

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11129 OF 2024

Vitesco Technologies India Pvt. Ltd.	}	...Petitioner
: Versus :		
Christopher Francis Dais	}	..Respondent

Mr. Avinash Jalisatgi, *for Petitioner.*

CORAM : SANDEEP V. MARNE, J.
DATED : 8 AUGUST 2024.

Judgment :

1) Petitioner-employer has filed this petition challenging the order passed by the Appellate Authority under the Payment of Gratuity Act-cum-Industrial Court, Pune allowing Appeal PGA No. 25 of 2022 filed by Respondent and setting aside Controlling Authority's order dated 19 September 2022. The Controlling Authority had held Application (PGA) No.13/2015 filed by Respondent to be not maintainable for want of jurisdiction. While setting aside the order of the Controlling Authority, the Appellate Authority has held the Application (PGA) No.13/2015 to be maintainable and within the jurisdiction of the Controlling Authority. Accordingly, the Controlling Authority has been directed to decide the remaining issues based on oral and documentary evidence already led by the parties. Aggrieved by the order of the Appellate Authority holding Application (PGA) No.13/2015 to be maintainable and within the jurisdiction of the Controlling Authority, Petitioner-employer has filed the present petition.

2) The Petitioner is a private limited company engaged in the business of manufacturing automobiles ancillaries. Respondent has functioned as managing director of the petitioner-company. he came to be appointed as managing director of the company vide Managing Director's Agreement dated 31 July 2005 on various terms and conditions stipulated therein. Clause-B(k) of Annexure-B to the Agreement provided for payment of gratuity to Respondent at expiration of the Agreement computed at one half months' basic salary for each completed year of service. It appears that upon expiration of term of the initial agreement dated 31 July 2005, a fresh Managing Director's Agreement was executed on 15 July 2009 re-appointing Respondent as Managing Director for a fresh tenure of four years. Thereafter, further Managing Director's Agreement was executed on 24 July 2013 once again reappointing the Respondent as Managing Director for further period of 2 years. As per the Agreement dated 24 July 2013, gratuity was payable at the rate of two months last drawn salary plus House Rent Allowance for each completed year of service. It appears that Respondent tendered resignation on 4 May 2015 from the position of Managing Director and his tenure came to an end.

3) Respondent claimed a sum of Rs. 1,13,00,000/- towards gratuity. Petitioner thereafter computed the amount of gratuity payable to Respondent in accordance with Managing Director's Agreement at Rs. 35,28,904/- and after deducting tax, net amount of Rs.26,53,699/- was paid to the Respondent vide cheque dated 6 August 2015. By letter dated 19 August 2015, Respondent claimed balance amount of gratuity of Rs.77,71,096/-, which was denied by the Petitioner.

4) In the above background, Respondent filed Application (PGA) No.13/2015 before the Controlling Authority-cum-Labour Court, Pune for payment of balance gratuity of Rs.77,71,096/-. Petitioner resisted the application by filing written statement. Both the parties led evidence.

5) By judgment and order dated 19 September 2022, the Controlling Authority answered Issue No. 1A about maintainability of the application, as well as Issue No.2 about jurisdiction in the negative holding that rest of the issues were rendered redundant. The Controlling Authority therefore held the application to be not maintainable for want of jurisdiction by its order dated 19 September 2022.

6) Respondent preferred Appeal No. 25 of 2022 before the Appellate Authority-cum-Industrial Court, which has allowed the Appeal answering Issue Nos. 1A and 2 in the affirmative holding that the application is maintainable and that the Controlling Authority has jurisdiction to decide the same. Petitioner is challenging order dated 8 May 2024 passed by the Appellate Authority in the present petition.

7) I have heard Mr. Jalisatgi learned counsel appearing for the Petitioner and have considered the submissions canvassed by him. The main objection raised by the Petitioner to the order passed by the Appellate Authority is that payment of gratuity to the Respondent does not stem out of the provisions of Payment of Gratuity Act and that the same is premised on the covenants of the Managing Director's

Agreements. Mr. Jalisatgi submits that sub-section (5) of Section 4 of the Payment of Gratuity Act cannot be read in isolation and the same needs to be read in conjunction with Section 7 of the Act. That if gratuity is claimed by exercising remedy under Section 7, the same is subject to the provisions of Section 4(2) and 4(3) of the Act and that any claim about the statutory cap specified under Section 4(3) of the Act, would be outside the jurisdiction of the Controlling Authority. That since Respondent has not claimed gratuity as per the provisions of the Payment of Gratuity Act, jurisdiction of the Controlling Authority under Section 7 could not have been invoked. In support, he would rely upon judgment of the Apex Court in **Beed District Central Co-op. Bank Ltd V/s. State of Maharashtra and Ors**¹. He would submit that the Appellate Authority has erroneously relied upon the judgment of the Apex Court in **State of Punjab V/s. Labour Court, Jullandhar and Ors.**² Mr. Jalisatgi would therefore submit that the order passed by the Appellate Authority deserves to be set aside.

8) In the present case, Petitioner-Company does not dispute its liability to pay gratuity to Respondent and has in fact paid him gratuity of Rs.45,28,904/- (net amount of Rs.26,53,699/- after deduction of taxes). There appears to be dispute between the parties about the exact amount of gratuity, which the Respondent is entitled to draw from Petitioner. It appears that in notice for payment of gratuity in Form-L, Petitioner has taken into account total tenure of the Respondent as ten years and his last drawn wages is Rs. 2,71,634/- and considering the half of that figure of Rs. 156,712, gratuity of Rs. 35,28,904 is computed.

1. 2008 6 SCC 514

2. 1980 1 SCC 4

9) As observed above, total three Managing Director's Agreements have been executed between the parties on 31 July 2005, 15 July 2009 and 24 July 2013. It appears that the total tenure of the three agreements was $4 + 4 + 2 = 10$ years. According to Respondent, the last Managing Directors Agreement dated 24 July 2013 supersedes the earlier agreements and the gratuity becomes due and payable as per the last agreement dated 24 July 2013. As per the Agreement dated 24 July 2013, gratuity was payable at the rate of two months last drawn salary plus House Rent Allowance for each completed year of service. As against this, Petitioner has computed gratuity by considering only half of basic pay by ignoring the last Agreement. According to Respondent, clause 10 of Annexure-B of the agreement dated 24 July 2013, entire period of service as managing director will have to be computed. There appears to be in fact no dispute about computation of entire period of service as Petitioner also has taken into consideration 10 years of service for computation of gratuity. The difference is essentially on account of considering the provisions of first agreement versus the last agreement for computation formula.

10) Thus dispute amongst the parties is about the quantum of gratuity payable. Both the parties appear to be *ad-idem* about the right of Respondent to receive gratuity. They also appear to be *ad idem* about non-application of maximum cap under Section 4(3) of the Act and the right to receive gratuity flowing out of the three Managing Directors Agreement. This is because cap of Rs. 20,00,000/- prescribed under the provisions of Section 4(3) of the Payment of Gratuity Act is not insisted upon by either of the parties. Since Petitioner itself has paid to the Respondent amount higher than Rs.20,00,000/-, payment of gratuity to

Respondent would be governed by the provisions of sub-section (5) of Section 4 of the Act.

11) The only issue that arises for consideration is whether entitlement of better terms of gratuity under Section 4(5) of the Act which arises out of the Agreement can be adjudicated under Section 7 of the Act by invoking the jurisdiction of the Controlling Authority. In my view, judgment of the Apex Court in *State of Punjab V/s. Labour Court, Julludhar* (supra) provides complete answer to the issue at hand. In paras-6 and 7 of the judgment, the Apex Court has held :

6. The third contention raised by the appellant is that the employee-respondents were not entitled to apply under Section 33-C(2) of the Industrial Disputes Act, 1947 for payment of the gratuity, and should have, if at all, applied under the provisions of the Payment of Gratuity Act. It is urged that the Payment of Gratuity Act is a self-contained code incorporating all the essential provisions relating to payment of gratuity which can be claimed under that Act, and its provisions impliedly exclude recourse to any other statute for that purpose. The contention has force and must be accepted. A careful perusal of the relevant provisions of the Payment of Gratuity Act shows that Parliament has enacted a closely knit scheme providing for payment of gratuity. A controlling authority is appointed by the appropriate Government under Section 3, and Parliament has made him responsible for the administration of the entire Act. In what event gratuity will become payable and how it will be quantified are detailed in Section 4. Section 7(1) entitles a person eligible for payment of gratuity to apply in that behalf to the employer. Under Section 7(2), the employer is obliged, as soon as gratuity becomes payable and whether an application has or has not been made for payment of gratuity, to determine the amount of gratuity and inform the person to whom the gratuity is payable specifying the amount of gratuity so determined. He is obliged, by virtue of the same provision, to inform the controlling authority also, thus ensuring that the controlling authority is seized at all times of information in regard to gratuity as it becomes payable. If a dispute is raised in regard to the amount of gratuity payable or as to the admissibility of any claim to gratuity, or as to the person entitled to receive the gratuity, Section 7(4)(a) requires the employer to deposit with the controlling authority such amount as he admits to be payable by him as gratuity. The controlling authority is empowered, under Section 7(4)(b), to enter upon an adjudication of the dispute, and after due inquiry, and after giving the parties to the dispute a reasonable opportunity of being heard, he is required to determine the amount of gratuity payable. In this regard, the controlling authority has all the powers as are vested in a court while trying a suit under the Code of Civil Procedure, 1908 in respect of obtaining evidentiary material and the recording of evidence. The amount

deposited by the employer with the controlling authority as the admitted amount of gratuity will be paid over by the controlling authority to the employee or his nominee or heir. Section 7(7) provides an appeal against the order of the controlling authority under Section 7(4) to the appropriate Government or such other authority as may be specified by the appropriate Government in that behalf. The appropriate Government or the Appellate Authority is empowered under Section 7(8), after giving the parties to the appeal a reasonable opportunity of being heard, to confirm, modify or reverse the decision of the controlling authority. Where the amount of gratuity payable is not paid by the employer within the prescribed time, the controlling authority is required by Section 8, on application made to it by the aggrieved person, to issue a certificate for that amount to the Collector. The Collector, thereupon, is empowered to recover the amount of gratuity, together with compound interest thereon at the rate of nine per cent per annum from the date of expiry of the prescribed time, as arrears of land revenue, and pay the same to the person entitled thereto.

7. It is apparent that the Payment of Gratuity Act enacts a complete code containing detailed provisions covering all the essential features of a scheme for payment of gratuity. It creates the right of payment of gratuity, indicates when the right will accrue, and lays down the principles for quantification of the gratuity. It provides further for recovery of the amount, and contains an especial provision that compound interest at nine per cent per annum will be payable on delayed payment. For the enforcement of its provisions, the Act provides for the appointment of a controlling authority, who is entrusted with the task of administering the Act. The fulfilment of the rights and obligations of the parties are made his responsibility, and he has been invested with an amplitude of power for the full discharge of that responsibility. Any error committed by him can be corrected in appeal by the appropriate Government or an Appellate Authority particularly constituted under the Act.

(emphasis added)

12) In *State of Punjab V/s. Labour Court, Julludhar*, (supra) the Respondents before the Apex Court were work-charged employees in construction project of Hydel Department of Government of Punjab and upon their retrenchment, they claimed gratuity, bonus and other allowances by filing application under Section 33-C(2) of the Industrial Disputes Act, 1947 before the Labour Court. The Labour Court allowed the claim for gratuity and Writ Petition filed by the State was dismissed by the High Court. In Appeal, the Apex Court has held that Payment of Gratuity Act enacts a complete Code containing provisions of essential features of the Scheme for payment of gratuity. The Apex Court therefore

held that remedy under Section 33-C(2) of the Industrial Disputes Act was not maintainable and that the Respondents therein ought to have invoked jurisdiction of the Controlling Authority under Section 7 of the Payment of Gratuity Act. What is relevant to be noted in the judgment of the Apex Court in *State of Punjab V/s. Labour Court, Jullundhar* (supra) is the observation about Payment of Gratuity Act being a complete Code.

13) Thus, it is incomprehensible that the jurisdiction of the Controlling Authority under Section 7 of the Act can be invoked only for claiming gratuity which is statutorily capped under Section 4(3) of the Act and that a different forum, outside the Payment of Gratuity Act, needs to be approached if claim for better terms of gratuity is to be enforced under Section 4(5) of the Act. In my view, whether the gratuity is claimed in accordance with formula prescribed under Section 4(2) together with maximum cap prescribed under Section 4(3) or whether better terms of gratuity under Section 4(5) of the Act are sought to be enforced, same machinery of Controlling Authority under Section 7 can be invoked. In short, jurisdiction of the Controlling Authority under the Payment of Gratuity Act would not depend upon the amount of gratuity claimed.

14) If the submission of Mr. Jalisatgi is accepted, it would create two classes of employees governed by Payment of Gratuity Act viz. (i) where gratuity is payable as per formula prescribed under Section 4(2) together with cap under Section 4(3) and (ii) where better terms of gratuity are agreed under Section 4(5). In such a case, the employees falling under second category will have to file a Civil Suit for recovery of

gratuity, which does not appear to be the legislative intention. On the contrary, the legislative intention appears to be to offer single window forum to decide all claims of gratuity irrespective of the fact as to whether the claim stems out of Sections 4(2) or Section 4(5) of the Act.

15) In fact, denying the remedy of filing application under Section 7 to the employees who are offered better terms of gratuity under Section 4(5) of the Act would turn out to be disadvantageous if the employer and Union agrees on a settlement for slightly better terms of gratuity. To illustrate, if in a given case, the employer agrees to pay gratuity @ 20 days salary per completed year of service, Mr. Jalisatgi's submission would drive employees to the remedy of filing a civil suit for recovery of gratuity. Thus offering better terms of gratuity will turn out to be a disadvantageous proposition for employees in respect of remedy.

16) Thus, statutory provision of protecting right to claim higher gratuity than the one prescribed by formula and maximum cap, would be rendered otiose if remedy under Section 7 of the Act is denied to such class of employees. Such interpretation would in fact be counterproductive to the express legislative intention of protecting employees who are to be paid better terms of gratuity under Section 4(5) of the Act.

17) Reliance by Mr. Jalisatgi on judgment in **Beed District Central Co-op. Bank Ltd** (supra) does not cut any ice. That judgment deals with the issue of liberty available to employees to switch back to the formula under sub-sections (2) and (3) once they agree to a contractual gratuity under sub-section (5) of the Payment of Gratuity Act. The judgment therefore has no application to the facts of the present case.

18) In my view, therefore even employees, whose gratuity is governed by Section 4(5) of the Act, can invoke jurisdiction of Controlling Authority under Section 7 of the Act.

19) The petition filed by the Petitioner is thus devoid of merits. The Appellate Authority has corrected the error committed by the Controlling Authority and the order passed by the Appellate Authority appears to be perfectly in order. The Writ Petition is accordingly dismissed.

[SANDEEP V. MARNE, J.]

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