

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.03.2018

Coram

THE HONOURABLE Mr. JUSTICE **K.K.SASIDHARAN**
AND
THE HONOURABLE Mr. JUSTICE **P.VELMURUGAN**

W.A.No.1040 of 2009
and M.P.No.1 of 2009

Bank of Baroda
rep by its Chairman &
Managing Director
No.3, Walchand Hirachand Marg
Ballard Pier, Mumbai 400 038.

.. Appellant

Vs.

1.A.M.Sampath

2.The Regional Labour Commissioner (C)
and Appellate Authority under payment of
Gratuity Act, 1972

Office of the Regional Labour
Commissioner (C), Haddows Road
Sastry Bhavan, Chennai 600 006.

.. Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set-aside the order
dated 02.02.2009 made in W.P.No.6746 of 1999 on the file of this Court.

For Appellant : Mr.M.R.Raghavan
for M/s Sampath Kumar Associates
For R1 : Mr.V.Kalyanaraman
for Mr.C.R.Chandrasekaran
For R2 : Mr.J.Madanagopal Rao, SCGSC

J U D G M E N T

[Judgment of the Court was delivered by K.K.SASIDHARAN, J.]

Whether the employee is entitled to claim the gratuity under the Payment of Gratuity Act, 1972 notwithstanding the currency of a settlement, is the core issue that arises for consideration in this intra court appeal filed by a Public Sector Bank.

2. The first respondent was an employee of the Bank of Baroda. The first respondent on attaining the age of superannuation, retired from service on 31 May, 1992. The first respondent made a claim for payment of the gratuity under the Payment of Gratuity Act. The claim was rejected by the Bank on the ground that in view of the settlement arrived at between the Union and the employee which governed the field, there is no right to claim gratuity. The first respondent filed a claim petition before the Controlling Authority. The Controlling Authority directed the appellant to pay gratuity to the first respondent. The said order was challenged by the Bank before the appellate authority under the Payment of Gratuity Act, 1972. The appellate authority over turned the said order and dismissed the claim on the ground that in view of the settlement, there is no statutory liability on the part of the appellant to pay gratuity to the employee. The said order was challenged before the writ court in W.P.No.6746 of 1999.

3. The learned single Judge by placing reliance on the Division Bench judgment of this Court in **P.Selvaraj vs. Management of Shardlow India Ltd., Chennai [2007 (1) LLN 835]**, allowed the writ petition on the ground that the payment of gratuity is a statutory obligation and the same has nothing to do with the settlement. The order is under challenge at the instance of the Management.

4. The learned counsel for the appellant contended that in view of the statutory settlement arrived at between the employer and the employee, there is no liability on the part of the Bank to make payment under the Payment of Gratuity Act. According to the learned counsel, the entire amount payable to the employee has already been settled by statutory settlement and as such, the first respondent was not correct in claiming gratuity. According to the learned counsel, the appellate authority rightly allowed the appeal filed by the Bank.

5. We have also heard the learned counsel for the first respondent.

6. There is no dispute that there was a binding settlement between the Bank and its employees. It was a statutory settlement. The first respondent, in spite of the said settlement, claimed gratuity under the Payment of Gratuity Act, 1972. Regulation No.46 of the Bank of Baroda Officers Service Regulations,

1979 deals with the scheme of payment of gratuity to the employees. Therefore, it is clear that there is a statutory obligation on the part of the Bank to pay gratuity to its employees. This is further strengthened by the Regulations framed by the Bank of Baroda in the name and style of "Bank of Baroda Officers Service Regulations, 1979."

7. The core question is as to whether the first respondent was correct in claiming gratuity, notwithstanding the binding settlement.

8. The issue raised by the first respondent is no more *res integra* in view of the decision of a co-ordinate Bench in **P.Selvaraj (cited supra)**. Similar plea was taken in the said appeal by the employer. The Division Bench while negating the contention taken by the employer, indicated the legal position in the following words:

"35.We are not impressed with this line of argument. The Gratuity Act is a beneficial piece of legislation and it should receive an interpretation consistent with the principles of equity and fair play. Therefore, the term "last drawn wage" found in S.4(2) of the Gratuity Act should receive its full meaning and it cannot give any fractured interpretation. Further, the settlement provides as to what should be the wages that should be paid to a workman and that the management cannot adopt an artificial interpretation with reference to the term "wages". It is in this context, the term "wages" which is defined under the Gratuity Act, must include not only what is paid but also what is payable to a workman."

9. The view taken by the Division Bench in **P.Selvaraj** was followed by a Division Bench in **Indian Overseas Bank vs. Regional Labour Commissioner and others** (judgment dated 28 April 2009 in W.A.No.95 of 2008).

10. The learned counsel for the appellant contended that appeal is now pending before the Hon'ble Supreme Court challenging the judgment dated 28 April 2009 in W.A.No.95 of 2008.

11. The learned single Judge allowed the writ petition by following the judgment in **P.Selvaraj**. The appellant has no case that the judgment in **P.Selvaraj** is the subject matter of appeal before the Hon'ble Supreme Court. The law declared in **P.Selvaraj** holds the field even today. We are, therefore, bound to follow the said judgment, being a co-ordinate Bench.

12. The learned single Judge discussed the statutory liability under the Payment of Gratuity Act, vis-a-vis, the settlement arrived at between the employer and the employee and rightly held that payment of gratuity is a statutory obligation on the part of the Bank. There is nothing on record to take a different view in the matter. We are, therefore, of the view that the learned

**K.K.SASIDHARAN, J.
AND
P.VELMURUGAN, J.**

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single Judge was correct in directing the appellant to pay gratuity by setting aside the order passed by the appellate authority.

In the upshot, we dismiss the intra court appeal. No costs.
Consequently, connected miscellaneous petition is closed.

**(K.K.SASIDHARAN, J.) (P.VELMURUGAN, J.)
22 March, 2018**

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To

The Regional Labour Commissioner (C)
and Appellate Authority under payment of
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