

GAHC010007092016



2024:GAU-AS:8885

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/416/2016

M/S MOTHOLA TEA ESTATE
HAVING ITS PLACE OF BUSINESS and HEAD OFFICE AT MANCOTTA ROAD,
DIBRUGARH-786001 ASSAM OWNED BY LT. NAND KISHORE BAGARIA
DULY REP. BY HIS LEGAL HEIRS SRI MURLI MANOHAR BAGARIA, SRI
SHIV KR. BAGARIA, AND SRI CHANDRA PRAKASH BAGARIA, ALL SONS
OF LT. NAND KISHORE BAGARIA AND R/O. MANCOTTA ROAD,
DIBRUGARH-786001 HAVING INHERITED MOTHOLA TEA ESTATE AS
LEGAL HEIRS OF LT. NAND KISHORE BAGARIA.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, LABOUR AND EMPLOYMENT
DEPTT., DISPUR, GHY.-781006.

2:THE ASSTT. LABOUR COMM.-CUM-CONTROLLING AUTHORITY
THE PAYMENT OF GRATUITY ACT
1972

NIDHI BHAWAN
MILAN NAGAR
P.O. C.R. BUILDING
DIBRUGARH-786003.

3:MRS. ANJU BORDOLOI

W/O. LT. PRADEEP CH. SHARMA BORDOLOI
R/O. M. LANE
MILAN NAGAR
P.O. C.R. BUILDING
DIBRUGARH-786003
DIST. DIBRUGARH
ASSAM

Advocate for the Petitioner : MR S DATTA, MR.C SHARMA,MR.S DUTTA,MS.M CHOUDHURY,MS.N MODI

Advocate for the Respondent : MS.J RAJKUMARI R-3, MR.S BORA(R-3),GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioner : Shri S Dutta, Senior Advocate and
Mrs. K Bora, Advocate.

For the Respondents : Shri M Chetia, GA, Assam, R/1 and 2
Shri S Bora, Advocate, R/3.

Date of Hearing : 05.09.2024.

Date of Judgment : 05.09.2024.

JUDGMENT & ORDER

The instant petition has been filed under Article 226 of the Constitution of India whereby an order No. N-91/PGA/92/6620-21, dated 03.12.2015 passed by the learned Assistant Labour Commissioner-cum-Controlling Authority under the Payment of Gratuity Act, 1972, Dibrugarh has been put to challenge. By the said order, the petitioner has been directed to pay the gratuity amount quantified at Rs.5,81,726.54 to the respondent no. 3.

2. As per the facts projected, the husband of the respondent no. 3 was initially appointed as the Manager of the petitioner-Tea Estate and was, at the relevant time,

holding the post of General Manager of the petitioner's Company. Owing to certain serious medical ailments, the late husband of the respondent no. 3 had taken advance payments of Rs. 6 lakhs in different installments against the gratuity payable to him. The employee, unfortunately passed away on 15.12.2014 due to cardiac ailment and thereafter on 20.03.2015, the respondent no. 3 who is the widow had filed an application before the respondent no. 2 for payment of gratuity. Initially, the respondent no. 2 had passed an *ex parte* order for payment of gratuity on 08.06.2015 which was the subject matter of challenge in WP(C)/4034/2015. This Court vide an order dated 09.09.2015 had remanded the matter to be decided afresh. After the said remand, the matter was again taken for consideration wherein the petitioner-Management had adduced evidence through two numbers of witnesses. The mainstay of the case of the petitioner is on 3 nos. of debit vouchers which were issued for advance payment to the late husband during his lifetime and it is contended that such advances were on account of gratuity. It is the case of the petitioner that without appreciating those documents which were duly accepted, the impugned order for payment of gratuity has been made.

3. I have heard Shri S Dutta, learned Senior Counsel assisted by Ms. K Bora, learned counsel for the petitioner-Management. I have also heard Shri M Chetia, learned State Counsel, Assam for the respondent nos. 1 and 2 as well as Shri S Bora, learned counsel for the contesting respondent no. 3.

4. Shri Dutta, learned Senior Counsel for the petitioner has submitted that on remand of the matter by this Court vide order dated 09.09.2015, the case was contested and 3 nos. of documents were produced, being Document Nos. C, D and E. It is submitted that those pertain to payment of advance against the gratuity and as per the petitioner, it is in fact entitled to a certain refund as the advance paid is more than the gratuity payable. It is submitted that the said documents C, D and E were not

questioned and there was no cross-examination on the point. By drawing the attention of this Court to the impugned Award dated 03.12.2015, he has submitted that 3 issues were framed. While answering the Issue No. 3, the learned Authority though had come to a conclusion that the vouchers indicated receipt of the amount, it has been held that since there was no formal application under the Payment of Gratuity Act, 1972, the same cannot be construed to be payment under the said Act. He submits that the circumstances was such that advance had to be released to the deceased husband as he had served the Company for a long period and was in need of money to undergo treatment of the ailment. He submits that the approach of the learned Controlling Authority was hyper-technical when the practical aspect was wholly ignored and thereby, there has been miscarriage of justice.

5. By drawing the attention of this Court to the aforesaid three documents, the learned Senior Counsel has submitted that the documents clearly reflect that the advance was made against the gratuity and there is no dispute in this regard. He has also drawn the attention of this Court to the written statement-cum-counter claim filed before the learned Controlling Authority, more particularly, the averments made in paragraph 6 wherein, it has been categorically stated regarding the advance payment of gratuity against the three numbers of debit vouchers. It is submitted that a party cannot have double benefit under the Act of 1972 and therefore, the impugned order dated 03.12.2015 is liable to be interfered with.

6. In support of his submission that there was no objection either in the cross-examination or otherwise on the three debit vouchers, the learned Senior Counsel for the petitioner has relied upon the case of the Hon'ble Supreme Court in ***PC Purushothama Reddiar Vs. S Perumal***, reported in **1972 (1) SCC 9**. In the said case, it was held that certain reports which were marked without any objection was not open to be objected on their admissibility.

7. The learned Senior Counsel has also drawn the attention of this Court to order dated 03.04.2019 passed in IA(C)/2880/2018 which had to be passed under unusual circumstance as the original records transmitted to this Court by the learned Controlling Authority were found to be missing and in this regard, this Court had passed the aforesaid order regarding the authenticity of the photo copies of the documents which were part of the original records.

8. *Per contra*, Shri Bora, learned counsel for the respondent no. 3 has raised a preliminary objection on the maintainability of the writ petition itself. By drawing the attention of this Court to Rule 18 of the Payment of Gratuity (Central) Rules, 1972, the learned counsel submits that there is a provision of appeal against any orders passed by the Controlling Authority and without preferring any appeal, the instant writ petition has been filed. He has emphasized that no extra-ordinary circumstance has either been pleaded or been made out for invoking the jurisdiction under Article 226 of the Constitution of India. It is submitted that there is no pleading that there has been any violation of the principles of natural justice or jurisdictional issue or that the order passed is palpably arbitrary and unreasonable.

9. On the merits of the case, the learned counsel submits that the payment of gratuity can be made only on fulfillment of three conditions as laid down in Section 4 of the Act of 1972. The circumstances when gratuity is payable are:

- (a) on his superannuation, or
- (b) on his retirement or resignation, or
- (c) on his death or disablement due to accident or disease.

The only pre-condition for such payment is rendering of continuous service of 5

years which is fulfilled by the deceased husband. He submits that under no other condition, gratuity is to be released. He submits that when the Act governing the field does not permit payment of any advance, the plea taken by the petitioner is not tenable. He has also submitted that so far as the documents sought to be relied upon by the petitioner are concerned, even a *prima facie* look at the documents would not lead this Court to accept the submissions made on behalf of the petitioner. It is submitted that none of the aforesaid three documents which were marked as Document Nos. C, D and E contain signatures on revenue stamp. He has also submitted that there is a difference in the letter heads of the so-called debit vouchers which do not contain any serial number or book number. He has also submitted that no application for gratuity could be produced by the Management which is of condition precedent for such release. Shri Bora, learned counsel submits that there is no infirmity legally or otherwise in the impugned order dated 03.12.2015 and therefore, the writ petition is liable to be dismissed. In support of his submissions, the learned counsel has relied upon the following judgments:

- i) *Balbir Kaur & Ors. Vs. Steel Authority of India & Ors.*, (2000) 6 SCC 493, and**
- ii) *Bakshish Singh Vs. M/S Darshan Engineering Works & Ors.*, (1994) 1 SCC 9.**

10. The Hon'ble Supreme Court in the case of ***Balbir Kaur*** (*supra*) has held as under:

“15. It is upon consideration of the above-noted provisions of Section 4, it was contended that question of compulsory depositing of the gratuity amount does not and cannot arise. We shall come back to the deposit of the provident fund but as regards the gratuity amount, be it noted that

there is a mandate of the statute that gratuity is to be paid to the employee on his retirement or to his dependants in the event of his early death — the introduction of the Family Pension Scheme by which the employee is compelled to deposit the gratuity amount, as a matter of fact runs counter to this beneficial piece of legislation (Act of 1972). The statutory mandate is unequivocal and unambiguous in nature and runs to the effect that the gratuity is payable to the heirs of the nominees of the employees concerned but by the introduction of the Family Pension Scheme, this mandate stands violated and as such the same cannot but be termed to be illegal in nature. We do find some substance in the contention as raised, a mandatory statutory obligation cannot be trifled with by adaptation of a method which runs counter to the statute. It does not take long to appreciate the purpose for which this particular Family Pension Scheme has been introduced by deposit of the provident fund and the gratuity amount and we are not expressing any opinion in regard thereto but the fact remains that statutory obligation cannot be left high and dry on the whims of the employer irrespective of the factum of the employer being an authority within the meaning of Article 12 or not.”

11. In the case of **Bakshish Singh** (*supra*) while the vires of Section 4(1)(b) of the Act has been upheld, the following has been laid down:

“32. On both grounds, therefore, viz. that the provisions for payment of gratuity contained in Section 4(1)(b) of the Act are one of the minimal service conditions which must be made available to the employees notwithstanding the financial capacity of the employer to bear its burden and that the said provisions are a reasonable restriction on the right of

the employer to carry on his business within the meaning of Article 19(6) of the Constitution, the said provisions are both sustainable and valid. Hence the decision of the High Court has to be set aside.”

12. In his rejoinder, Shri Dutta, learned Senior Counsel has, however, submitted that so far as the issue of maintainability is concerned, while reliance has been placed upon Rule 18, the said Rule has to be read in conjunction with Section 7 of the Act of 1972 which is on “determination of the amount of gratuity”. Section 7(7) is the substantive provision for preferring an appeal. By referring to Section 7(3A), it is submitted that an appeal would lie only in a case when the gratuity is not paid. He submits that in the instant case, payment of gratuity by way of advance has already been made and in fact, the petitioner is entitled to certain refund and under those circumstances, the question of preferring an appeal will not come.

13. The rival contentions have been duly considered and the materials placed before this Court have been carefully perused. It may be mentioned that Shri Dutta, learned Senior Counsel has also placed before this Court the photo copies of the deposition by the two Management witnesses.

14. The application for gratuity was made on 20.03.2015 and as observed above, initially an *ex parte* order was passed on 08.06.2015 which was however, interfered with by this Court with an order of remand on 09.09.2015 whereafter the petitioner had contested the claim. The principal defence was that the amount involved towards payment of gratuity was already released to the deceased husband during his lifetime and in this connection, three numbers of debit vouchers were exhibited before the learned Authority. It is also the case of the petitioner that such payment was made on good faith and taking into consideration the long tenure of service rendered by the deceased husband and also the fact that he was suffering from serious ailment and

was in need of financial assistance.

15. This Court has noticed that the Authority under the Act of 1972 had framed three numbers of issues which are as follows:

“1. Whether there is provision for payment of gratuity in advance and in instalments.

2. Whether application in Form I (sub-rule (1) of Rule 7 of the Payment of Gratuity (Assam) Rules, 1972 or in any other form was received from the deceased employee for payment of advance gratuity.

3. Whether payment made vide vouchers (Annex, C,D,E)- were actually payments against advance gratuity as claimed by the opposite party management.”

16. So far as the Issue No. 1 is concerned as to whether gratuity can be released in advance and in installments, the learned Authority had held that there was no provision for advance payment or payment by installment under the Act. So far as the Issue No. 2 relating to the requirement of an application, it has been held that application either in Form I or any other form is a condition precedent. So far as the Issue No. 3 is concerned regarding the payment through debit vouchers, the learned Authority had held that though the Management had presented the vouchers showing payment of gratuity in advance which bears the signature of the deceased husband, in absence of any application for payment of advance against the gratuity or any other declaration letter, the said payment cannot be held to be payment under the Act of 1972.

17. The said Act of 1972 is undoubtedly a beneficial piece of legislation. Under Section 4, the procedure for payment of gratuity has been laid down, the relevant part

of which is extracted hereinbelow:

“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, –

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

...”

18. The condition for payment of gratuity is rendering of continuous service of not less than 5 years by an employee and such payment **shall** be payable only on three conditions as laid down above. The Act of 1972 nowhere contemplates payment of gratuity in advance. Further, as rightly held by the learned Authority, the Act stipulates making of an application in the format for payment of gratuity. From a reading of the impugned order, it does not appear that there was any application at all for payment of gratuity by the deceased husband during his lifetime or for releasing any amount against the gratuity payable. The respondent no. 3 for the first time filed the application on 20.03.2015 for payment of gratuity after the death of her husband. When the law holding the field does not provide for payment of gratuity in advance, even assuming that certain payments have been made in advance that cannot be adjusted with the amount of gratuity payable under the Act of 1972. So far as other objection regarding the maintainability of the writ petition on the availability of an appellate provision, this Court has noticed that under Section 7(7) of the Act read with Rule 18, there is no manner of doubt that an appeal is indeed provided. Though the availability of an appellate forum may not be an absolute bar for exercise of writ jurisdiction, the Hon’ble Supreme Court in a catena of decisions, including the one

rendered in the case of ***Whirlpool Corporation Vs. Registrar of Trade Marks***, reported in **(1998) 8 SCC 1** has laid down that only under certain circumstances, the extra-ordinary jurisdiction may be invoked and those circumstances include a case of gross violation of the principles of natural justice, lack of jurisdiction of the authority passing the order or when the order is such that it is palpably unreasonable and arbitrary which does not appeal to a reasonable mind. In the instant case, this Court has noticed that all the issues which were framed appear to have been correctly answered by taking into consideration the facts and circumstances and the provisions of law.

19. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India is to look into the aspect of the decision making process and more particularly, while exercising its certiorari jurisdiction, the aspect as to whether the order impugned has been passed by following the law holding the field is the only consideration. This Court has noticed that the relevant factors and the law holding the field have been duly taken into consideration.

20. In view of the above, this Court is of the considered opinion that there is no merit in this petition and accordingly, the same is dismissed.

JUDGE

Comparing Assistant