

The Jalgaon District Central Co-Operative Bank Ltd.

Vs

Pandalikrao Laxmanrao Suryawanshi and Others

Civil Appeal No. 944 of 1966

(J.M. Shelat, C.A. Vaidialingam, I.D. Dua JJ)

03.09.1969

JUDGMENT

DUA, J. -

1. Pandalikrao Laxmanrao Suryawanshi plaintiff (Respondent No. 1 in this Court) instituted arbitration proceedings in the Court of the Registrar's nominee against the Jalgaon District Central Co-operative Bank Ltd., Jalgaon (appellant in this Court), for the recovery of a sum of Rs. 7,605/- as the balance of gratuity with interest at 6 per cent. due from 18-8-1962. The claim having been resisted, the same was disallowed on May 16, 1963. An appeal presented to the Maharashtra State Co-operative Tribunal under Section 97 of the Maharashtra Co-operative Societies Act against the award of the Registrar's nominee was dismissed and the said award was confirmed.
2. The Bombay High Court was thereupon approached by Respondent No. 1 under Article 227 of the Constitution and the High Court allowing the application on July 17, 1965 set aside the orders made by the Co-operative Tribunal and by the Registrar's nominee and directed the appellant-Bank to pay to Respondent No. 1 Rs. 7,605/- together with interest at 4 per cent. per annum from June 19, 1963 up-to-date.
3. The present appeal by special leave is directed against the order of the Bombay High Court.
4. Shri M. C. Chagla, the learned counsel for the appellant, concentrated his challenge to the impugned order on the ground that on July 19, 1962, when Respondent No. 1 retired from service of the appellant Bank, there were no valid rules in force entitling him to the amount of gratuity claimed by him. It was not disputed before us that Respondent No. 1 had retired on July 19, 1968 after 32 years of service. On retirement, he was paid a sum of Rs. 5,070/- by way of gratuity, but his claim in the present proceedings is for a further sum of Rs. 7,605/-.
5. Gratuity Fund Rules were sanctioned by the Board of Directors of the appellant - Bank on August 17, 1957. They were framed under the Bank's bye-laws. These rules (hereafter called old rules), were forwarded to the Registrar of Co-operative Societies for approval and they were approved with some modifications except Rules 6, 10 and 15 which were kept under consideration. The principal argument pressed before us by Shri Chagla was that Rules 6 and 10 having not been approved by the Registrar, all the old rules must be deemed to have remained inoperative because these two rules form the real substratum of the scheme embodied in these rules. Without these two rules, the remaining rules, according to the argument, cannot effectively operate. We are unable to accept this submission.

6. It would be useful at this stage to reproduce old Rules 6, 7, 9, 10, 15 and 16 which alone are suggested on behalf of the appellant to be relevant :

"6. These Rules shall be deemed to have come into force (i.e. in respect of an employee retiring, resigning and/or having terminated his services) from the 1st July, 1953. Every employee who has completed at least five years service shall be granted gratuity at the rate specified herein.

7. In case retirement, resignation or termination of services gratuity shall be granted :

(a) After five years but before completion of 10 years services : - half months salary for each completed years of services.

(b) After 10 years but before completion of 15 years services : - three-fourth of a month's salary for each completed year of service.

(c) After 15 years service three-fourth of a month's salary for each completed year of service, subject to the maximum of fifteen month's salaries.

#8. \* \* \* \* ##

9. Payment of the claims on account of the gratuity payable under these rules, shall be made within one month from the retirement, resignation, death or the termination of service.

10. The Bank shall contribute on 30th June, every year, or as soon as possible thereafter, but not later than 30th September of the year, an amount not less than the amount contributed by the Bank as contribution to the Provident Fund.

#11 to 14. \* \* \* \* ##

15. The provisions under Section 41 of the Bombay Co-operative Societies Act (Bombay Act VII of 1926), as amended up-to-date shall be applicable to the administration of the 'Gratuity Fund' created under these rules.

16. The Board of Directors shall have powers, subject to the approval of the Registrar, Co-operative Societies, Bombay State, Poona, to alter, add to, or repeal these rules from time to time, provided however that no such alteration, addition or repeal shall have any retrospective effect against the interest of the employee, in the employment of the Bank on that date."

According to the appellant's learned counsel, the Registrar having withheld approval of Rule 6, the last sentence of which provides that every employee who has completed at least 5 years service, shall be granted gratuity at the rate specified in the rules, there is no rule which imposes an obligation on the appellant - Bank to pay gratuity. This argument, in our opinion, ignores the express language of Rule 7 which, in unequivocal terms, requires gratuity to be granted in case of retirement, resignation or termination of service according to the rates specified therein. Clause (a) of this rule contains a provision similar in effect to what the last sentence of Rule 6 directs. Rule 9 also imposes an imperative obligation for the payment of gratuity under these rules within one month from the retirement, resignation, death or termination of service of the employee concerned. Rule 10, which provides for contribution of the Bank towards the Gratuity Fund, was no doubt also kept under consideration and not approved by the Joint Registrar, but this too, in our view, does not

render the remaining rules ineffective; nor does this fact by itself absolve the Bank of the obligation imposed on it by Rules 7, 8 and 9. The contention that without there being a Gratuity Fund, the Bank cannot lawfully pay gratuity assumes that the Bank has no other resources out of which its liabilities under the rules in question can be discharged - an assumption which is not easy to uphold. Once the Gratuity Fund Rules imposing an obligation on the Bank to pay gratuity to its employees are approved by the Registrar, then this obligation, in our opinion, cannot be rendered nugatory merely because there is no separate Gratuity Fund. Rule 15 which provides for the applicability of Section 41 of the Bombay Co-operative Societies Act, VII of 1925, to the "Administration of the Gratuity Fund" created under the rules in question, does not touch the question of enforcement of these rules, and indeed even on behalf of the appellant, no attempt has been made to rely on Rule 15 for this purpose.

7. The appellant's counsel next relied on the new rules which were approved by the Joint Registrar of Co-operative Societies and were made retrospective in their operation so as to be enforceable with effect from July 1, 1953. It was, however, conceded by Shri Chagla and, in our opinion, rightly, that the new rules could not detract from or prejudicially effect the vested rights created under the old rules. Indeed old Rule 16, it may be recalled, prohibits the retrospective operation of the new rules with the object of protecting the interests of the employees. The submission that the old rules have neither been repealed, nor altered, as contemplated by Rule 16, and that the Registrar has merely withdrawn his approval to the old rules and enforced the new ones, does not advance the appellant's case. The effect of old Rule 16, in our opinion, cannot be negated by describing the process as mere withdrawal of the approval of the old rules and enforcement of the new ones, for in real substance the process seems to us to be covered by Rule 16.

8. The appeal accordingly fails with no order as to costs.

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