THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT APPEAL Nos.1339 & 1375 of 2016

W.A.No.1339/2016

Between:

1. Bhagavatula Ahok and others.

APPELLANTS

And

1. The Controlling Authority under P.G. Act, 1972 and Assistant Labour Commissioner (Central), ATI Campus, Vidyanagar, Hyderabad 500007 and others.

RESPONSENTS

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

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COMMON JUDGMENT: (Per Hon'ble Sri Justice V. Ramasubramanian)

Both these writ appeals are by third parties to a writ petition challenging an order passed by the learned Single Judge, quashing the application filed by the 2nd respondent in these writ appeals, before the Controlling Authority under the Payment of Gratuity Act, 1972.

2. Heard Mr. P.V. Krishnaiah, learned counsel for the appellants and Mr. G. Vidyasagar, learned Senior Counsel appearing for the 3rd respondent-corporation.

3. It appears that around hundreds of former employees of 3rd respondent-corporation filed applications in Form-N, in terms of Rule 10 of the Payment of Gratuity Rules, 1972, before the Controlling Authority under the Act, claiming the differential gratuity amount of Rs.6.5 lakhs. The 2nd respondent in these writ appeals was one among the applicants, who filed Form-N before the Controlling Authority.

4. After filing objections to Form-N filed by the employees, both on the ground that the procedure prescribed by the Rules had not been followed and also on the ground that whatever was the maximum gratuity payable under Act had already been paid to the employees, even admittedly, the management came up with one writ petition in W.P.No.7128 of 2015. The main contention of the management in the said writ petition was that though by an Office Memorandum dated 26.11.2008 issued by the Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises, Government of India, a decision was taken to raise the ceiling limit of gratuity to Rs.10 lakhs w.e.f.

01.01.2007, the Board of Directors of the 3rd respondent-corporation had taken a decision to wait for an amendment to the Payment of Gratuity Act, 1972 and that therefore, till the amendment was effected, the employees could not invoke the jurisdiction of the Controlling Authority under the Act merely on the basis of the Office Memorandum.

5. The said contention was accepted and the writ petition filed by the Management in W.P.No.7128 of 2015 was allowed by the learned Single Judge. Aggrieved by such an order, the other employees, whose applications are now under threat of dismissal at the hands of the Controlling Authority, have come up with the present writ appeals.

6. The main objection of the learned counsel for the appellants to the order of the learned Single Judge is that the fate of hundreds of applications pending before the Controlling Authority under the Payment of Gratuity Act, 1972, have been decided by the learned Single Judge at the instance of the Management in one writ petition filed as against the one application by a former employee. The second objection of the learned counsel for the appellants to the order of the learned Single Judge is that this is not a case warranting interference with the jurisdiction of a statutory authority.

7. In response to the above contentions, it is submitted by Mr. G. Vidyasagar, learned Senior Counsel for the 3rd respondent-corporation that when maximum amount of gratuity stipulated under the Payment of Gratuity Act, 1972 had already been admittedly paid to the non-union category employees, the Controlling Authority would not have jurisdiction to decide the issue as to whether the Office Memorandum of the Government of India dated 26.11.2008 should be implemented even without an amendment to the Gratuity Act and even without the Board of

Directors passing resolution to that effect. In other words, his contention is that the very entertainment of the applications by the Controlling Authority, was without jurisdiction and that therefore, the learned Judge was right in interfering with the proceedings.

8. We have carefully considered the above submissions.

9. There are no disputes at least on two aspects, viz., (a) that under the Payment of Gratuity Act, 1972, the maximum gratuity payable to these employees stands at Rs.3,50,000/-; and (b) that the said amount, even according to the individuals, had been paid by the management.

10. However, there is also no dispute about the fact that under the Office Memorandum bearing No. 2(70)/08-DPE(WC), dated 26.11.2008, issued by the Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises, Government of India, the Government took a policy decision on the basis of the recommendations of the second Pay Revision Committee. One of the decisions taken under the Office Memorandum was to increase the ceiling of gratuity for executives and non-unionized supervisors of the Central Public Sector Enterprises to Rs.10 lakhs with effect from 01.01.2007. Paragraph 13 of the Office Memorandum dated 26.11.2008 reads as follows:

> "Gratuity: The ceiling of gratuity of the executives and non-unionised supervisors of the CPSEs would be raised to Rs.10 lakhs with effect from 1.01.2007."

11. Interestingly the question of revision of pay scales of non-unionized supervisory staff was left by the very same Office Memorandum dated 26.11.2008, to the decision of the Board of Directors of the CPSEs. Paragraph 15 of the Office Memorandum dated 26.11.2008 reads as follows:

> "Pay Revision in respect of non-unionised supervisory staff: The revision of scales of pay for non-unionized supervisory staff may be decided by the respective Board of Directors of the CPSEs."

12. It must be recorded at this juncture that the Office Memorandum was a sequel to the recommendations made by a Pay Revision Committee constituted under the Chairmanship of Justice M. Jagannadha Rao, retired Judge of the Supreme Court.

13. Pursuant to the aforesaid Office Memorandum, the Board of Directors of the 3rd respondent-corporation passed resolutions in the 226th meeting held on 21.04.2009. In paragraph 5.0 of the Memorandum placed under Item No.19 of the Agenda to the 226th meeting of the Board of Directors, it was recorded that the revision of pay scales as per the recommendations contained in the Office Memorandum, would not go beyond 20% of the profit before tax for the year 2007-2008. Paragraph 5.0 of the Office Memorandum under Item No.19 of the Agenda reads as follows:

> "By revising the pay scales and, perks/other allowances together with PRP as per order of GoI, the additional outgo for 2007-08 does not go beyond 20% of PBT for the year 2007-08. Hence, ECIL can implement the pay revision in full."

14. However, insofar as the increase in the ceiling limit of gratuity is concerned, the Board resolved in paragraph 6.0 of the Office Memorandum, as follows:

> "Company proposes to maintain the ceiling limit on Gratuity at Rs.3.5 lakhs till the Gratuity Act is amended."

15. Thereafter, an additional resolution was passed on 13.08.2010 in the 234th meeting of the Board Directors of the 3rd respondent-Corporation to the following effect.

> "FURTHER RESOLVED that in view of the amendment of the Payment of Gratuity Act 1972 vide Gratuity (Amendment) Act 2010, the enhancement of ceiling limit

from Rs.3.5 lakhs to Rs.10 lakhs in Term Assurance under Group Gratuity Cash Accumulation Policy with LIC also be made applicable to include cases of death-in-harness in settlement of gratuity amount."

16. It was followed by a Personnel Circular No.2068/2010-11, dated 12.11.2010, amending the ECIL Employees' Gratuity Fund Rules. The Circular amending the Rules reads as follows:

> "In accordance with the enactment of the Payment of Gratuity (Amendment) Act, 2010 and in pursuance of the approval accorded by the Board of Directors in its 233rd and 234th meetings held on 29.06.2010 and 13.08.2010 respectively, the Management is pleased to enhance the ceiling limit from Rs.3.5 lakhs to Rs.10 lakhs for payment of Gratuity effective from 24.05.2010 by amending the Rule No.8.1 and 8.3 of ECIL Employees' Gratuity Fund Rules."

17. In the light of the above, the question as to whether the employees, who have gone before the Controlling Authority are entitled to the benefits of the amendment, without an amendment to the Gratuity Act or not, is a question, which is a mixed question of fact and law. If a question is a mixed question of fact and law like limitation, it is the statutory authority, who is conferred with the power of adjudication, who should actually decide the same. At the stage when an enquiry is pending before such a statutory authority, it may not be permissible to interfere, especially under Article 226 of the Constitution.

18. Drawing our attention to a judgment of the Delhi High Court in *State Farms Corporation of India v. P.S. Gupta*[1] dated 01.07.2014, it is contended by the learned Senior Counsel for the 3rd respondent-corporation that the only issue to be considered by the Controlling Authority in these cases is, as to whether the Office Memorandum dated 26.11.2008 would *per se* apply to these employees without an amendment to the Gratuity Act or not, and that such a question being a pure and simple question of law, need not necessarily be

[1] (2014) 213 DLT 95

relegated to the statutory authority, especially in the light of the number of persons who have gone before the authority.

19. But a careful look at the decision of the Delhi High Court would show that the same arises out of an order passed by the Controlling Authority. The Controlling Authority passed an order in favour of an employee, which forced the management to go by way of a writ petition. The Delhi High Court did not interfere at the stage of enquiry. Yet another distinction between our case and the case before the Delhi High Court is that there was no factual finding about the 20% profit before tax available for the year and there was no adjudication by the Controlling Authority about the same. Therefore, the Delhi High Court actually permitted the employee to revive the petition, after the Board took a decision on the basis of the profit before tax as per the Profit and Loss Account.

20. The next decision relied upon by the learned Senior Counsel for the 3rd respondent-corporation is *Srinivasan v. Government of India*[2]. But the said decision of a Division Bench of the Madras High Court arose out of a writ petition directly filed by the employees before the High court on the specious plea that since the writ petitions were filed against the Government of India and a Public Sector undertaking, they need not go before the Controlling Authority under the Act. Therefore, the Court decided to deal with the issue relating to a similar Office Memorandum under the First Pay Committee. Hence the said decision may not also be of any assistance to the question whether an interference under Article 226 at the stage of pendency of an enquiry before the Controlling Authority is warranted or not.

[2] 1999 (1) LLJ 986 Mad.

21. As we have pointed out earlier, we are concerned in this case with the primary question as to whether an interference with the exercise of jurisdiction by the Controlling Authority under the Payment of Gratuity Act, 1972 is warranted at this stage. It is only in extraordinary cases where there is inherent lack of jurisdiction on the part of a Statutory Authority that this Court will prevent even an enquiry being held by such an authority. Admittedly, this is not a case of inherent lack of jurisdiction on the part of the Controlling Authority. Therefore, we are of the considered view that the learned Judge could not have quashed the proceedings pending before the Controlling Authority.

22. One collateral argument raised by the learned Senior Counsel appearing for the 3rd respondent is that the procedure prescribed by the Rules, requiring the employee first to serve Form-I upon the employer and then to file Form-N explaining the reasons for the delay in filing such a Form, has not been followed. Therefore, it is his contention that without a sufficient cause, the employees were not even entitled to have their applications entertained after such a long delay. Reliance is placed upon Rule 7(5) of the Payment of Gratuity (Central) Rules 1972.

23. But unfortunately, when a statute and Rules framed thereunder prescribe a particular Form and that particular Form needs to be filled up in a particular manner, some times the question whether sufficient cause is shown or not, becomes subjective. In any case, this is an objection which the management has actually taken before the Controlling Authority. Without allowing the Controlling Authority to decide that objection, the management cannot rush to this Court. Therefore, we are of the considered view that the order of the learned Judge needs to be set aside and the law should be allowed to take its own course in

accordance with the statutory prescription. Hence the writ appeals are allowed, the order of the learned Judge is set aside. It will be open to the management to raise all objections before the Controlling Authority and the Controlling Authority shall consider all objections in the light of the provisions of the Rules as well as the Act and decide the same in accordance with law. The Controlling Authority shall endeavour to dispose of the application as expeditiously as possible.

24. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

JUSTICE V. RAMASUBRAMANIAN

JUSTICE G. SHYAM PRASAD

8th December, 2016
Js.

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

WRIT APPEAL Nos.1339 & 1375 of 2016

Date: 08-12-2016

Js.