M/s. Muller & Phipps (India) Ltd.

Vs

K. C. Sud

Civil Appeal No. 147 of 1960

(P. B. Gajendragadkar, K. C. Das Gupta JJ)

11.04.1960

JUDGMENT

DAS GUPTA, J. -

This appeal is against an order of the Judge, Labour Court, Delhi, in an application under s. 33C of the Industrial Disputes Act by the respondent, K. C. Sud, by which the Court computed the amount due to the petitioner by way of gratuity under an award to be Rs. 80.42 np. only. Sud, who was a workman of the appellant company, M/s. Muller & Phipps (India) Ltd. was retrenched by the company on January 31, 1958. At that time a reference on the question of introduction of a gratuity scheme for the workmen of the company was pending before the Industrial Tribunal. An application by Sud against this order of retrenchment under s. 33A failed. In the reference above-mentioned the Court made an award framing a gratuity scheme in the following terms :-

> "On the death of an employee while in the service of the company, or on his becoming physically or mentally incapable of further service, half a month's basic salary or wages for each year of continuous service shall be paid to the disabled employees, or if he has died, to his heirs or legal representatives or assigns.
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> On voluntary retirement or resignation of an employee, after five years' continuous service, half a month's basic salary or wages for each year of continuous service.
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> On termination of service by the company, half a month's basic salary or wages for each year of completed service."

The scheme was also made applicable with effect from the date on which the reference had been made, viz., June 28, 1957. It was on the basis of this award that Sud has made his application under s. 33C, his case being that as his retrenchment amounted to termination of service within the meaning of the award he was entitled to half a month's basic salary for each year of completed service. Admittedly he had completed two years of service. It is also not disputed that his basic wage at the time of retrenchment was Rs. 80.42 np. If, therefore, he is entitled to have a gratuity in accordance with the scheme of the award the amount due to him will be Rs. 80.42 np.

Of the many contentions raised on behalf of the company in resisting the petition, all of which were rejected by the Court below, the only one which is pressed before us is on the question whether the respondent is entitled to recover gratuity under this scheme in addition to the compensation, he had admittedly received already in accordance with the provisions of s. 25F of the Industrial Disputes Act. In support of this contention it is urged that the gratuity which the respondent claims is in

essence the same thing as compensation for his retrenchment and to allow him gratuity in addition to retrenchment compensation under s. 25F would be to give double benefit for the same event i.e., retrenchment. This it is urged is unfair to the employer and is against the Industrial Disputes Act.

The question whether a double benefit of a gratuity scheme as well as retrenchment compensation can be given to workmen, came up for consideration before this Court in Indian Hume Pipe Co. v. Its Workers ((1960) 2 S.C.R. 32). This Court there considered in some detail the real nature and object of the retrenchment compensation provided by s. 25F of the Industrial Disputes Act and the nature and object of a gratuity scheme as a retirement benefit. It pointed out that while gratuity is intended to help workmen after retirement to whatever cause the retirement may be due to, the retrenchment compensation is intended to give relief for the sudden and unexpected termination of employment by giving partial protection to the retrenched person and his family to enable them to tide over the hard period of unemployment. The Court also traced the history of development of the industrial law as regards gratuity schemes and retrenchment compensation, and after a full consideration of the question, came to the conclusion that there was nothing in law to prevent a workman from getting double benefit, one under a gratuity scheme and the other as retrenchment compensation. The Court however took care to point out that gratuity schemes may be so framed, whether by consent or by award, that retrenchment compensation is thereunder payable only in lieu of gratuity and again they may be so framed as to provide for payment of gratuity in addition to retrenchment compensation. Accordingly, the Court laid it down that the question as to whether retrenched workmen can claim the benefit of a gratuity scheme in addition to the retrenchment compensation under s. 25F or not would depend on the construction of the material terms of the scheme considered in the light of the provisions of s. 25F of the Act.

On the very day this pronouncement was made the Court also delivered judgment in Brahmachari Research Institute v. Its Workmen ((1960) 2 S.C.R. 45) in which the question as indicated above fell to be considered. In Brahmachari's case the Court after mentioning that the general question as to double benefits of retrenchment compensation and gratuity being available to workmen had already been considered in the Indian Hume Pipe Company's case proceeded to examine the award that had been made in a dispute between the Institute and its workmen to ascertain whether gratuity in addition to retrenchment compensation was provided thereby. The Court pointed out that in that award the word 'gratuity' had been used to cover all three cases, viz., (i) retrenchment, (ii) termination of service by any reason other than misconduct and (iii) resignation with the consent of the management; what deserved special notice was that cases of retrenchment as such were specifically covered by the award. It was of opinion that such payment to workmen for retrenchment as such did not lose its character of retrenchment compensation by reason of the mere fact that it was described as gratuity. It was mainly on the basis of this fact that the award had provided gratuity for retrenchment as such in addition to gratuity for other modes of termination of service that the Court decided in Brahmachari's case that the gratuity there on retrenchment was nothing more or less than compensation on account of retrenchment as provided under s. 25F of the Act and decided that the workmen were entitled to only one or the other, whichever is more advantageous to them.

If we examine the award in the case before us in the light of the two decisions of the Court mentioned above the first thing that strikes us is that this award did not make any provision for gratuity for retrenchment as such. It is important to notice that the workmen themselves in their statement of claim had urged for a distinct provision for retrenchment in addition to other modes of termination of service. The tribunal however made no special provision for retrenchment but provided in the scheme of gratuity for three classes of cases, namely, (i) on the death of an

employee or on his becoming physically or mentally incapable of further service, (ii) on voluntary retirement or resignation, and (iii) on termination of service by the company. Retrenchment, it is true, will fall within the termination of service. That, however, as is clear from the above cases, cannot by itself justify a conclusion that the gratuity that could be claimed under such a scheme in case of retrenchment was in lieu of retrenchment compensation. If the intention was that in cases of retrenchment the gratuity will be in lieu of retrenchment compensation provided under s. 25F the obvious thing would be to make separate provisions for gratuity for retrenchment as such and gratuity for other modes of termination of service. That was the method followed in the award that fell for consideration in Brahmachari's case. That method has however not been followed in the award that we have to consider here. In this case there is no specific reference in the award to retrenchment as such. The reasonable conclusion from the scheme as drawn up is that the gratuity that could be claimed under this award by retrenched workmen because of the fact that retrenchment is also one kind of termination of service within the meaning of the award was intended to be in addition to the retrenchment compensation and not in lieu thereof.

The decision in Brahmachari's case on the special facts of the award therein is therefore of no assistance to the appellant. We are bound to hold on an examination of the award in the present case that the gratuity which the respondent claims on the basis of the award is distinct from and in addition to the retrenchment compensation he has received. We are of opinion therefore that the Tribunal was right in holding that the respondent is entitled to such gratuity even though he has already received payment of compensation for retrenchment in accordance with the provisions of s. 25F of the Industrial Disputes Act.

The appeal is accordingly dismissed with costs.

Appeal dismissed.

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