

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.04.2019

Pronounced on : 24.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 1261 of 2011
and
M.P. No. 1 of 2012

1. D.S. Kumar
2. S. Marichamy
3. M. Sankaran
4. R. Kannan
5. R. Baskaran
6. A.A. Wahid Ali
7. K. Sidha Shaik Madar
8. M. Mahalingam
9. A. Balu
10. G. Avudiappan
11. J. Samuvel Selva Rathinam
12. N.M. Shaul hamead
13. K. Subramanian
14. A. Kesavamoorthy
15. H. Abubakker
16. K. Sundaram
17. S. Meeran Mytheen
18. A. Palaniyandi
19. P. Shanmugham
20. P. Muthuvalli
21. P. Rathnavel
22. S. Neela
23. A. Arumuga nainar
24. S. Subramanian
25. T. Ganapathy
26. K. Jothi Pandian
27. S. Pitchiah
28. S. Chidambaranathan
29. A.C. Muthu
30. L. Ashok Kumar
31. G. Chidambaranathan
32. A. Subramania Sharma
33. C. Murugesan

34. Muthukrishnan
35. R. Kanthaswamy
36. P.M. Kumar
37. V.S. Chandran
38. M. Marimuthu
39. M. Pandirajan
40. M. Subbiah
41. K. Karunanithi
42. V. Jeyabal
43. V. Durai Venkataraman
44. R. Gunasekaran
45. L. Abdul Raonistar
46. S. Kumararaj
47. M. Karunanandam
48. M. Gnanaprakasam
49. K. Rengaraj
50. M. Seenil Mohamed
51. M. Thajudeen
52. S. Krishnamoorthy
53. P. Ananthakrishnan
54. A. Sakthivelu

.... Appellants/Petitioners

-vs-

The Managing Director,
Tamil Nadu Civil Supplies Corporation Limited,
No.12, Kilpauk, Chennai - 600 010. ... Respondent/Respondent

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 11.07.2011 made in W.P. No. 16358 of 2011.

Prayer in WP No.16358/11 : Petition under Article 26 of the Constitution of India praying for a writ of certiorified mandamus to call for the impugned circular RC No. AGR2/55813/10 dt 26.8.10 by a circular No. 73/2010 and quash the same and direct the respondent to issue the benefit as amended to the payment of gratuity act 1972

For Appellants : Mr. N.R. Chandran, Senior Counsel
for Mr. R. Kannan

For Respondent : Mr. C. Munusamy,
Standing Counsel

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 11.07.2011 in W.P. No. 16358 of 2011 passed by the Learned Judge of this Court.

2. The Appellants, who are the erstwhile employees of the Tamil Nadu Civil Supplies Corporation Limited, retired from service before 24.05.2010 and they were paid the maximum amount of gratuity of Rs.3,50,000/- fixed under Section 4(3) of the Payment of Gratuity Act, 1972, as it stood at the time of their respective dates of retirement. An amendment was made to Section 4(3) of the Payment of Gratuity Act, 1972, with effect from 24.05.2010, by enhancing the maximum amount of gratuity from Rs.3,50,000/- to Rs.10,00,000/-. The Appellants filed W.P. No. 16358 of 2011 in this Court claiming that they were entitled to higher amount of gratuity as the maximum amount of gratuity had been increased.

3. The Learned Judge, who heard the Writ Petition, by order dated 11.07.2011 held that the contingencies on which the gratuity would have to be paid in Section 4(1) of the Payment of Gratuity Act, 1972, is on the termination of the employment of an employee after he has rendered service for not less than five years on his superannuation or retirement or resignation and that the Appellants cannot claim any benefits of enhancement of the maximum amount of gratuity in the amendment which came into force on 24.05.2010, after their respective dates of retirement from service and dismissed the Writ Petition. Aggrieved thereby, the Appellants have preferred this Appeal.

4. We have heard Mr. N.R. Chandran, Learned Senior Counsel appearing for the Appellants, Mr. C. Munusamy, Learned Standing Counsel appearing on behalf of the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

5. The Learned Senior Counsel appearing for the Appellants strenuously urged that the Writ Court lost sight of the actual contention of the Appellants that they are entitled to the benefits arising out of enhancement in the maximum amount of gratuity from Rs.3,50,000/- to Rs.10,00,000/- with effect from 01.01.2006 on par with the employees of the Government of Tamil Nadu as the Appellants had retired from service after that date. In order to buttress the said contention, reliance has been placed on G.O. Ms. No. 235, Finance (Pay Cell) Department dated 01.06.2009 issued by the Government of Tamil Nadu, providing in para 2(ix) that the maximum quantum of gratuity,

death cum retirement gratuity shall be enhanced from Rs.3,50,000/- to Rs.10,00,000/- with effect from 01.01.2006. It is further pointed out that in G.O. Ms. No. 250, Finance (BPE) Department dated 17.06.2009, the Government of Tamil Nadu had extended the benefits conferred in G.O. Ms. No. 234, Finance (Pay Cell) Department dated 01.06.2009 to the employees of the State Public Sector Undertakings on the terms and conditions mentioned therein and as a consequence thereof, the benefit of enhancing the maximum amount of gratuity from Rs.3,50,000/- to Rs.10,00,000/- should be extended to the Appellants, who had retired between 01.01.2006 and 24.05.2010.

6. The Learned Standing Counsel appearing for the Respondents justified the order under appeal and contended that the Respondent, viz., the Tamil Nadu Civil Supplies Corporation Limited, though a State Public Sector Undertaking, its employees cannot be considered as employees of the State Government in order to claim parity for all purposes and it is highlighted that the gratuity was paid to the retiring employees of the Tamil Nadu Civil Supplies Corporation Limited under the Payment of Gratuity Act, 1972, in which the benefit of enhancement of maximum amount of gratuity from Rs.3,50,000/- to Rs.10,00,000/- came into force only from 24.05.2010 after the Appellants had retired from service, and that the gratuity under the Tamil Nadu Pension Rules, 1978, were not applicable to them.

7. We have duly considered the rival submissions and find that the contentions made on behalf of the Appellants cannot be countenanced. It is not in dispute that the Appellants, who are the erstwhile employees of the Tamil Nadu Civil Supplies Corporation Limited, are governed by the Payment of Gratuity Act, 1972, and that the amendment enhancing the maximum amount of gratuity from Rs.3,50,000/- to Rs.10,00,000/- came into effect only on 24.05.2010 after the Appellants had retired from service. On a bare perusal of G.O. Ms. No. 235, Finance (Pay Cell) Department dated 01.06.2009 issued by the Government of Tamil Nadu, it is evident that the same enhanced the maximum amount of gratuity from Rs.3,50,000/- to Rs.10,00,000/- with effect from 01.01.2006 only in respect of employees of the Government of Tamil Nadu and as such, the Appellants cannot claim any benefit from the same. Insofar as G.O. Ms. No. 250, Finance (BPE) Department dated 17.06.2009 read with G.O. Ms. No. 234, Finance (Pay Cell) Department dated 01.06.2009 is concerned, the same relates only to the benefits of pay scale for the existing employees and there is nothing therein to show that it includes gratuity for the employees who have retired from 01.01.2006. The mere circumstance that the enhancement of the maximum amount of gratuity from Rs.3,50,000/- to Rs.10,00,000/- had been made on the recommendation of the Sixth Pay Commission appointed by the Central Government, which was

adopted by the Government of Tamil Nadu, cannot automatically mean that the employees of the Tamil Nadu Civil Supplies Corporation Limited, which is a State Public Sector Undertaking would be entitled to all the benefits including gratuity even in the absence of specific Governmental Order or binding decision of the Tamil Nadu Civil Supplies Corporation Limited to that effect.

8. Learned Senior Counsel appearing for the Appellants in support of this appeal cited on a passage from the decision of the Hon'ble Supreme Court of India in State of Punjab -vs- Justice S.S. Dewan (Retired Chief Justice) [(1997) 4 SCC 569], which has been quoted in the subsequent decision in United Bank of India -vs- United Bank of India Retirees' Welfare Association [(2018) 16 SCC 539], and reads as follows:-

"7. Therefore, what we have to consider is what is the nature of the change made by the amendment. Is it by way of upward revision of the existing pension scheme? Then obviously the ratio of the decision in D.S. Nakara case [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] would apply. If it is held to be a new retiral benefit or a new scheme then the benefit of it cannot be extended to those who retired earlier."

On a perusal of the same, we do not find the same to be relevant in any manner for the issue involved in this case, especially when the date on which the amendment came into effect is alone of significance.

9. A similar contention raised by the retired employees of the State Bank of India for the enhancement of the maximum amount of gratuity to Rs.2,50,000/- with effect from 01.04.1995 and to Rs.3,50,000/- with effect from 01.01.1996 on the basis of the recommendations of the Fifth Pay Commission appointed by the Central Government have been negatived by the Hon'ble Supreme Court of India in Shitla Sharan Srivastava -vs- Government of India [(2001) 6 SCC 106] by pointing out that the amendment enhancing the maximum of gratuity to Rs.3,50,000/- in Section 4 (3) of the Payment of Gratuity Act, 1972, came into effect only from 24.09.1997, and those who retired prior to that date cannot claim that benefit. It also requires to be noticed here that in Municipal Corporation of Delhi -vs- Dharam Prakash Sharma [(1998) 7 SCC 221] and Nagar Ayukt Nagar Nigam -vs- Mujib Ullah Khan (Order dated 02.04.2019 in Civil Appeal No. 2628 of 2017), the Hon'ble Supreme Court of India has made the legal position clear and in respect of establishments governed by the Payment of Gratuity Act, 1972, in view of the overriding effect contained in Section 14 of that Act, the liability to pay gratuity in accordance with the provisions of that Act would not cease even if pension with gratuity is paid to its employees

under some other statutory provision, unless specific exemption had been obtained under Section 5 of that Act on being satisfied that the employees are in receipt of gratuity and pensionary benefits not less favourable than the benefits conferred under that Act. It is not in dispute that no such exemption has been obtained in respect of the Tamil Nadu Civil Supplies Corporation Limited, in which the Appellants had worked till their retirement from service. In other words, the right of the Appellants to claim gratuity arises only under the provisions of the Payment of Gratuity Act, 1972, and they cannot fall on the Tamil Nadu Pension Rules, 1978, to derive the benefit of enhancement of the maximum amount of gratuity from Rs.3,50,000/- to Rs.10,00,000/-, with effect from earlier date on 01.01.2006 instead of 24.05.2010, when the amendment came into force.

10. In the upshot, we do not find any merits in the Writ Appeal and the same is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

vjt

To

The Managing Director,
Tamil Nadu Civil Supplies Corporation Limited,
No.12, Kilpauk, Chennai - 600 010.

+1cc to Mr.R.Kannan, Advocate SR.No.39133

सत्यमेव जयते

W.A. No. 1261 of 2011

VGII (CO)
GMY (25/04/2019)

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