.61,445/- deposited by the petitioner(W.P.No.23579 of 2015).

(iv) to call for the records relating to the order passed by the first respondent herein in GA No.3 of 2014 dated 20.04.2015 and the order of the second respondent in GA No.12 of 2011 dated 30.04.2013 quash the same and further direct the second respondent herein to refund of Rs.6,903/- deposited by the petitioner(W.P.No.25708 of 2015).

For Petitioner(in all WPs) : Mr.Venkataswamybabu
For RR1 &2 (in all WPs) : Mr.V.Venkatesan, SCGSC
For R3 (in all WPs) : Mr.S.T.Varadarajulu

COMMON ORDER

Heard Mr.Venkataswamybabu, learned counsel appearing for the petitioner, Mr.V.Venkatesan, learned Senior Central Government Standing counsel appearing for the first and second respondents and Mr.S.T.Varadarajulu, learned counsel who accepts notice on behalf of the third respondent in all petitions and with their consent, the writ petitions are taken up for final disposal.

2. In all these writ petitions the petitioner is a heavy water plant, Department of Atomic Energy, represented by its Administrative Officer, and the challenge is to the identical orders passed by the Authorities under the provisions of the Payment of Gratuity Act, (herein after referred to as the 'Act').

3. The admitted facts are that the respondents 3 to 6 were employed as Tradesmen/(semi-skilled) in the petitioner organization and all of them have retired from service on attaining the age of superannuation. At the time of retirement, all of them have received Gratuity, computed in terms of the CCC Pension Rules (herein after referred to as the 'Pension Rules') 1972, till 2011.

4. The respondents have filed petitions before the second respondent, who is the Controlling Authority, to compute the dues in Gratuity in accordance with the procedure contemplated under the Act. The said Authority considered the claim and computed the Gratuity payable to each of the respondents. Challenging the same, the petitioner preferred appeals before the first respondent after depositing the entire amount so computed as it is mandatory under the Act. The Appellate Authority confirmed the order passed by the Original Authority, by order dated 20.04.2015, which are impugned in these writ petitions.

5. The learned counsel appearing for the petitioner reiterated the factual contentions raised in the affidavit filed in support of the petition and contended that the impugned order is wholly unsustainable and calls for interference. By referring to section 2(e) of the Act, it is submitted that a person who holds a post under the Central Government or a State Government and is governed by any other Act or by Rules providing for payment of Gratuity, will not be covered under the provisions of the Act. Secondly, it is contended that the respondents, who are holding a post in the Central Government, are not entitled to the benefits under the Act. Further, it is submitted that the respondents have already been paid Gratuity under the provisions of the Pension Rules, and therefore they cannot seek benefits under the Act, as it would amount to seeking benefit under two provisions of law. In support of such contention reliance has been placed on the decision of this Court in the case of Pallavan Transport Corporation(Metro) Ltd., Pallavan Illam, Madras Vs. Ms.Simrose and others-2004(1) L.L.N.792.

6. The learned counsel appearing for the respondents submitted that the respondents were employed as Tradesmen and after their retirement, since their Gratuity was not paid, as per the computation to be done under the Act, they have filed

applications for payment of the differential amount of Gratuity and the Authority rightly computed the same and the Appellate Authority had confirmed such an order and there are no merits in the revision.

7. It is further submitted that the petitioner/Heavy Water Plant is declared as a Public utility Service by the Government of India and falls under the purview of Section (2) (n) of Industrial Disputes Act, 1947 and therefore, the petitioner is an employer as defined under Section (2)(d) of the Act. Further it is submitted that the workmen/employee in the petitioner establishment are termed as an employee as per Section 2(e) of the Act and as such, they were employed in a firm carrying on skilled, semi-skilled work which are covered under Section 2(e) of the Act. Therefore, it is contended that though they are holding posts under Central Government, the respondents are deemed to be employees as defined in the first part of Section 2 (e) of the Act. Further it is submitted that the computation/calculation done by the Controlling Authority, computing gratuity is valid as per law. The amount payable under Section 2(g) (5) of the Act is more beneficial to the workmen than the amount computed and paid under the Pension Rules. Further, it is submitted that in terms of Section 14 of the Act 1972, it has overriding effect over other Acts and Rules. Further the Act being a beneficial legislation and that being a later enactment, the petitioner is entitled to seek for the benefits under the Act. Further, it is submitted that merely because the petitioner has been paid Gratuity as calculated under the Pension Rules that will not dis-entitle the petitioner from claiming dues of gratuity by adopting the calculation as per the Act.

8. Further, it is submitted that the respondents are all retired employees, who have served faithfully for more than 25 years, to their establishment and in their retired life, this small amount which has been computed as dues of gratuity will go a long way to help them. On the above submission, the learned counsel appearing for the respondents/workmen seeks to sustain the impugned order.

9. I have elaborately heard the submissions of the learned counsel on either side and perused the materials placed on record.

10. Two legal issues would arise for consideration in the instant case. Firstly, as to whether the respondents are excluded from the purview of the Act. Secondly, whether the respondents having been paid gratuity under the Pension Rules cannot claim gratuity under the Act.

11. Section 2(e) of the Act defines the term 'employee' as under:-

'employee' means any person (other than an apprentice) employed on wages in any establishment, factory, mine, oil field, 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.'

12. Thus in terms of the said definition of the employee, the persons holding the posts under the Central Government or a State Government stand excluded from the applicability of the Act. However, the law on the subject had been interpreted in several decisions, some of which have already been referred to by the first respondent in the impugned order. Firstly, it cannot be disputed that the Act is a beneficial legislation intended to provide for a scheme of payment of Gratuity to employees of factories, mine, oil fields etc including the shops or other establishments. Thus, the Act was enacted as the social welfare legislation intended to give benefit to the employees working in establishments and therefore, has to be considered liberally.. Therefore, no strict interpretation could be made regarding the applicability of the provisions of the payment of Gratuity Act.

13. Section 14 of the payment of Gratuity Act states that :
'the provisions of this Act or any Rule made there under shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.'

Thus, the Act has overriding effect over Acts and rules.

14. Coming to the legal issue(1), it is to be noted that the Hon'ble Supreme Court in the case of Srwan Singh Vs. Kasturi Lal AIR 1977 SC 265, held that when two or more laws operate in the same field and each contains a non-obstante clause stating that its provisions will override those or any other law, then such conflict has to be decided by reference to the object and purpose of the laws under consideration. Further, the Court held that for resolving inter se conflicts, another test is that the latter enactment must prevail over the earlier one.

15. Admittedly, both the Pension Rules and the Act came into force in the year 1972. However the provisions of the Act came

into effect from 21.09.1972, subsequent to the Pension Rules. Therefore, that being a subsequent enactment that too a statute, having a overriding effect over other enactments. At this stage, it is relevant to refer to the decision of the Hon'ble Supreme Court in the case of Municipal Corporation Delhi Vs. Dharan Prakash Sharma and Others (1998 (3) LLN 898, which considered the issue arising in these petitions, contending that an employee cannot avail benefits under the provisions of the Act. It was pointed out that Section 14 of the Act has overriding effect over other Acts or Rules. That apart, the petitioner Organisation has been declared as a Public Utility Service by the Government of India and falls under the purview of Section 2(n) of the Industrial Disputes Act which defines Public Utility Service under the I Schedule to the Act in serial No.28 of the Industrial Establishments manufacturing or producing Nuclear Fuel and Components, Heavy Water and allied Chemicals and Atomic Energy. Hence, the petitioner is an employer in terms of the definition of 'employer' as defined under Section 2(e) of the Act. Thus, the provisions of the Act which has some overriding effect can be invoked.

16. Furthermore, the petitioner establishment has not obtained any permission from the Government of India by invoking Section 5 of the Act.

17. In such circumstances, the mere fact is that Gratuity has been provided as per the Pension Rules will not disentitle the respondents 3 to 6 to get their Gratuity computed and paid as per the Act. It is not the case of the respondents 3 to 6 that they seek for gratuity both under the Act and as per the Pension Rules. They are claiming Gratuity under the Act and that they claim only the difference in Gratuity arising out of computation under the Act after giving credit to the Gratuity paid under the Pension Rules. Hence, for all the above reasons both the legal issues have to be necessarily answered against the petitioner.

18. The other contention raised by the learned counsel appearing for the petitioner is that the claim made by the respondents is a belated claim as the respondents 3 to 6 retired from service in the year 2007 and claim petitions had been filed in the year 2011. The application for payment of Gratuity would arise from the date on which the employee becomes eligible for the payment of Gratuity. In the instant case, prior to the retirement, Gratuity was computed in accordance with the Pension Rules and paid and thereafter, after obtaining legal advice, the respondents have moved the Controlling Authority. In terms of Rule 10 of the Payment of Gratuity (Central) Rules 1972, the employee may file an application within 90 days from the occurrence of the cause for the application and apply Form No.'N'. The application filed before the second respondent,

Controlling Authority, was entertained and the Authority having been satisfied, directed the application to be taken on file. It appears that the petitioner establishment did not raise any objection before the second respondent with regard to limitation and therefore at this juncture they are not entitled to raise such plea. In any event, the respondents 3 to 6 having served for more than 35 years cannot be shut out at threshold and the applications could not have been rejected on the ground of limitation when there is no allegation of any malafide intention for belatedly approaching the Authority. Therefore, on this ground also, this Court is unable to accept the contention of the learned counsel for the petitioner.

19. The decision relied upon by the learned counsel appearing for the petitioner in the case of Pallavan Transport Corporation(Metro), Ltd., Madras and Ms.Simrose and Others arose out of slightly a different factual situation and taking note of the definition of employees as defined under Section (2) (e) of the Act, this Court held that the employee therein cannot seek for counting the service rendered by him with the Government for computation of Gratuity. However, in the instant case, the petitioner establishment has been declared as a Public Utility Service by the Government of India and fall under the purview of Section 2(n) of the Industrial Disputes Act and therefore, the petitioner establishment is an employer as contemplated under Section 2(f) of the Act.

20. For all the above reasons, the petitioner has not made out any case for interference with the impugned orders. Accordingly, the writ petitions fail and they are dismissed. As the amount computed as difference of Gratuity has already been deposited by the petitioner organisation before the second respondent, the second respondent is directed to forthwith release the amount to the respondents 3 to 6, on production of copy of this order. Consequently, connected miscellaneous petitions are closed. No costs.

सत्यमेव जयते

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

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To

1.The Regional Labour Commissioner(Central) Cum
Appellate Authority Under the payment of Gratuity Act1972,
Office of the Regional Labour Commissioner,
No.26, Haddows Road,
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2.The Assistant Labour Commissioner(Central) and
Controlling Authority Under the payment of Gratuity Act 1972,
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New No.5, Old No.1-A, (IInd Floor),
Lady Doak Collage Road,
Chinna Chokkikulam,
Madurai-625 002.

+1cc to Mr.Venkataswamybabu, Advocate, S.R.No.5790
+1cc to Mr.V. Venkatesan, Advocate, S.R.No.6192
+1cc to Mr.S.T. Varadharajulu, Advocate Sr.5994

KGK(CO)
EU(2/03/2016)

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