The Andhra Pradesh State Road Transport Corporation, Hyderabad

Vs

P. Venkateswara Rao and Others

The General Manager, Andhra Pradesh State Road Transport Corporation, Hyderabad

Vs

M. Ramamohan Rao

The Andhra Pradesh State Road Transport Corporation, Hyderabad

Vs

A. J. Ruben

The Andhra Pradesh State Road Transport Corporation, Hyderabad

Vs

B. Jammiah, Retd. Driver and Others

Civil Appeal Nos. 36 to 54 of 1971

(CJI A.N. Ray, M.H. Beg, P.N. Shinghal JJ)

19.08.1976

JUDGMENT

BEG, J. -

1. A number of appeals filed by the Andhra Pradesh State Road Transport Corporation are before us by grant of special leave under Article 136 of the Constitution of India, against orders of a Labour Court passed under Section 33C(2) of the Industrial Disputes Act, 1947. The facts of the first of these appeals may be stated to illustrate the kind of circumstances in which a common question of law involved in these appeals arises.

2. The respondent P. Venkateswara Rao, who was employed on October 6, 1933, retired on February 10, 1968, after putting in more than 34 years of service. As he was a former employee of the Nizam's State Railway, his service conditions were governed by the provisions of the Government of Hyderabad, Railway Department Establishment Code of 1949, (hereinafter referred to as 'the Code'). He claimed that he was entitled to receive a gratuity at a half month's salary for each year of qualifying service subject to a maximum of 15 month's salary as laid down in Rule 8.01 of the Code, which says :

> 8.01. Condition of eligibility. - Gratuity is granted at the discretion of Government in the Railway Department as a reward for good, efficient, continuous, and faithful

service to a permanent railway servant if he is not a subscriber to the Provident Fund or to the Guaranteed Provident Fund, on his quitting the service, or, in the event of his death before receipt of gratuity to his widow or widows and/or dependent children. For purposes of this rule a monthly paid railway servant borne on the temporary establishment whose pay is charged to open line capital and revenue works on which he is employed shall be deemed to be a permanent railway servant only after he had rendered 4 years' continuous service : railway servants belonging to the category of workshop staff, employed otherwise than in a supervisory capacity, shall also be considered as permanent railway servants only after they have rendered 4 years' continuous service.

3. The other rules which seemed to have a bearing on the question before us are as follows :

8.02. A gratuity cannot be claimed as of right.

8.04. No gratuity shall be granted to a railway servant who has been removed from service by reason of any misconduct on his part, save with the express sanction of the authority competent to sanction the gratuity.

8.05. Qualifying service. - Except where otherwise provided for in these rules, service must be continuous and must also, in the opinion of the General Manager, be "good", "efficient" and "faithful" service to qualify for the gratuity. A gratuity may be granted on the fulfilment of the following conditions :

(i) Completion of thirty years' service; or

(ii) Attainment of the age of fifty-five years, provided not less than fifteen years' service has been completed; or

(iii) Retirement or resignation after fifteen years' service, on grounds admitted by the authority competent to sanction the gratuity as good and sufficient from the point of view of the Administration; or

(iv) Retirement with less than fifteen years' service, due to

(a) permanent physical or mental incapacity, or

(b) abolition of appointment if other suitable employment cannot be found for the railway servant,

8.12. The maximum period of service qualifying for gratuity is thirty years.

8.13. A railway servant who is retired in service after he has attained the age of fifty-five years may be permitted to count the whole of his service, subject to the limit thirty years, as qualifying for gratuity.

8.15. Service for which a railway servant has already received a retiring gratuity or special contribution to the provident fund or to the guaranteed provident fund counts as qualifying service for the purpose of Rule 8.05 but it shall be excluded in calculating the amount of gratuity admissible under Rule 8.19.

8.16. When a railway servant is injured in the performance of his duty and is obliged to leave the service, he may be given the gratuity he had earned under these rules in addition to any compensation gratuity awarded to him on account of his injury.

8.17. Breaks in service. - (i) Ordinarily, a break in the service of a railway servant entails forfeiture of his past service, but, in deserving cases, this rule may be relaxed under orders of the Government in the Railway Department, or in cases of breaks not exceeding fifteen days in respect of railway servants other than Class I or II under the orders of the General Manager, the period of break whether in permanent or temporary service or both being treated as dies non.

(ii) A railway servant who has been discharged from the service may subject to the other conditions of these rules, on re-employment on the Railway, be permitted to add the period of his former qualifying service to his future service for the purpose of determining the gratuity admissible to him.

8.19. Amount of gratuity - The amount of gratuity admissible shall be as follows :

(i) In cases of less than fifteen years' qualifying service falling under Rule 8.05 (iv) above, a gratuity limited ordinarily to half a month's pay, and, in special cases, where circumstances warrant, to one month's pay, for each year of qualifying service, subject to a maximum of six month's pay in all.

(ii) In all other cases falling under the rules in this chapter half a month's pay for each year of qualifying service, subject to a maximum of fifteen months' pay.

4. The respondent claimed Rs. 3962.50 as gratuity. The defence of the appellant was, inter alia, that a sum of Rs. 3962 had already been paid to the respondent on March 13, 1968, as special contribution to provident fund. It was urged that no employee is entitled to any grant at all if he is a subscriber to provident fund. It is pointed out that Rule 8.01 set out above made a claim of payment of gratuity admissible in those cases where the employee was not a subscriber to the provident fund. On the face of it, this contention, which has been repeated before us, seems to be sound and unanswerable.

5. The Labour Court had, however, overruled the main defence of the appellant on the strength of a previous proceeding under Section 15(2) of the Payment of Wages Act, in which the respondent had claimed a payment out of his gratuity, to the extent of Rs. 2000, on the ground that the gratuity claimable fell within the definition of "wages" under the Payment of Wages Act. It had been that he was entitled to such payment although he was a subscriber to a provident fund. In that case, the respondent had applied only for deducting Rs. 1256.79 due from him to the cooperative credit society of the appellant corporation from the gratuity which would have become payable to him on retirement. He was declared entitled to Rs. 1630 only. The two issues framed in that case were as follows :

1. Whether gratuity is wages within the meaning of payment of wages Act ?

2. Whether the corporation had the discretion to refuse to pay the gratuity to the respondent and whether it cannot be questioned ?

6. The case had gone up to the High Court of Andhra Pradesh in revision under Section 115. Civil

Procedure Code. The High Court, while rejecting the objection advanced on behalf of the appellant corporation in a case arising out of the proceeding under the Payment of Wages Act, had observed that Rule 8.15 indicated that Rule 8.01 did not stand in the way of awarding gratuity to a person who is also entitled to the provident fund.

7. We are unable to read Rule 8.15 in the same way as the High Court had done it in the earlier case. We think that Rule 8.15 only explains how Rule 8.05 was to be applied in certain cases. It lays down that the period for which gratuity on retirement or contribution to the provident fund had been received will count towards the qualifications laid down in Rule 8.05. It then clarifies that this period will not, however, affect the calculation of the amount of gratuity under Rule 8.19. The obvious intention of Rule 8.15 was that the amount already received either as gratuity or contribution to the provident fund will not be paid again to the employee. The periods for which payments had already been made, which may happen in certain cases, such as those of broken service or of anticipatory payments, like the one to satisfy debt of the respondent P. Venkateswara Rao, to the cooperative society, would, nevertheless, count towards the qualifying period prescribed by Rule 8.05.

8. On the strength of the judgment of the High Court, in the previous proceeding, which was the basis of the decision of the Labour Court, learned Counsel for the respondent had put forward a preliminary objection that the matter cannot be reagitated. It is clear that the provisions of Section 11, C.P.C. have no application to such a case. The nature of the proceedings and of authorities before which the claims were made were different. It is, however, urged that the principles of res judicata should bar raising the same question once again in a subsequent proceeding. It is true that the High Court had made observations which had a clear bearing on the question to be decided subsequently, but, it will be noticed that the question now before us was not directly the subject-matter of the issues framed in the previous proceeding which have been set out above. Nevertheless, an objection was taken on behalf of the appellant that a basic condition for the eligibility of a claim for gratuity had not been satisfied inasmuch as the respondent was subscriber to a provident fund. This objection had been overruled. It was held that the gratuity could be claimed as of right. we do not know what direction was exactly given in that case. The finding, however, that the petitioner was entitled to a payment of gratuity, as of right, to the extent of Rs. 1630, appears to have been given as a result of the decision that he was entitled to the payment of this much gratuity and no more for the purposes of the claim made in the proceedings under the Payment of Wages Act.

9. It seems to us that, when gratuity was awarded in a previous proceeding, as a part of wages, in the teeth of the clear provision of Rule 8.01 imposing a condition precedent, which was not satisfied, to eligibility for it, it is difficult to hold that such patently illegal view could or should be held to be binding on the parties in a subsequent claim for gratuity on the same footing, before the Labour Court. We find that, even if we were to hold, as we think we must, as the matter was not taken further, that the declaration of entitlement to Rs. 1630 in the previous proceeding should be held to be binding between parties, we cannot apply the same reasoning to the subsequent claim made before the Labour Court which is now before us. The Labour Court had not even deducted the amount already awarded earlier from the amount awarded by its judgment now before us. The most we can say is that the previous recognition of a claim to gratuity, practically in excess of jurisdiction to do so, debars the Labour Court from going into the question whether the respondent was rightly paid that amount as gratuity in the past. We have already set out the rule which disentitles him from being eligible for the award of gratuity when he contributes to a provident fund also. We have also interpreted the rule which was misunderstood earlier by the High Court.

10. We need not here set out the relevant provident fund rules contained in Chapter 7 of the Code. It is true that the whole idea of the provident fund, to which the employer also contributes, seems to be different from a gratuity to which "good, continuous, efficient and faithful servant" may entitle an employee, yet, we are enable to hold that the employee is able to claim the benefit of both a guaranteed or other provident fund, to which the employer contributes, as well as to gratuity, as of right, in the face of the provisions of Rules 8.01 and 8.02 of the gratuity rules set out above.

11. Although we have held that a claim to gratuity, as of right, cannot be put forward, under the Code, by an employee who gets the benefits of a provident fund also, yet, illegal payments of gratuity in the past will not affect legal claims to provident fund. In Civil Appeal No. 1153 of 1972, the amount awarded to an employee was in respect of payment due towards the guaranteed provident fund which had nothing to do with a claim for gratuity. This claim was, therefore, rightly allowed.

12. Civil Appeals Nos. 36 to 54 of 1971 and Civil Appeals Nos. 325 to 339 of 1973 involve only claims to gratuity by persons who are entitled to provident fund. These claims, according to the view taken by us, are not admissible under the law. Similar is the position in Civil Appeal No. 312 of 1973.

13. For the reasons given above, we allow Civil Appeals Nos. 36 to 54 of 1971, and Civil Appeal No. 312 of 1973, and Civil Appeals Nos. 325 to 339 of 1973, and dismiss the claims under Section 33C(2) of the Industrial Disputes Act, 1947, of the respondents in these appeals. We, however, dismiss the Civil Appeal No. 1153 of 1972.

14. The parties will bear their own costs.

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