

Kerala High Court

Kerala Electrical & Allied ... vs Raveendran Pillai And Ors. on 10 June, 1999

Equivalent citations: (1999) IILLJ 1001 Ker

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Bench: P Mohammed, M H Nair

JUDGMENT Mohammed, J.

1. The central point posed before us here relates to the power of the appellant-company to cut down the amount of gratuity payable to the respondents-employees by invoking the provisions contained in the Payment of Gratuity (Amendment) Act, 1994.

2. The respondents herein filed writ petition, O.P. No. 619 of 1998, praying for a direction to the appellant herein to pay the balance amount of gratuity available to them. They further prayed for a declaration that they are eligible for the gratuity limiting the maximum to 20 months' wages pursuant to Ext. P1 Standing Orders framed by the Company.

3. The respondents 1 to 3 joined the service of the appellant- company on January 23, 1959, December 1, 1956 and March 1, 1960 respectively. Ext. P1 is the Standing Orders provided for employees who are classified by the Management as managerial personnel and such other employees as are not 'workmen' as defined in the Industrial Disputes Act, 1947 as amended from time to time. By virtue of this Standing Order which is applicable to them respondents are eligible to have gratuity limited to 20 months' wages at the time of retirement. When the gratuity payable to the respondents was actually worked out, it was limited to Rs. 1 lakh each. Though the respondents filed an objection it remained unconsidered. It was in the above circumstances the above writ petition was filed by the respondents.

4. The learned single Judge while disposing of the writ petition observed that the respondents had retired from service in the year 1996 and 1997 and that the amount of gratuity was due to them on the date of retirement. The Court further held that the claim for payment of gratuity on the date of retirement had become a 'vested right' and therefore the appellant was not entitled to deprive that right retrospectively. In that view of the matter the learned Judge directed the appellant to pay the balance amount to the respondents within three months from the date of receipt of a copy of the judgment. It appears, the appellant-company is dissatisfied with the impugned judgment. Hence the present appeal has been filed.

5. Clause 11(iii) of the Standing Orders prescribes that the amount of gratuity payable to an employee shall not exceed twenty months wages. This provision contains better terms of gratuity. Sub-section (5) of Section 4 of the Payment of Gratuity Act provides that nothing contained in the Section shall affect the right of an employee to receive better terms of gratuity under an award or agreement or contract with the employer. In view of this provision the right of the employee to receive better terms of gratuity under the Standing Order is well preserved.

6. The counsel for the appellant brings to our notice Section 3 of the Payment of Gratuity (Amendment) Act, 1994 came into force with effect from May 24, 1995.

By the said amendment Sub-section (3) of Section 4 of the original Act was amended as below:

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

However, this provision is unavailable to the appellant in view of the provisions contained in Sub-section (5) thereof as we have already found.

7. What is now pleaded by the learned counsel appearing for the appellant is that Ext. P1 Standing Orders had been amended with retrospective effect so as to take away the rights already accrued to the employees irrespective of the ceiling limit. The right to receive the gratuity by an employee on retirement is a vested right and it cannot be destroyed by amending the Standing Orders retrospectively. As earlier said the respondents had retired from service in the year 1996 and 1997 and the right to receive the gratuity by them on retirement is well protected. In the industrial jurisprudence gratuity come to be recognised as a retiral benefit available as of right to an employee for long, continuous and meritorious service whether such retirement is the result of superannuation, physical disability or otherwise.

8. The counsel for the appellant has brought to our notice the decision of the Supreme Court in Govt. of A. P. and Ors. v. Syed Yousuddin Ahmed 1997 7 SCC 24 which according to him, would apply in the facts of this case. That was a case which arose under the Andhra Pradesh Revised Pension Rules, 1980. There the question was whether Rule 31 thereof would apply to all those who were in service at the time when the amended Rule came into force. The Supreme Court said that Rule 31 would apply to all the employees who were in service on the date when the amended Rule came into force for the purpose of finding out the meaning of the expression 'emoluments' on the basis of which the pension of the employees has to be calculated on superannuation. The question before us is not similar to the one that arose in that case.

9. Learned counsel for the respondents, however, relied on the decision of the Supreme Court in Chairman, Railway Board and Ors. v. C.R. Rangadhamaiah and Ors. 1997 6 SCC 623. Para 20 of the said decision pin points that the rule which operates in future so as to govern future rights of those already in service cannot be assailed on the ground of retrospectivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit, which has been granted or availed of, e.g. promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively. The above decision further states in para 24 of the report that in many of the decisions the expressions 'vested right' or 'accrued rights' have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution.

10. What we have to do here is only to examine whether the direction given by the learned single Judge to the appellant to pay the balance amount of gratuity to the respondents is legal and valid. Inasmuch as the respondents had already retired from service as early as in the year 1996 and 1997 the amendment to the Standing Orders with retrospective effect will not take away the accrued rights available to the respondents on the date of retirement. The above conclusion of the learned Judge is just and proper. We do not see any reason whatsoever to interfere with the impugned judgment.

11. In the result, the appeal is dismissed.