19.06.2024
Court No.13
Item No.193
pk

WPA 6439 of 2023

Shyamal Das and Ors.
Vs.
The State of West Bengal and Ors.

Mr. Sakti Pada Jana
Mr. Subhajyoti Das
... for the Petitioners.

Mr. Jayanta Samanta
Mr. Manas Kumar Sadhu
... for the State.

1. The writ petitioners challenge an order dated 9th September, 2019 passed by the Secretary, Department of Agriculture of the State. A prayer for parity, in quantum of gratuity, with that payable to the State Government employees was declined. Even a reference of the matter to the finance department of the State, as mentioned in the said order has resulted in a refusal by the latter to such prayer.

FACTS OF THE CASE

2. The writ petitioners are all employees of the Ramkrishna Mission Ashram Agricultural Training Institute (RMAATI). The salaries and pay structures of the petitioners are the same as the State Government employees. The petitioners have correspondingly got absolutely the same quantum and scale of pay revision like State Government

employees pursuant to every ROPA from the year 1998 till date. With every corresponding new ROPA the salaries of the petitioners and the State Government employees have been revised at par with one and another.

3. Unlike the Agricultural Training Institutes under the State under the department of agriculture, the RMAATI enjoys some degree of autonomy in the matter of recruitment and termination of services. For all other purposes the employees of the RMAATI enjoy the same benefits as that of the State Government employees insofar as pay, pension, leave, leave encashment and all other benefits, except gratuity. For the aforesaid purpose reference is made by the writ petitioners to a notice issued by the agricultural training branch of the Government of West Bengal dated 03.02.2003 stating that the Finance Department Memo No.7308F dated 16th October, 1998 shall be applicable to the petitioners as well albeit by different Memo number of even date.

ARGUMENTS OF THE PETITIONERS

4. Mr. Jana, learned counsel for the petitioner has placed the effects of pay revision of the State Government employees and the corresponding similar revisions paid to the employees of the

agricultural training institutes and particularly to the writ petitioners.

5. There is no dispute that the State exercises some degree of control over the RMAATI and other similar institutes in the State. There is a representative of the Government on its Managing Committee to oversee functions. The RMAATI is required to follow all guidelines and standards as ATI's directly under the State.

6. The petitioners are aggrieved that from the year 1998 and even prior thereto, the retirement gratuity, paid to them is not at par with the gratuity paid to State Government employees. For example on 27th October, 1998, the retirement gratuity for the State Government employees was increased from 2,00,000/- to 2,50,000/- whereas the petitioners got 2,00,900/- maximum ceiling limit. The retirement gratuity for the petitioners was subsequently revised on 6th September, 2011 from 2,00,900/- to 4,20,000/- whereas State Government employees were given 6,00,000/- as gratuity.

7. According to the counsel for the petitioner, Mr. Jana, there is discrimination meted out to the petitioners by the State. It is submitted that there is parity in pay pension, leave encashment and pay

revisions between the petitioners and the State Government employees. The petitioners are governed by the same conditions of service or that of the State Government employees. There has to be equal parity in payment of gratuity also.

ARGUMENTS OF THE STATE

8. Learned counsel for the State, Mr. Samanta, per contra has taken great pains and has very ably conducted the defence on behalf of the State. He has researched well and has placed several judgments of the Supreme Court and the principles of equity vs law by reference to the Halsbury Laws of England.

9. Mr. Samanta would argue that employees of the State cannot be equated with the employees of autonomous body like RMAATI. He submits that RMAATI is an autonomous body and its employees are governed by the rules framed by its management. The petitioners are not governed by the rules of the State Government insofar as service, discipline, appeal and conduct is concerned. While it is true that they receive pay and pension equivalent to the State Government employees, insofar as gratuity is concerned, they cannot claim the same amount payable to the State

Government employees. Reference in this regard is made to several decisions of the Supreme Court.

10. The first decision relied upon by Mr. Samanta appearing for the State is ***Federation of All India Customs and Central Exercise Stenographers and Ors. Vs. Union of India and Ors.*** Reported in ***(1988) 3 SCC 91*** particularly paragraphs 5, 7 and 11. It is argued that parity of pay must be assessed on the basis of not only the work done but also its volume and the responsibilities entrusted. The issue in this case was the pay of stenographers with the secretariat versus that of the stenographers in the regular establishments under the State.

11. The next decision relied upon by the State is the case of ***Arun Kumar & Ors. Vs. Union of India and Ors.*** reported in ***(2007) 1 SCC 732***. By reference to paragraph 95 of the judgment it is submitted that the Supreme Court has held that employees of the State and the employees of the State owned corporations do not stand on the same footing.

12. Mr. Samanta next relies upon the decision of the Supreme Court in the case of ***South Malabar Gramin Bank Vs. Coordination Committee of South Malabar Gramin Bank Employees' Union***

and South Malabar Gramin Bank Officers' Federation and Ors. reported in ***(2001) 4 SCC 101*** particularly paragraph 13 and 14 thereof. It is submitted that it is not for a Court of law to decide parity between employees of regional rural banks and their respective sponsored banks. The Supreme Court has referred the issue of parity to a special committee headed by retired High Court Judge. It is, therefore, argued that the writ Court should not decide that the same amount of gratuity payable to the State Government employees must also be paid to the petitioners.

13. Mr. Samanta lastly relied upon **Para 994** and **996** of **volume 14 of 3rd Edition** of the **Halsbury Laws of England**, to explain the principle of equity follows the law. It is argued by reference to the said principle that equity cannot be invoked when the law laid down by the State prescribes different quantum of gratuity for State Government employees and the employees of agricultural training institutes under the State.

14. Mr. Samanta argues that since the pay commission for the State Government employees and the employees of the agricultural training institutes like the petitioners are different, there cannot be parity in the quantum of gratuity of State Government employees and the petitioners.

ANALYSIS OF THE COURT

15. This Court has carefully considered the arguments advanced by the parties and has also considered three affidavits-in-opposition filed on behalf of the State.

16. It is now well settled by the Supreme Court in the case of State of ***Uttar Pradesh and Ors. Vs. Arvind Kumar Srivastava and Ors.*** reported in ***(2015) 1 SCC 347*** that similarly situated persons must be treated similarly. The relevant portions of the judgement are hereinbelow:-

> *"22.1 The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India.* ***This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly.*** *Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently."*

17. Insofar as gratuity is concerned, in the case of ***Jeewanlal Ltd. Vs. Appellate Authority*** reported in ***(1984) 4 SCC 356*** at para 8 it has been held that uniformity even in the payment of gratuity between the employees must be maintained. Paragraphs 8 to 13 are quoted below for the convenience:

"**8.** The Payment of Gratuity Act, 1972 is enacted to introduce a scheme for payment of gratuity for certain industrial and commercial establishments, as a measure of social security. It has now been universally recognized that all persons in society need protection against loss of income due to unemployment arising out of incapacity to work due to invalidity, old age etc. For wage-earning population, security of income, when the worker becomes old or infirm, is of consequential importance. The provisions of social security measures, retiral benefits like gratuity, provident fund and pension (known as the triple-benefits) are of special importance. In bringing the Act on the statute-book, the intention of the Legislature was not only to achieve uniformity and reasonable degree of certainty, but also to create and bring into force a self-contained, all-embracing, complete and comprehensive code relating to gratuity. The significance of this legislation lies in the acceptance of the principle of gratuity as a compulsory statutory retiral benefit.

9. As is true in every case involving construction of a statute, our starting point must be the language employed by the Legislature. It is necessary to set out the relevant statutory provisions of the Act. Sub-section (1) of Section 4 of the Act reads:

"4. (1) *Payment of Gratuity.*—Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,—

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee, or, if no nomination has been made, to his heirs.

Explanation.—For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement."

Sub-sections (2) and (3) of Section 4 of the Act provide as follows:

"4. (2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of an employee employed in a seasonal establishment, the employer shall pay the gratuity at the rate of seven days' wages for each season.

4. (3) The amount of gratuity payable to an employee shall not exceed twenty months' wages."

The term "wages" is defined in Section 2{s) as follows:

"2. (s) "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance."

10. In dealing with interpretation of sub-sections (2) and (3) of Section 4 of the Act, we must keep in view the scheme of the Act. Sub-section (1) of Section 4 of the Act incorporates the concept of gratuity being a reward for long, continuous and meritorious service. Sub-section (2) of Section 4 of the Act provides for payment of gratuity at the rate of "fifteen days' wages" based on the rate of wages last drawn by the employee concerned for every completed year of service. The legislative intent is obvious. Had the Legislature stopped with the words "fifteen days' wages" occurring in sub-section (2) of Section 4 of the Act there was something to be said for the submission advanced by the learned counsel for the appellants based upon the decision of learned Single Judge of the Andhra Pradesh High Court in Associated Cement case [(1978) 52 FJR 138 (AP)] which was later approved by a Division Bench of that Court in Swamy case". But the Legislature did not stop with the words "fifteen days' wages" in sub-section (2) of Section 4 of the Act. The words "fifteen days' wages" are preceded by the words "at the rate of and qualified by the words "based on the rate of wages last drawn" by the employee concerned. The emphasis is not on what an employee would have earned in the course of fifteen days during the month when his employment was last terminated, but on the rate of fifteen days' wages for every completed year of service, based on the rate of wages last drawn by the employee concerned. The word "rate" appears twice in sub-section (2) of Section 4 and it necessarily involves the concept of actual working days. In Shri Digvijay Woollen Mills case [(1980) 4 SCC 106 : 1980 SCC (L&S) 513 : (1981) 1 SCR 64 : (1980) 2

LLJ 252] the Court rightly observed that although a month is understood to consist of 30 days, gratuity payable under the Act treating the monthly wages as wages for 26 working days is not new or unknown.

11. In construing a social welfare legislation, the court should adopt a beneficent rule of construction; and if a section is capable of two constructions, that construction should be preferred which fulfils the policy of the Act, and is more beneficial to the persons in whose interest the Act has been passed. When, however, the language is plain and unambiguous, the Court must give effect to it whatever may be the consequence, for, in that case, the words of the statute speak the intention of the Legislature. When the language is explicit, its consequences are for the Legislature and not for the courts to consider. The argument of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are two methods of construction. In their anxiety to advance beneficent purpose of legislation, the courts must not yield to the temptation of seeking ambiguity when there is none.

12. It is not correct to say that the decision in Shri Digvijay Woollen Mills case [(1980) 4 SCC 106 : 1980 SCC (L&S) 513 : (1981) 1 SCR 64 : (1980) 2 LLJ 252] does not lay down any principle. Gupta, J. speaking for the Court set out the following passage from the judgment of the Gujarat High Court in Shri Digvijay Woollen Mills case [SCA No 1641 of 1976, dated 12-10-76] : [SCC paras 4 and 5, p. 108: SCC (L&S) p. 515]

"The employee is to be paid gratuity for every completed year of service and the only yardstick provided is that the rate of wages last drawn by an employee concerned shall be utilised and on that basis at the rate of fifteen days' wages for each year of service, the gratuity would be computed. In any factory it is well known that an employee never works and could never be permitted to work for all the 30 days of the month. He gets 52 Sundays in a year as paid holidays and, therefore, the basic wages and dearness allowance are always fixed by taking into consideration this economic reality…. A worker gets full month's wages not by remaining on duty for all the 30 days within a month but by remaining on work and doing duty for only 26 days. The other extra holidays may make some marginal variation into 26 working days, but all wage boards and wage fixing authorities or tribunals in the country have always followed this pattern of fixation of wages by this method of 26 working days."

And then observed:

"The view expressed in the extract quoted above appears to be legitimate and reasonable."

The learned Judge then went on to say:

“Ordinarily of course a month is understood to mean 30 days, but the manner of calculating gratuity payable under the Act to the employees who work for 26 days a month followed by the Gujarat High Court cannot be called perverse.”

He further observed that it was not necessary to consider whether another view was possible and declined to interfere under Article 136 in a matter where the High Court had taken a view favourable to the employees and the view taken could not be said to be in any way unreasonable and perverse, and then added: [SCC para 5, p. 108: SCC (L&S) p. 515]

“Incidentally, to indicate that treating monthly wages as wages for 26 working days is not anything unique or unknown,.…”

We find that the same view has been taken by as many as three High Courts viz. by the Calcutta, Bombay and Gujarat High Courts in the cases referred to at the Bar. We find no compelling reason to take a view different from the one expressed by this Court in Shri Digvijay Woollen Mills case [(1980) 4 SCC 106 : 1980 SCC (L&S) 513 : (1981) 1 SCR 64 : (1980) 2 LLJ 252] .

13. The intention of the Legislature enacting sub-section (2) of Section 4 of the Act was not only to achieve uniformity and reasonable degree of certainty, but also to create and bring into force a self-contained, all-embracing, complete and comprehensive code relating to gratuity as a compulsory, retiral benefit. The quantum of gratuity payable under sub-section (2) of Section 4 of the Act has to be fifteen days' wages based on the rate of wages last drawn by the employee concerned for every completed year of service or more in excess of six months' subject to the maximum of 20 months' wages as provided by sub-section (3) thereof. The whole object is to ensure that the employee concerned must be paid gratuity at the rate of fifteen days' wages for 365 days in a year of service. The total amount of gratuity payable to such employee at that rate has to be multiplied by the number of years of his service subject to the ceiling imposed by sub-section (3) of Section 4 of the Act viz. that such amount shall not exceed 20 months' wages. The construction of sub-section (2) of Section 4 of the Act adopted by the learned Single Judge of the Andhra Pradesh High Court in Associated Cement Company case [(1976) 1 LLJ 222 (AP)] and later approved by a Division Bench of that Court in Swamy case [(1978) 52 FJR 138 (AP)] would make it utterly unworkable. If the determination of the amount of gratuity payable under sub-section (2) of Section 4 depends on the number of calendar days in a month in which the services of the employee concerned terminates, the quantum of gratuity payable would

> necessarily vary between an employee and an employee, belonging to the same class, drawing the same scale of wages, with like service for the same number of years. Obviously, this could not have been the legislative intention."

18. In the case of ***Steel Authority of India & Anr. Vs. Taraknath Sengupta & Ors***. reported in ***(2010) 2 Cal LT 473*** at para 26 it has been held that for the purpose of promoting the object of the act the principles under the Act of 1972 must be given precedence.

19. One may now address the expression wage under Section 2(s) of the said Act of 1972 which is set out herein below:

> "(s) 'wages' means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance."

20. It would follow from the above that the mode of computing gratuity either under the Act of 1972 or under any rule of the State Government must be similar and uniform and essentially based on the wage and basic pay. Admittedly, the pay structure of the petitioners, particularly the basic pay as standing after the application of the last ROPA is

mutatis mutandis similar to the salary and pay structure of employees of the State.

21. Gratuity, as already discussed in the case law, is a right conferred on an employee for continuous and unblemished service with the State and or a body. In a Memorandum of the State being Memo No.1331-Trg./38-8/03 dated 21st April, 2010 issued by the Government of West Bengal, it has been specified that service rules of Government sponsored agricultural training institutes like the RMAATI are required to follow the service rules in the matters related to leave, holidays, attendance and working hours etc. similar to agricultural training centers run directly by the Government.

22. The said order was issued in conformity with the Finance Department Memo No.34 dated 12th April, 2010. The said executive order has been made in terms of Article 163 of the Constitution of India is an aid of Article 309 of the Constitution and not in derogation thereof.

23. A clarificatory memorandum of the Finance Department dated 23.02.2009 to the ROPA, 2009 provides that pay structures of all educational and training institutions under the State would also be considered for revision under ROPA 2009.

24. In ***Union of India Vs. S.S. Soma Sundaram Vishwanath*** reported in ***AIR 1988 SC 2255*** the power of the State to regulate service conditions of the employees under its control through administrative orders under Article 73 of the Constitution of India has been reiterated.

25. The West Bengal ROPA's therefore at all material times covered and were meant to cover all employees even of autonomous bodies under the State in direct control.

26. This Court has in WP 19948 (W) of 2018 dated 14th March, 2019 held that the leave encashment rules of the Ramkrishna Mission Agricultural Training Institute cannot be different from that of the State Government.

27. In view of the Para 13 of the ***Jeewanlal Ltd. (supra)*** decision this Court is of the view that the gratuity amount payable to the petitioners cannot also be different from that of employees of the State Government.

28. None of the decisions cited by the learned counsel for the State are those where the pay structures and allowances of the two categories of the employees were similar. The question of same rate of gratuity did not and could not arise. The said decisions on the principles of parity of pay and

equal pay for equal work, therefore, have no manner of application to the facts of the instant case. On the principles of equity cited by Mr. Samanta, this Court is of the view that the rights of the petitioner are founded not only on the principles of equity but also under Article 14 and 16 (1) of the Constitution of India.

CONCLUSION

29. For the reasons stated hereinabove, the writ petition must succeed. The writ petitioners shall be entitled to the same quantum and/or amount of gratuity that is Rs.6,00,000/- under ROPA 2009 payable to the State Government employees. The petitioners shall also be entitled to the same amount of enhanced gratuity as paid to the State Government employees under ROPA 2019 i.e. Rs.12,00,000/-

30. This decision shall operate prospectively from the date of filing of the writ petition i.e. 14.03.2023.

31. The impugned order shall stand set aside. The decision of the Finance Department and rejection of the petitioner's claim shall also set aside.

32. The respondents shall take steps accordingly within three months.

33. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)