

A KRISHNA GOPAL TIWARY & ANR.

v.

UNION OF INDIA & ORS.

(Civil Appeal No. 4744 of 2021)

B AUGUST 13, 2021

**[HEMANT GUPTA AND A. S. BOPANNA, JJ.]**

- Income Tax Act, 1961: s.10(10)(ii) – Exemption – Appellants are employees of Coal India Ltd. – In terms of Office Memorandum of Government of India dated 26.11.2008, the upper limit of gratuity was increased to Rs.10 lakhs w.e.f 01.01.2007 – Payment of such gratuity was made to appellants in terms of Office Memorandum – However, later on Payment of Gratuity Act was amended which received assent of President on 17.05.2010 – In terms of Amending Act, a notification issued by Government of India on 24.05.2010*
- C appointing the said date as the date on which the Amending Act came into force – Case of appellant was that the tax was deducted at source when the gratuity was paid to the appellants before the commencement of the Amending Act – Appellants thus challenged the date of commencement as 24.05.2010 but asserted that it should be made effective from 01.01.2007 and consequently they would not be liable for deduction of tax on the gratuity amount – Held: Sub-section (5) of s.4 of the Gratuity Act protects the right of an employee to receive better terms of gratuity under any award or contract with the employer – The gratuity paid to the appellants on the strength of Office Memorandum dated 26.11.2008 would fall in*
- E the said sub-section – However, what is exempt from the Income Tax Act is the amount of gratuity received under the Gratuity Act to the extent it does not exceed an amount calculated in accordance with the provisions of sub-sections (2) and (3) of s.4 of the Gratuity Act – The Gratuity Act contemplated Rs.10 lakhs as the amount of*
- F gratuity only from 24.05.2010 – Such gratuity is the amount payable only once – Thus, the cut-off date cannot be said to be illegal, it being one-time payment – Therefore, such amendment in the Gratuity Act cannot be treated to be retrospective – The benefit paid to the appellants under the Office Memorandum is not entitled to exemption in view of specific language of s.10(10)(ii) of the Income Tax Act –*
- G H*

*Payment of Gratuity (Amendment) Act, 2010 – s.1(2) – Payment of A  
Gratuity, 1972 – s.4.*

**Dismissing the appeal, the Court**

**HELD:** The date of commencement fixed by the Executive in exercise of power delegated by the Amending Act cannot be treated to be retrospective as the benefit of higher gratuity is one-time available to the employees only after the commencement of the Amending Act. The benefit paid to the appellants under the office memorandum is not entitled to exemption in view of specific language of Section 10(10)(ii) of the Income Tax Act. [Para 17][430-F-H]

*Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited (2015) 1 SCC 1 : [2014] 12 SCR 1037; D. S. Nakara & Ors. v. Union of India (1983) 1 SCC 305 : [1983] 2 SCR 165; State Government Pensioners' Association & Ors. v. State of Andhra Pradesh (1986) 3 SCC 501 : [1986] 3 SCR 383; Union of India v. All India Services Pensioners' Association & Anr. (1988) 2 SCC 580 : [1988] 2 SCR 697; Sri Vijayalakshmi Rice Mills, New Contractors Co. & Ors. v. State of Andhra Pradesh (1976) 3 SCC 37 : [1976] 3 SCR 775; Orient Paper and Industries Ltd. & Anr. v. State of Orissa & Ors. (1991) 1 Suppl. SCC 81 : [1990] 2 Suppl. SCR 480; Himachal Road Transport Corporation & Anr. v. Himachal Road Transport Corporation Retired Employees Union (2021) 4 SCC 502 – referred to.*

<b><u>Case Law Reference</u></b>		
[2014] 12 SCR 1037	referred to	Para 7
[1983] 2 SCR 165	referred to	Para 8
[1986] 3 SCR 383	referred to	Para 10
[1988] 2 SCR 697	referred to	Para 11
[1976] 3 SCR 775	referred to	Para 14
[1990] 2 Suppl. SCR 480	referred to	Para 15
(2021) 4 SCC 502	referred to	Para 16

- A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4744 of 2021.

From the Judgment and Order dated 27.07.2016 of the High Court of Jharkhand at Ranchi in W.P. (S) No.1729 of 2016.

- B Arijit Prasad, Sr. Adv., Sanjay Kumar Visen, Bhanwar Jadon, Ms. Adira A. Nair, Advs. for the Appellants.

Vikramjit Banerjee, ASG, M. P. Gupta, Bhakti Vardhan Singh, Mohan Prasad Gupta, P. S. Sudhir, Ms. Priyanka Das, Amrish Kumar, Vaibhav Agnihotri, Ms. Supriya Juneja, Advs. for the Respondents.

- C The Judgment of the Court was delivered by

**HEMANT GUPTA, J.**

1. The challenge in the present appeal is to an order passed by the High Court of Jharkhand on 27.7.2016 whereby the claim of the appellants to declare the applicability of Payment of Gratuity (Amendment) Act,

- D 2010<sup>1</sup> from 1.1.2007 was declined.

2. The appellants are employees of Coal India Limited. The Government of India approved enhancement of gratuity to the executives and Non-Unionized Supervisors of Central Sector Enterprises such as the Coal India Limited where the appellants were employed. The ceiling

- E of the gratuity was raised to Rs.10 lakhs w.e.f. 1.1.2007 in terms of office memorandum of Government of India dated 26.11.2008.

3. The appellants were paid such gratuity in terms of such office memorandum. However, later on, the Payment of Gratuity Act<sup>2</sup> was amended by Central Act No. 15 of 2010 which received the assent of

- F the Hon'ble President on 17.5.2010. The relevant provisions of the Amending Act read as under:

“1(1). This Act may be called the payment of Gratuity (Amendment) Act, 2010.

- G (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In Section 4 of the Payment of Gratuity Act, 1972, in sub-section (3), for the words “three lakhs and fifty thousand Rupees”, the words “ten lakh rupees” shall be substituted.”

H <sup>1</sup>For short, the ‘Amending Act’  
<sup>2</sup> For short, the ‘Gratuity Act’

4. In terms of sub-section (2) of Section 1 of the Amending Act, a A notification was issued by the Government of India on 24.5.2010 appointing the said date as the date on which the Amending Act came into force.

5. The grievance of the appellants is that the tax has been deducted at source when the gratuity was paid to the appellants before the commencement of the Amending Act. The appellants have thus challenged the date of commencement as 24.5.2010 but asserted that it should be made effective from 1.1.2007 and consequently the appellants would not be liable for deduction of tax on the gratuity amount. B

6. Certain provisions of the Gratuity Act as it existed prior to amendment by Central Act No. 12 of 2018 and that of Income Tax Act, 1961<sup>3</sup> would be necessary to be extracted: C

“The Payment of Gratuity Act, 1972

4. Payment of Gratuity – (1) 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,- D

xx                   xx                   xx

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: E

xx                   xx                   xx

(3) The amount of gratuity payable to an employee shall not exceed ten lakh rupees.

xx                   xx                   xx

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.”

The Income Tax Act, 1961

10. Incomes not included in total income. – In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included – G

1.   xx                   xx                   xx

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<sup>3</sup> For short, the ‘Income Tax Act’

- A 10 (ii). any gratuity received under the Payment of Gratuity Act, 1972 (39 of 1972), to the extent it does not exceed an amount calculated in accordance with the provisions of sub-sections (2) and (3) of section 4 of that Act;”

7. Learned counsel for the appellants argued that the amendment B of the Gratuity Act is to grant liberalised benefits. Therefore, it would be retrospective. Reliance is placed upon judgment of this Court in *Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited*<sup>4</sup>. The aforesaid case is of insertion of proviso to Section 113 of the Income Tax Act providing that tax chargeable C under the said Section shall be increased by a surcharge and shall be applicable in the assessment year relevant to the previous year in which the search is initiated under Section 132 of the said Act. It was the said provision which came up for consideration before this Court. This Court held as under:

- D “31. In such cases, retrospectivity is attached to benefit the persons in contradistinction to the provision imposing some burden or liability where the presumption attaches towards prospectivity. In the instant case, the proviso added to Section 113 of the Act is not beneficial to the assessee. On the contrary, it is a provision which is onerous to the assessee. Therefore, in a case like this, we have E to proceed with the normal rule of presumption against retrospective operation. Thus, the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises F by necessary and distinct implication. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by outweighing factors.”

8. Learned counsel for the appellants also referred to a judgment G of this Court in *D.S. Nakara & Ors. v. Union of India*<sup>5</sup> to contend that the cut-off date as 24.5.2010 has created two categories of employees, first who have attained the age of superannuation before the said date and second who have superannuated on or after 24.5.2010. Such classification is illegal and arbitrary in nature.

<sup>4</sup>(2015) 1 SCC 1

<sup>5</sup>(1983) 1 SCC 305

9. On the other hand, Mr. Vikramjit Banerjee, learned counsel for the Union has argued that **D.S. Nakara's** case deals with pensioners, who get recurring benefit every month whereas, the gratuity is one-time payment. This Court has held that the cut-off date so as to grant benefit of pension to the retirees after the cut-off date and to deny the retirees pension before the cut-off date is arbitrary. It was thus argued that benefit of gratuity stands on different footing, then recurring right of payment of pension. This Court held as under:

“38. What then is the purpose in prescribing the specified date vertically dividing the pensioners between those who retired prior to the specified date and those who retire subsequent to that date? That poses the further question, why was the pension scheme liberalised? What necessitated liberalisation of the pension scheme?

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42. If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date...”

10. The aforesaid judgment has come up for consideration before this Court in a judgment reported as ***State Government Pensioners' Association & Ors. v. State of Andhra Pradesh***<sup>6</sup> wherein the payment of gratuity from a specified date of retirement was held to be not unconstitutional. This Court held as under:

“2. ... Similar is the case with regard to gratuity which has already been paid to the petitioners on the then prevailing basis as it obtained

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<sup>6</sup>(1986) 3 SCC 501

- A at the time of their respective dates of retirement. The amount got crystallized on the date of retirement on the basis of the salary drawn by him on the date of retirement. And it was already paid to them on that footing. The transaction is completed and closed. There is no scope for upward or downward revision in the context of upward or downward revision of the formula evolved later on in future unless the provision in this behalf expressly so provides retrospectively (downward revision may not be legally permissible even)....”
- B
- C 11. Similar view was taken in a judgment reported as *Union of India v. All India Services Pensioners' Association & Anr.*<sup>7</sup> wherein it was held that the pension is payable periodically as long as the pensioner is alive whereas the gratuity is ordinarily paid only once on retirement. This Court held as under:
- D “8. From the foregoing it is clear that this Court has made a distinction between the pension payable on retirement and the gratuity payable on retirement. While pension is payable periodically as long as the pensioner is alive, gratuity is ordinarily paid only once on retirement. No other decision of this Court which has taken a view contrary to the decision of Thakkar and Ray, JJ. in *Andhra Pradesh State Government Pensioners' Association case* [(1986) 3 SCC 501 : 1986 SCC (L&S) 676] and to the decision in *N.L. Abhyankar case* [(1984) 3 SCC 125 : 1984 SCC (L&S) 486] has been brought to our notice. The observations made in these two cases are binding on us insofar as the applicability of the rule in *D.S. Nakara case* [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165 : 1983 UPSC 263] to the liability of the Government to pay gratuity on retirement. We respectfully agree with the views expressed in those decisions. It is also not shown that the Government notification in question either expressly or by necessary implication directs that those who had retired prior to 1-1-1973 would be entitled to any additional amount by way of gratuity. The Tribunal was, therefore, in error in upholding that gratuity was payable in accordance with the Government Notification No. 33/12/73-AISC(ii) dated 24-1-1975 to all those members of the All-India Services who had retired prior to 1-1-1973.”
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- F
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- H <sup>7</sup>(1988) 2 SCC 580

12. Sub-section (5) of Section 4 of the Gratuity Act protects the right of an employee to receive better terms of gratuity under any award or contract with the employer. The gratuity paid to the appellants on the strength of office memorandum dated 26.11.2008 would fall in the said sub-section. A

13. However, what is exempt from the Income Tax Act is the amount of gratuity received under the Gratuity Act to the extent it does not exceed an amount calculated in accordance with the provisions of sub-sections (2) and (3) of Section 4 of the Gratuity Act. The Gratuity Act contemplated rupees ten lakhs as the amount of gratuity only from 24.5.2010. Such gratuity is the amount payable only once. Thus, the cut-off date cannot be said to be illegal, it being one-time payment. Therefore, such amendment in the Gratuity Act cannot be treated to be retrospective. Therefore, the provisions of the statute cannot be said to be retrospective. B

14. In a judgment of this Court reported as *Sri Vijayalakshmi Rice Mills, New Contractors Co. & Ors. v. State of Andhra Pradesh*<sup>8</sup>, the new rate of supply of rice was made effective on 23.3.1964. The question arose was as to whether the rice supplied earlier would have the benefit of beneficial provision as contained in the later notification dated 23.3.1964. This Court held that price as was prevalent on the date of sale alone would be payable and not the higher price introduced by amendment. It was held as under: C

“6. The aforesaid sales in the instant cases having been made by the appellants before the coming into force of the Rice (Andhra Pradesh) Price Control (Third Amendment) Order, 1964, and the property in the goods having passed to the Government of Andhra Pradesh on the dates the supplies were made, the appellants had to be paid only at the controlled price obtaining on the dates the sales were effected and not at the increased price which came into operation subsequently.” D

15. In another judgment reported as *Orient Paper and Industries Ltd. & Anr. v. State of Orissa & Ors.*<sup>9</sup>, it was held that since the executive has been empowered to choose the date of commencement of the Act, such delegation cannot be said to be case of excessive delegation. The Court held as under: E

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<sup>8</sup>(1976) 3 SCC 37

<sup>9</sup>1991 Supp. (1) SCC 81

- A “29. Even if the section were to be seen as a delegation of power, it is a power conferred on the government to give full effect to the policy behind the legislation. It is with a view to achieving that purpose that the executive has been empowered to choose the time, place and forest produce for bringing the Act into operation having regard to the particular facts and circumstances in the contemplation of the legislature. There is no excessive delegation in such statutory grant of power. [See *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. CST* [(1974) 4 SCC 98 : 1974 SCC (Tax) 226 : (1974) 2 SCR 879] ; *Harishankar Bagla v. State of M.P.* [(1955) 1 SCR 380, 388 : AIR 1954 SC 465] ]”
- B
- C 16. In a recent judgment reported as ***Himachal Road Transport Corporation & Anr. v. Himachal Road Transport Corporation Retired Employees Union***<sup>10</sup>, in the case of payment of increased quantum of death-cum-retirement gratuity, it was held that the cut-off date cannot be said to be arbitrary which was fixed keeping in view financial
- D constraints. This Court held as under:
- E “18. Though there are long line of cases, where validity of fixation of cut-off date is considered by this Court, we confine and refer to the case law which is relevant to the facts of the case on hand. In *State of Punjab v. Amar Nath Goyal* [*State of Punjab v. Amar Nath Goyal*, (2005) 6 SCC 754 : 2005 SCC (L&S) 910], while examining the validity of cut-off date fixed for grant of benefit of increased quantum of death-cum-retirement gratuity, this Court has held that the financial constraint pleaded by the Government, was a valid ground for fixation of cut-off date and such fixation was not arbitrary, irrational or violative of Article 14 of the Constitution.....”
- F
- G 17. In view of the above, we find that the date of commencement fixed by the Executive in exercise of power delegated by the Amending Act cannot be treated to be retrospective as the benefit of higher gratuity is one-time available to the employees only after the commencement of the Amending Act. The benefit paid to the appellants under the office memorandum is not entitled to exemption in view of specific language of Section 10(10)(ii) of the Income Tax Act.

18. Consequently, we do not find any error in the order passed by A  
the High Court. The appeal is dismissed.

Devika Gujral

Appeal dismissed.