IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Present :- Hon'ble Justice Amrita Sinha

WPO 1202 of 2023

Akansha Agarwal
Vs.
Union of India & Ors.

For the writ petitioners	:-	Mr. Kushal Chatterjee, Adv. Mr. Sunil Kumar Singhania, Adv. Ms. Kalpana Singhania, Adv.
For respondents	:-	Mr. Kallol Basu, Adv. Mr. Debrup Bhattacharjee, Adv. Mr. Ritesh Kr. Ganguly, Adv.
Heard on	:-	19.02.2025
Judgment on	:-	04.03.2025

Amrita Sinha, J.:-

1. The husband of the petitioner was an employee of Balmer Lawrie and Company Limited who died in harness on 18th May, 2021. The respondent Company is a public sector unit functioning under the Government of India.

2. The petitioner prays for grant of gratuity payable to her husband. On 15th June, 2021 she was communicated that she would be eligible to receive gratuity of Rs. 8,55,048/- but thereafter on 22nd June, 2021 she was intimated that the aforesaid figure was wrongly communicated to her and she would actually be entitled to receive gratuity of Rs. 2,46,648/-.

3. The petitioner claims that as per the terms and conditions of service of her husband, the calculation of gratuity would amount to Rs. 8,55,048/- and not Rs. 2,46,648/-. It has been submitted that the respondents are calculating gratuity at a reduced rate relying on the amended service rules which came into effect after the death of her husband and, accordingly, the said amendment ought not to be made applicable in the instant case.

4. It has been submitted that the rules relating to grant of terminal relief is a piece of beneficial legislation and the same ought not to be used to the disadvantage of the deceased employee.

5. It has been contended that the Company may have taken a decision earlier to amend the service rules, but actually the same was not amended. Only after filing of the writ petition, it came to the knowledge of the Company that, as per the unamended rules the petitioner would be entitled to a higher rate of gratuity and, as such, the Company hastily sought to amend the rules with retrospective effect. The said amended rules cannot and ought not to be made applicable in case of the petitioner.

6. The respondents have filed affidavit in opposition and a further application in support of the submission that the gratuity fund rules and regulations of the Company stood amended with the approval of the Commissioner of Income Tax on and from 16th July, 2013. The petitioner was inadvertently intimated the gratuity amount calculated

on the basis of the unamended gratuity rules as was appearing in the service manual of the Company. The HR manual of the Company stood rectified in May, 2022 in line with the amendment of the Company's gratuity fund rules and regulations which were in effect from 16th July, 2013.

7. The Company has produced a calculation sheet disclosing the breakup of the pay drawn by the employees and due to their heirs, in case of death, on and from 16th July, 2013 till May, 2022. In respect of all the employees, calculation of gratuity was made in accordance with the amended gratuity rules of the Company.

8. It has been submitted that there has been no discrimination with regard to calculation of gratuity in respect of any of the employees and each of the employees were paid gratuity in accordance with the amended gratuity rules.

9. It has been contended that at the time of entry into service the husband of the petitioner had signed a contract clearly mentioning that he would accept the rules and regulations of the Company applicable from time to time. After the death of the employee the petitioner, being his heir, would be bound by the contract entered into by and between the Company and her deceased husband.

10. It has been argued that if benefit is to be granted to the petitioner relying on the unamended rules, then the Company would be guilty of causing discrimination. It has been prayed that the Court ought not to

pass any order by directing the Company to pay gratuity to the petitioner at the higher rate relying upon the unamended gratuity rules of the Company.

11. I have heard and considered the rival submissions made on behalf of both the parties.

12. From the documents annexed to the writ petition it appears that the petitioner lays her claim for higher amount of gratuity relying on the communication made by the Company on 15th June, 2021. The petitioner may not have been aware whether the figure intimated to her was in accordance with the calculation as per the amended rules or not. Immediately thereafter on 22nd June, 2021 she was intimated that the lesser amount of gratuity was remitted to her bank account, being the full amount payable as per the relevant Act and rules of the Company. The Company intimated the petitioner that an unintentional and erroneous communication was made to her and the Company expressed regret and inconvenience caused to her because of such inadvertent communication.

13. The Company, in the affidavit in opposition, has mentioned that the husband of the petitioner was appointed vide appointment letter issued in December, 2014 and on the date of his appointment the gratuity amount payable to the employee is to be calculated at the rate of 15 days' emolument inclusive of basic pay, stagnation pay and DA at the time of retirement for each completed year of continuous service

subject to a maximum of Rs. 20,00,000/-. The aforesaid rule was approved by the Commissioner of Income Tax with effect from 16th July, 2013, that is, prior to the appointment of the husband of the petitioner in the Company.

14. The petitioner possibly was misled relating to her claim for gratuity on the basis of a clause in the service manual of the Company. Though the rules relating to payment of gratuity of the Company stood amended with effect from July, 2013, but the said amendment was not reflected in the manual of the service terms and conditions of the executives of the Company. The same resulted in a confusion with regard to the amount of gratuity payable to the employee.

15. The explanation given by the learned advocate for the petitioner that the Company may have taken a decision to amend the rules, but the rules were actually not amended till the year 2022, does not appear to be correct and, hence, cannot be accepted. The allegation of frustrating the right of the petitioner to receive gratuity at a higher rate, also does not appear to be proper. The amended rules were placed before the Commissioner of Income Tax in 2014 and the same stood approved by the Commissioner with effect from July, 2013. The petitioner never had the right to receive gratuity at the higher rate as the amendment took place before the husband of the petitioner joined service, as such, there cannot be any question of frustrating her claim.

16. The confusion of the petitioner may be put to rest by the calculation sheet annexed by the Company in GA 1 of 2024 filed by the Company to show that the amended rules of gratuity was uniformly applied to all the employees and that there has been no discrimination in respect of any of them. None of the other employees or their heirs raised any issue with regard to the amendment. Directing the Company to grant gratuity at a higher rate to the petitioner would, if fact, cause discrimination.

17. Though it is true that the Company ought to have amended the service manual immediately in line with the amended service rules, but the unamended service manual will certainly not give or create any right in favour of the petitioner to claim higher gratuity. The service manual is a mere handbook for the employees and does not have any statutory force. The employees would be governed by the statutory service rules, as amended.

18. It is not a case that the amendment of the gratuity rules took place in 2022 after the death of the employee, as claimed by the petitioner, but the rules stood amended in the year 2014 with retrospective effect from July, 2013 with the approval of the Commissioner of Income Tax. May be due to mistake the amendment was not incorporated in the service manual. On detection of the error, the manual has been amended and the amendment is with effect from the date on which the amended gratuity rules came into force.

19. In view of the discussion made hereinabove, it does not appear that the petitioner would be entitled to gratuity at a higher rate relying on the unamended gratuity rules. The petitioner would be entitled to receive gratuity as per the rules prevailing in the Company on the date of death of the employee, i.e, the amended rules which came into effect from July, 2013.

20. Hence, no relief can be granted to the petitioner in the instant case. The writ petition fails and is hereby dismissed.

21. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)