THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT APPEAL NO.559 OF 2018

JUDGMENT
(*Per Hon'ble Sri Justice Sanjay Kumar*)

By order dated 06.02.2018, a learned Judge of this Court allowed W.P.No.21213 of 2016 and directed the respondents therein to pay the petitioners the balance gratuity of Rs.5,50,000/- each, as per G.O.Ms.No.51, Finance (Pension-I) Department, dated 01.04.2011, adopted by the Society for Employment Promotion & Training in Twin Cities (SETWIN) on 06.08.2011, and as per G.O.Rt.No.73, Youth Advancement, Tourism & Culture (YS) Department, dated 01.02.2018. In consequence, the learned Judge set aside the Memo dated 12.12.2014 issued by the Government of Telangana, through its Youth Advancement, Tourism & Culture Department, denying the petitioners the benefit of enhancement of gratuity. Aggrieved by the said order, the respondents in the writ petition, the Government of Telangana and the Managing Director of the SETWIN, filed this appeal.

Heard Sri K.Ramanuja Chari, learned counsel for the appellants, and Sri K.Ramalingeswara Rao, learned counsel for the respondents.

The respondents, 33 in number, were employees of the SETWIN and retired upon attaining the age of superannuation between August, 2011 and April, 2014. Each of them was only paid Rs.2,50,000/- towards gratuity. Their grievance in the writ petition was that they had not been paid the balance gratuity in terms of G.O.Ms.No.51 dated 01.04.2011. Under G.O.Ms.No.51 dated 01.04.2011, the Government enhanced the gratuity payable to its employees to Rs.8,00,000/- with effect from 01.04.2011. This G.O. was adopted by the Managing Committee of the SETWIN on 06.08.2011. Earlier, the respondents and others filed W.P.No.31084 of 2014 seeking implementation of G.O.Ms.No.51 dated 01.04.2011. Pursuant to the direction passed therein to consider their claim, the Government of Telangana issued Memo dated 12.12.2014 stating to the effect that the resolution of the Managing Committee of the SETWIN would be applicable with prospective effect only and therefore, the employees who had retired from service prior to the date of adoption of the G.O. by the Managing Committee of the SETWIN and approval by the Government could not seek the benefit thereunder. This led to the filing of the present writ petition, wherein the learned Judge granted relief.

Perusal of G.O.Ms.No.51 dated 01.04.2011 demonstrates that the Government, after having elaborate discussions with employees associations, agreed to enhancement of retirement gratuity to Rs.8,00,000/- with effect from 01.04.2011 and accordingly directed so. The said order was to come into force from 01.04.2011 and applied to all Government Servants who retired or whose death took place on or after the said date. The Managing Committee of the SETWIN, in its meeting held on 06.08.2011, advised the Managing Director to implement enhancement of gratuity as per the 9th Pay Commission recommendations and G.O.Ms.No.51 dated 01.04.2011 and to pursue the matter with the Government for approval of gratuity on par with Government employees. Pursuant thereto, the Managing Director of the SETWIN addressed correspondence in November, 2011 to the Government informing it that a sum of Rs.50,00,000/- was provided in the budget for the year 2011-12 for enhancement of gratuity to SETWIN employees on par with Government employees, i.e., basic + DA x 16.5 months, with a maximum limit of Rs.8,00,000/-. The Managing Director sought suitable directions from the Government to enhance the maximum limit of retirement gratuity up to Rs.8,00,000/-, as per G.O.Ms.No.51 dated 01.04.2011, for regular employees of the SETWIN. Thereafter, letter dated 30.11.2013 was again addressed by the Managing Director of the SETWIN to the Government furnishing the details of the approximate expenditure on account of enhancement of gratuity and also the number of persons benefited thereby. Reference was made to the resolution of the Managing Committee of the SETWIN on 06.08.2011 and the fact that Rs.50,00,000/- had been provided in the budget for the year 2011-12. It was also brought out that Rs.96,64,600/- was allocated for payment of gratuity in the budget year 2012-13 and Rs.96,00,000/- was allocated for gratuity in the budget for 2013-14. The Managing Director therefore stated that no additional budget was required for implementation of G.O.Ms.No.51 dated 01.04.2011 in respect of regular employees of SETWIN. He further stated that though the maximum limit of the retirement/death gratuity was enhanced up to Rs.8,00,000/-, the average gratuity expenditure would be approximately between Rs.3.25 and 5.05 lakh only per employee during 2010-11 to 2013-14 and the number of eligible employees benefited were set out as under:

YEAR	BUDGET SANCTIONED FOR GROUP GRATUITY	NUMBER OF EMPLOYEES BENEFITED	AVERAGE ENHANCED GRATUITY PAYABLE	DIFFERENCE TO BE PAID APPROX.
2010-11	Rs.79.72 Lakhs (Addl. Funds)	14	Rs.3.25 Lakhs	Rs.11.0 Lakhs
2011-12	Rs.50.00 Lakhs	15	Rs.4.90 Lakhs	Rs.36.0 Lakhs
2012-13	Rs.96.64 Lakhs	22	Rs.4.35 Lakhs	Rs.40.0 Lakhs
2013-14	Rs.96.00 Lakhs	22	Rs.5.05 Lakhs	Rs.50.0 Lakhs
2014-15	-	12	-	
2015-16	-	20	-	
2016-17	-	13	-	
2017-18	-	12	-	
2018-19 to 2030-31	-	38	-	
TOTAL	Rs.242.64 Lakhs	168		Rs.137.0 Lakhs

Out of the aforestated 168 eligible retired employees, the cases of 68 retired employees were stated to have been settled and the difference of the enhanced gratuity payment was to be met from the sanctioned budget from time to time without seeking additional budget from the Government. The Managing Director therefore requested the Government to issue suitable orders for implementation of the enhanced gratuity from the allocated and sanctioned budget of the SETWIN, in terms of the resolution dated 06.08.2011. The list of employees appended to this letter included the names of the respondents.

Again, on 16.09.2014, the Managing Director of the SETWIN addressed the Government informing it that, as on 23.07.2014, the total balance of contribution fund, including interest, was approximately Rs.2.01 crore and on receipt of the orders from the Government to implement the enhanced gratuity payable to its employees, the available group gratuity contribution with the Life Insurance Corporation of India of Rs.2.01 crore would be withdrawn and remitted to the Government. The Managing Director again sought suitable directions as to enhancement of the retirement gratuity up to Rs.8,00,000/-, as per G.O.Ms.No.51 dated 01.04.2011, in respect of the regular employees of the SETWIN.

However, it was only in the year 2018 that the Government of Telangana issued G.O.Rt.No.73 dated 01.02.2018, adverting to the proposal of the Managing Director of the SETWIN for enhancement of the gratuity payable to its regular employees from Rs.2.50 lakh to Rs.8.00 lakh, consequent to implementation of the 2010 revised pay scales in respect of the SETWIN employees and approving the proposal of the Managing Director, SETWIN, for enhancement of retirement gratuity payable to regular employees of the SETWIN from Rs.2.50 lakh to Rs.8.00 lakh as per the recommendation of the Managing Committee of the SETWIN. The Government further stated that the additional expenditure in this regard was to be paid from own/generated available funds within the budget of SETWIN without any additional burden on the State Government Exchequer. The

Managing Director of the SETWIN was directed to take necessary further action in the matter.

However, though there was no ambiguity in the GO, the Managing Director (FAC) of the SETWIN addressed letter dated 05.02.2018 to the Government informing it that as on the date of implementation of the revised pay scales 2010, 170 employees were working in the SETWIN whereas the present permanent employee strength was only 36 and requesting the Government to issue suitable orders as to the date of implementation of G.O.Rt.No.73 dated 01.02.2018. The Government then addressed Memo dated 24.02.2018 to the Managing Director of the SETWIN clarifying that G.O.Rt.No.73 dated 01.02.2018 would have prospective effect only.

The aforestated sequence of events clearly demonstrates that it was the intention of the SETWIN all along that enhancement of gratuity should be given effect so as to benefit employees who retired from the budget year 2010-11 onwards. This was obviously because the Managing Committee of the SETWIN resolved to implement G.O.Ms.No.51 dated 01.04.2011 on 06.08.2011. The correspondence addressed by the then Managing Director of the SETWIN to the Government also clearly bears out this fact. All through, it was the stand of the SETWIN that sufficient funds were available with it to meet the financial burden in this regard and that no additional budget would be required from the Government to give effect to enhanced gratuity payable to its regular employees. This request was approved by the Government belatedly, but in toto, as is clear from G.O.Rt.No.73 dated 01.02.2018. The Government specifically stated therein that the proposal submitted for enhancement of gratuity was linked to the implementation of the 2010 revised pay scales to regular employees of the SETWIN and the said proposal was approved as per the recommendation of the Managing

Committee on 06.08.2011, without modification. The Government also made it clear that payments would have to be made from own/generated available funds within the budget of the SETWIN without any additional burden on the State Government Exchequer. There being no ambiguity in the matter, the present in-charge Managing Director unnecessarily addressed letter dated 05.02.2018 seeking orders from the Government as to the date of implementation of G.O.Rt.No.73 dated 01.02.2018. Therefore, the clarification issued by the Government under its Memo dated 24.02.2018 was wholly unnecessary. Further, the Government could not have introduced something new into G.O.Rt.No.73 dated 01.02.2018, issued by it in exercise of executive power under Article 162 of the Constitution, by way of administrative instructions issued *vide* a Memo.

When the decision taken by the Managing Committee of the SETWIN as long back as on 06.08.2011, clearly borne out by correspondence of the Managing Director of the SETWIN with the Government, was to give effect to enhancement of retirement gratuity in relation to the regular employees who retired from service from 2010-11 budget year onwards, it is too late in the day for the SETWIN to now turn around and deny them the said benefit. It may be noted that the correspondence also bears out that sufficient funds were available at that time to meet the expenditure in relation to the enhanced gratuity amount. Sri K.Ramanuja Chari, learned counsel, has no explanation to offer as to why the SETWIN, having already made arrangements to meet the additional expenditure arising out of enhancement of retirement gratuity, is now seeking to back out. He also has no explanation to offer as to what happened to the funds aggregating to Rs.2.01 crore, which had been earmarked for the enhanced gratuity. In any event, the delay on the part of the Government in granting approval seems to have been the only reason that the said benefit was not extended to regular employees who retired since 2010-11. However, the delay on the part of the Government in taking necessary steps in this regard cannot be a factor to disentitle such retired employees of the benefit rightfully due to them in terms of the policy decision taken by the SETWIN itself, as long back as on 06.08.2011, which was approved without demur by the Government *vide* G.O.Rt.No.73 dated 01.02.2018. In effect, once the SETWIN took a policy decision to effect enhancement of gratuity payable to a regular employee, duly making provision therefor in its available funds, the mere fact that administrative approval by the Government was delayed would not have the effect of denuding the right of such retired employees to enhanced gratuity.

It may also be remembered that payment of gratuity to a retired employee is not a bounty and is payable to him on successful tenure of service. He is entitled to it as of right and it would be property in his hands. (See LIFE INSURANCE CORPORATION OF INDIA V/s. RETIRED L.I.C. OFFICERS ASSOCIATION[1] and D.D.TEWARI V/s. UTTAR HARYANA BIJLI VITRAN NIGAM LTD.[2]).

Reliance placed by Sri K.Ramanuja Chari, learned counsel, upon UNION OF INDIA V/s. ALL INDIA SERVICES PENSIONERS ASSOCIATION[3] is of no avail as that was a case where upward revision was sought in relation to payment of gratuity after the date of retirement, by relying on subsequent developments. In the present case, on the other hand, by the time the policy decision was taken on 06.08.2011, all the respondents were still in service and only retired thereafter. They therefore did not seek any upward revision based on subsequent events.

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[1] (2008) 3 SCC 321
[2] (2014) 8 SCC 894
[3] AIR 1988 SC 501 = (1988) 2 SCC 580

Similarly, the decision in STATE OF MADHYA PRADESH V/s. BADRINARAYAN ACHARYA[4] is also of no avail as it related to cut-off dates in the context of increments. TRANSPORT MANAGER, PUNE MUNICIPAL CORPORATION TRANSPORT UNDERTAKING V/s. VASANT GOPAL BHAGWAT (DEAD) BY LRS.[5] is distinguishable on facts as it did not involve a policy decision, as in the present case, with regular employees retiring thereafter.

This being the situation, when the SETWIN itself took a policy decision as long back as on 06.08.2011 and acted upon it, the mere delay on the part of the Government in approving the same would not have the effect of depriving retired regular employees of the SETWIN of the benefit of such policy decision. The order of the learned Judge holding to this effect therefore does not brook interference, be it on facts or in law.

The appeal is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

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SANJAY KUMAR, J

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M. GANGA RAO, J

12th APRIL, 2018

Svv

[4] 1996 (2) S.C. Service Law Judgments 536 = (1996) 10 SCC 271

[5] 1998 (2) S.C. Service Law Judgments 328 = (1998) 7 SCC 574