

MANAGEMENT OF KSRTC TH. CHIEF LAW OFFICER

v.

R. KRISHNA REDDY

NOVEMBER 1, 2006

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Payment of Gratuity Act, 1972—ss. 2(s) & 4—Gratuity—Computation of—Appellant-Corporation had its own scheme of paying gratuity—Settlement between workers and Appellant-Corporation providing that rates of DA shall be on par with rates sanctioned by State Government to its employees from time to time and that if State Government merged any portion of DA, that portion so merged will also be reckoned by Appellant-Corporation for determining gratuity—State Government merged part of DA with Basic Pay for which a G.O. was issued—Claim by retiree, for gratuity in terms of the said G.O.—Maintainability of—Held: Maintainable—High Court right in holding that relief cannot be denied on the hyper-technical view that the G.O. only speaks of “addition” of DA to Basic pay and not “merger” of DA—Consequence of “merger” not different from that of “addition”.

Appellant, a Statutory Corporation had its own scheme of paying gratuity at the rate of 30 days’ basic pay for each completed year of service. Government Servants are however entitled to gratuity calculated on the basis of 15 day’s basic pay. A Settlement arrived at between workers and Management of Appellant-Corporation provided that the rates of Dearness Allowance shall be on par with the rates sanctioned by the State Government to its employees from time to time and from the same date and further that if the State Government merged any portion of Dearness Allowance being paid to its employees, that portion of the Dearness Allowance so merged will also be reckoned by Appellant-corporation for determining Gratuity payable to its employees State Government merged a part of the Dearness Allowance with the Basic Pay wherefor a Government Order was issued on 28.11.1995.

Respondent retired as a Traffic Inspector in 1996 pursuant to which he claimed gratuity in terms of G.O. dated 28.11.1995. The claim was allowed by the Assistant Labour Commissioner, but the order was reversed in appeal. Respondent filed writ petition, on which the High Court held that relief cannot

A be denied to him on the hyper-technical view that the G.O. only speaks of “addition” of Dearness Allowance to the Basic pay and not “merger” of Dearness Allowance. Holding that there is no difference in meaning of the two words, namely “addition” and “merger” which are synonymous, the Court allowed the writ petition. Hence the present appeal.

B Dismissing the appeal, the Court

C HELD: 1. Gratuity is payable in terms of Section 4 of the Payment of Gratuity Act, 1972 to an employee *inter alia* on his superannuation after he has rendered continuous service for not less than five years. Sub-section (2) of Section 4 of the Act envisages that for every completed year of service, the employer shall pay gratuity to an employee at the rate of 15 days' wages based on the rate of wages last drawn by the employee concerned. Sub-section (5) of Section 4 *inter alia* provides that the provisions contained therein shall not affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer. What is, therefore, payable D by way of gratuity in terms of the scheme was 30 days wages for each completed year of service. [261-C, D, E]

E 2.1. As was rightly held by the High Court, different terminologies used did not make any material difference. Section 4 of the Act itself contemplates implementation of a settlement. Settlement, therefore, entered into by and between the parties was required to be interpreted having regard to the intention of the parties. What was contemplated by the parties was that the rates of Dearness Allowance would be at par with the rate sanctioned by the State Government to its employees from time to time and from the same date. It was never contemplated that a different amount of gratuity shall be payable F to an employee who retires prior to the revision of scale of pay although the terms of the settlement are applicable to his case. [262-B-C]

G 2.2. What was necessary to be taken into account was the merger of any portion of the Dearness Allowance with pay which was being paid to its employees. In such an event that portion of the Dearness Allowance was also to be reckoned at appropriate level by the appellant for determining the quantum of Gratuity payable to its employees. The said settlement was arrived at for calculating amount of gratuity payable to the employees of the appellant and not for any other purpose. [262-D]

H 3.1. It is, not a case where the appellant could legitimately raise a contention that any enhancement in the emoluments to its employees by the

State would not automatically enhance the emoluments of the employees of the appellant. [262-E] A

3.2. It has been contended that the effect of the merger and addition of Dearness Allowance would be different. It may be so. The contention may ordinarily be applicable to a case of merger of the basic pay *vis-à-vis* adding of Dearness Allowance to basic pay, but, herein the same would not make any substantive difference for the purpose of payment of gratuity keeping in view the definition of "wages" contained in Section 2(s) of the Act. It is not a case where the scheme of the Corporation and the provisions of the Act are inconsistent with each other. [262-F-G] B

3.3. It cannot be accepted that the consequences of merger in a case of this nature shall be different in case of addition to the Dearness Allowance in the scale of pay. In the facts and circumstances of this case, it is not a case where this Court should take a view different from that of the High Court. C

[263-C, D]

Beed District Central Co-operative Bank Ltd. v. State of Maharashtra & Ors. (2006) 10 SCALE 40, relied on. D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4637 of 2006.

From the Final Judgment and Order dated 9.9.2005 of the High Court of Karnataka at Bangalore in Writ Appeal No. 7954 of 2003. E

G.E. Vahanvati, S.G., R.S. Hegde, Chandra Prakash, Rahul Tyagi, Savitri Pandey and P.P. Singh for the Appellants.

L. Nageswara Rao, S.B. Mukkannappa and V.N. Raghupathy for the Respondent. F

The Judgment of the Court was delivered by

S.B. SINHA, J.: Leave granted. H

Appellant is a statutory corporation constituted under the Road Transport Corporation Act, 1950. It has its own scheme in terms whereof gratuity is being paid at the rate of 30 days' basic pay for each completed year of service. Government Servants are, however, entitled to gratuity calculated on the basis of 15 days' basic pay for each completed year of service. Such is the position also under the Payment of Gratuity Act, 1972 (for short "the Act"). H

A Disputes and differences having arisen by and between the workmen of the Corporation and the management, a settlement was arrived at on 17.07.1999. The said settlement was valid for the period 1.01.1988 and 31.12.1991. It expired on 31.12.1991, Clause (5) whereof postulated:

“Dearness Allowance

B

The rates of Dearness allowance shall be on par with the rates sanctioned by the State Government to its employees from time to time and from the same date. The enhanced Dearness Allowance shall be paid in cash.

C

If during the currency of this settlement, the Government of Karnataka were to merge any portion of Dearness Allowance presently being paid to its employees, that portion of the Dearness Allowance so merged will also be reckoned at appropriate levels by the corporation for determining the Dearness Allowance, House Rent Allowance, City Compensatory Allowance and Gratuity payable to the employees of the corporation, but shall not be reckoned for other purposes.”

D

The State of Karnataka merged a part of the Dearness Allowance with the basic pay wherefor a Government Order being Government Order No. FD 27 SRS 95 was issued on 28.11.1995 which is to the following effect:

E

“The question of revision of pensionary benefits in respect of Government Servants has been examined by Government in the light of the recommendations made by the Karnataka State Fourth Pay Commission and the decision taken by the Government of India on the Interim Recommendations of the Fifth Central Pay Commission. Accordingly, the following orders are issued.

F

2. Government are now pleased to order that Dearness Allowance sanctioned upto the Average All India Consumer Price Index (A.I.C.P.I.) 1201.66 in Government order No. FD 29 SRP 93, dated 30th October, 1993 as indicated below, shall be reckoned as emoluments for the purpose of retirement gratuity/ death gratuity under the Karnataka Civil Services Rules in respect of State Government Employees who retire or die on or after 28th November, 1995:

G

H

	Pay Range	Rate of Dearness Allowance to be added to pay for calculating gratuity
1.	Basic pay upto 3500 per month	90% of basic pay
2.	Basic pay between Rs. 3401 upto Rs. 600 per month	67% of basic pay subject to minimum of Rs. 3150 per month
3.	Basic pay above Rs. 6000 per month	58% of basic pay subject to minimum of Rs. 4020 per month"

The appellatant, however, contends that actual merger of pay had taken place on 7.01.1999 with retrospective effect from 1.04.1998 wherefor a Government Order was issued. The Board of Directors of the appellatant in its meeting held on 14.01.1999 adopted a resolution in the following terms:

“The Principal Secretary, Finance Department stated that the provisions of the Gratuity Act, 1972 has to be followed as far as the ceiling on payment of gratuity is concerned. The legal position in this regard may be examined in the context of the settlements reached and appropriate necessary action taken.

After considering the matter in detail the Board of Directors resolved as hereunder:

Resolution No. 7808

Approval is accepted for the payment of gratuity to the employees of the Corporation from 28.11.1995 in terms of the Gratuity Act 1972 if it is more advantageous.”

The Board of Directors of the appellatant also adopted the following resolution on 26.06.1999:

“Approval is accorded to merge the Dearness Allowance as contemplated in Government Order No. FD 48 SRP 98 dated 7.1.1999 into the Basic Pay of the employee of the Corporation w.e.f. 1.04.1998 by treating the same as Basic D.A. for calculation of Gratuity.”

The dispute between the parties centers round the issue as to whether

A for the purpose of computation of the amount of gratuity, the order dated 28.11.1995 would be attracted or not.

B Respondent herein was appointed on 4.06.1959 as a conductor. He retired as traffic inspector on 30.03.1996. He claimed gratuity in terms of the said Government Order dated 28.11.1995. The same having been denied to him, he filed an application before the Assistant Labour Commissioner and Controlling Authority under the Act. By an award dated 6.02.1998, he was held to be entitled thereto. An appeal thereagainst was preferred by the appellant. The Appellate Authority in terms of its order dated 15.09.1998 allowed the said appeal. The respondent filed a writ petition before the High Court. A learned Single Judge by reason of a judgment and order dated 13.10.2003 allowed the said writ petition *inter alia* holding:

D “In so far as the other contention that the Government Order only speaks adding Dearness Allowance to the basic pay wherein Clause to the basic pay wherein Clause (5) refers to merger of Dearness Allowance with basic pay is concerned, I do not find any substance. The word ‘adding of basic pay’, ‘adding of Dearness Allowance’ or the word ‘merger of Dearness Allowance’ with the basic pay are synonymous. There is no difference in meaning with those two phrases. The ultimate result is the same if such hyper technical interpretation of these phrases is accepted it would result in great injustice to one of the parties to the contract. Moreover, they are not words used in any status. They are words used by the Government at one place and the respondents in their order. Moreover, in the subsequent order passed by the KSRTC they have understood the said word as merger and has given benefit to its employees. Under the circumstance, I do not find any merit in the said contention also.”

F An intra-court appeal filed thereagainst by the appellant was dismissed.

Mr. G.E. Vahanvati, learned Solicitor General appearing on behalf of the appellant, principally raised two contentions in support of this appeal:

- G
- (i) The actual merger having taken place on 7.01.1999 upon revision of the scale of pay, the purported settlement dated 28.11.1995 could not have been construed differently.
 - (ii) In any event, the purported merger of Dearness Allowance in respect of the employees of the State was not binding on the Corporation.
- H

Mr. L. Nageshwara Rao, learned senior counsel appearing on behalf of the respondent, on the other hand, submitted that the amount of gratuity is required to be calculated in terms of Section 5 of the Act and in that view of the matter the rate prescribed therefor must be computed at par with the settlement. The High Court, the learned counsel would contend, cannot be said to have committed any illegality in arriving at the said finding.

The Act was enacted to provide for a scheme for payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, etc. and for matters connected therewith or incidental thereto. Gratuity is payable in terms of Section 4 of the Act to an employee *inter alia* on his superannuation after he has rendered continuous service for not less than five years.

Sub-section (2) of Section 4 of the Act envisages that for every completed year of service, the employer shall pay gratuity to an employee at the rate of 15 days' wages based on the rate of wages last drawn by the employee concerned. Sub-section (3) of Section 4, however, puts a ceiling on the amount of gratuity being Rs. three lakhs and fifty thousand. Sub-section (5) of Section 4 *inter alia* provides that the provisions contained therein shall not affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

What is, therefore, payable by way of gratuity in terms of the scheme was 30 days wages for each completed year of service.

'Wages' has been defined in Section 2(s) of the Act in the following terms:

"'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."

We have noticed hereinbefore that the Government of Karnataka in terms of Government Order dated 28.11.1995 *inter alia* directed that 90% of Basic Pay to be added to pay for calculating gratuity. If the basic pay of an employee was upto Rs. 3500/- per month and was drawing a Dearness Allowance of Rs. 2000/-, what was to be added was the 90% of the Dearness

A Allowance which was being paid. If 90% of the Basic Pay as Dearness Allowance is to be added to the basic pay, the employee became entitled to higher wages on the basis thereof. It is in that sense the question of application of the merger of Dearness Allowance with the scale of pay arose for all intent and purport. As was rightly held by the learned Single Judge, different terminologies used did not make any material difference. Section 4 of the Act itself contemplates implementation of a settlement. Settlement, therefore, entered into by and between the parties was required to be interpreted having regard to the intention of the parties. What was contemplated by the parties was that the rates of Dearness Allowance would be at par with the rate sanctioned by the State Government to its employees from time to time and from the same date. It was never contemplated that a different amount of gratuity shall be payable to an employee who retires prior to the revision of scale of pay although the terms of the settlement are applicable to his case.

D What was necessary to be taken into account was the merger of any portion of the Dearness Allowance with pay which was being paid to its employees. In such an event that portion of the Dearness Allowance was also to be reckoned at appropriate level by the appellant for determining the quantum of Gratuity payable to its employees. The said settlement was arrived at for calculating amount of gratuity payable to the employees of the appellant and not for any other purpose.

E It is, therefore, not a case where the appellant could legitimately raise a contention that any enhancement in the emoluments to its employees by the State would not automatically enhance the emoluments of the employees of the appellant. It has been contended before us that the effect of the merger and addition of Dearness Allowance would be different. It may be so. But, F having regard to the fact of the present matter and the definition of 'wages' under the Act, we need not go into the said question.

G We have noticed hereinbefore that the contention may ordinarily be applicable to a case of merger of the basic pay *vis-a-vis* adding of Dearness Allowance to basic pay, but, herein the same would not make any substantive difference for the purpose of payment of gratuity keeping in view the definition of "wages" contained in Section 2(s) of the Act. It is not a case where the scheme of the Corporation and the provisions of the Act are inconsistent with each other.

H In *Beed District Central Co-operative Bank Ltd. v. State of Maharashtra*

& Ors., (2006) 10 SCALE 40, it was laid down:

“...Undoubtedly, the Payment of Gratuity Act is a beneficial statute. When two views are possible, having regard to the purpose, the Act seeks to achieve being a social welfare legislation, it may be construed in favour of the workman. However, it is also trite that only because a statute is beneficent in nature, the same would not mean that it should be construed in favour of the workmen only although they are not entitled to benefits thereof.”

For the reasons aforementioned, we are unable to agree with the submissions made by the learned Solicitor General that the consequences of merger in a case of this nature shall be different in case of addition to the Dearness Allowance in the scale of pay.

Keeping in view the facts and circumstances of this case, we are of the opinion that it is not a case where this Court should take a view different from that of the High Court. The Appeal is dismissed with costs. Counsel's fee assessed at Rs. 10,000/-.

B.B.B.

Appeal dismissed