



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.37761 OF 2004

- 1.K.P.Govindan (Deceased)
- 2.Gouri
- 3.Asواني Kumar
- 4.Mahesh Govind
- 5.Ram Manohar

...Petitioners

(P2 to P5 substituted as LRs of deceased
sole petitioner vide order dated
04/12/2020 made in WMP.No.34155/2019
in WP.No.37761/2004)

-Vs-

1. The Regional Labour Commissioner and
Appellate Authority under the
Payment of Gratuity Act,
No.14, Haddows Road,
Shastri Bhavan, Nungambakkam,
Chennai - 600 006.
2. The Assistant Labour Commissioner (C) II,
Controlling Authority under the
Payment of Gratuity Act,
No.14, Haddows Road,
Shastri Bhavan, Nungambakkam,
Chennai - 600 006.
3. The Indian Bank,
Rep. by its General Manager,
No.31, Rajaji Salai,
Chennai - 600 001.

...Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 22.09.2004 passed by the 1st respondent in Gratuity Appeal No.430 of 2003 and quash the same as being illegal, arbitrary and



unconstitutional and consequently direct the 3rd respondent Bank to settle the difference in gratuity claimed by the petitioner with interest.

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For Petitioners: Mr.M.Hidayathulla Khan

For R1 & 2 : Mr.K.Gunasekar, SPCCG

For R3 : Mr.Kalyanaraman,
for M/s.Aiyar & Dolia

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. The learned counsel for the petitioners submitted that, pending the writ petition, the original petitioner, namely, K.P.Govindan, expired and his legal heirs have been brought on record.

3. The deceased employee, namely, K.P.Govindan, had reached the age of superannuation on 31.10.1994. In view of the revision of pay scale with effect from 01.11.1994, he made a claim to have his retirement benefits reckoned from 01.11.1994, before the second respondent herein. By an order dated 13.05.2002, the second respondent had held that the revised gratuity will be payable to him with effect from 01.11.1994. However, the first respondent, namely the Appellate Authority, had reversed such a finding in the impugned order dated 22.09.2004, whereby it was held that the contract of employment would end on the Afternoon of the closing hours on 31.10.1994 and not on 01.11.1994. As against this order of the first respondent, the present writ petition has been filed.

4. The explanation under Regulation 19(1) of the Indian Bank (Officers') Service Regulations states that an officer employee will retire from the last date of the employment, in which he completes his age of retirement. By applying this explanation to the facts of the present case, it has to be stated that the petitioner herein would retire only on the Afternoon of 31.10.1994 and not on the next day, i.e. 01.11.1994. This proposition has also been ratified by the Hon'ble Supreme Court in the case of Chief General Manager, Telecom, BSNL and another Vs. K.J.George and others reported in (2008) 14 SCC 699, whereby it was held that the employee is deemed to have retired with effect from the date on which he has reached the age of



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superannuation and not on the next day. The relevant portion of the order reads as follows:-

"1. The respondents were working in the Telecom Department on the posts of Senior Section Supervisor and Selection Supervisor and retired on 16-12-1995 and 3-12-1995 respectively. In view of the provision of FR 56 they were made to retire with effect from the afternoon of 31-12-1995. The report of the Fifth Central Pay Commission came into force with effect from 1-1-1996. Clause 3.1 of the Fifth Central Pay Commission Report states that the revised provisions shall apply to government servants who retire/die in harness on or after 1-1-1996.

2. The grievance of the respondents raised before the High Court was that they should be allowed to reckon their pensionary benefits on the basis of the Fifth Central Pay Commission Report with effect from 1-1-1996. The Division Bench of the High Court was of the view that since they were made to retire with effect from 31-12-1995, till the midnight of 31-12-1995 they were in service and, therefore, entitled to retiral benefits from 1-1-1996. We are unable to countenance with the decision of the Tribunal and the High Court.

3. As already noticed, they were retired with effect from 16-12-1995 and 3-12-1995 respectively but because of the provision of FR 56 they were allowed to retire on the last date of the month, the grace period of which was granted to them for the purpose of pay and allowances only. Legally, they were retired on 16-12-1995 and 3-12-1995 respectively and, therefore, by no stretch of imagination can it be held that their pensionary benefits can be reckoned from 1-1-1996. The relationship of the employer and employee terminated in the afternoon of 16-12-1995 and 3-12-1995 respectively. In view therefore the orders of the Tribunal and the High Court are accordingly set aside and these two appeals are allowed with no order as to costs."

5. The aforesaid extract is self explanatory. As such, the grounds raised by the learned counsel for the petitioners that



the pensionary benefits should be reckoned from the next day of retirement, cannot be sustained. Hence, the Writ Petition stands dismissed. No costs.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

hvk

To

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Chennai - 600 001.

+1cc to Mr.G.Ramadosh, Advocate, S.R.No.19470
+1cc to M/s.Aiyar & Dolia, Advocate, S.R.No.19112
+1cc to Mr.K.Gunasekar, Advocate, S.R.No.18973

W.P.No.37761 of 2004

MT (CO)
PM/08/04/2022