

Sudhir Chandra Sarkar

Vs

Tata Iron and Steel Co. Ltd. and Others

Civil Appeal No. 1803 (N) of 1970

(D. A. Desai, A. P. Sen, E. B. Eradi JJ)

27.03.1984

JUDGMENT

DESAI, J -

1. Appellant, an employee of Tata Iron and Steel Company Limited ('Company' for short) has been chasing a mirage; to wit to recover a paltry sum of Rs. 14,040 being the amount of gratuity to which he was entitled for the continuous service rendered by him from December 31, 1929 till August 31, 1959 under what are styled as Retiring Gratuity Rules, 1937 ('Gratuity Rules' for short) from the Company and in this wholly unequal fight he laid down his life before enjoying the pittance to which he was entitled after three decades of loyal service. What a dreadful return for abject loyalty ? When the appellant retired by resignation from service he was paid his provident fund dues but gratuity which he was entitled to be paid under the relevant rules was not paid to him. When the appellant claimed payment of gratuity, the respondent turned deaf ears to it. Appellant served a notice dated September 6, 1981 calling upon the respondent to pay the amount of gratuity being Rs. 14,040. The Company did not respond

2. The respondent appeared and contested the suit inter alia contending that " in terms of the contract of service and particularly having regard to the relevant rules under which gratuity can be claimed, the same is payable on certification of satisfactory service by the head of the department, and it is payable at the absolute discretion of the Company irrespective of whether the employee has or has not performed all or any of the conditions stated in the rules and no employee howsoever otherwise eligible is entitled as of right to any payment under the rules."

3. The learned trial Judge framed the issues on which parties were at variance. The learned Judge held that the plaint does disclose a cause of action and the plaintiff was entitled to claim and recover the amount of gratuity with interest thereon. Accordingly, the suit was decreed against the Company directing it to pay the amount claimed in the plaint with future interest at 6 per cent with costs.

4. The respondent Company preferred First Appeal No. 444 of 1963 in the High Court of Judicature at Patna. A Division Bench of the High Court held : (i) that the service conditions of the plaintiff were governed by the Works Standing Orders and that it was an implied condition of service that the plaintiff could get gratuity in accordance with the Gratuity Rules; (ii) that in view of Rule 6, an employee governed by the Gratuity Rules is not entitled to claim the same as a matter of right but he merely attains the benefit of eligibility or suitability for the retiring gratuity and not the right; (iii) that until and unless the Company has decided to pay the gratuity in accordance with Rule 7 or otherwise, the mere fact of the employee becoming eligible to get it under the relevant rules which can be enforced in a civil court because the matter of payment of gratuity is at the absolute

discretion of the Company as provided in Rule 10, and the employee, howsoever unfortunate the position may be under the moder

5. Hence this appeal by the plaintiff by special leave.

6. At the outset it is necessary to notice the relevant rules relied upon by the respondent in support of its submission that the gratuity cannot be claimed as a matter of right and the claim to gratuity cannot be enforced in the civil court. The Retiring Gratuity Rules came into force with effect from April 1, 1937 and at the relevant time, the rules as amended in 1948 were in operation. Rule 5 provides for retirement of every uncovenanted employee of the Company on attaining the age of 60 years subject to the right of the Company to grant extension. This rule is a mere incorporation of S. O. 54 which provides for retirement on attaining the age of 60. Rules 6, 7 and 10 may be extracted :

6. (a) Subject to the conditions referred to in these rules, every permanent uncovenanted employee of the Company, whether on the pay rolls of the Company of the Collieries and at One Mines and Quarries, will be eligible for a retiring gratuity which shall be equal to half a month's salary or wages for every completed year of continuous service, subject to a maximum of twenty months' salary or wages in all.

(b) Provided that when an employee dies, retires or is discharged under Rule 11 (2) (ii) and (iii) hereof, before he has served the Company for a continuous period of 15 years, a gratuity ordinarily limited to half a month's salary or wages for each qualifying year may be paid subject, however, to a maximum of 6 months' salary or wages in all. (Amended vide Board Resolution No. VIII dated July 2, 1953.)

(c) The retiring gratuity will be based on the rate of the salary or wages applicable to the employee in the last month of active service or if the employee has retired while on leave, in the last month prior to the employee going on leave.

(d) In the case of an uncovenanted employee who has been transferred to another Tata concern, the retiring gratuity payable to him under Rule 4-B (a) hereunder will be based on the rate of the salary or wages applicable to the employee in the last month of service with the Company. (In force from April 1, 1946 as per Board Resolution dated April 8, 1948.)

7. Notwithstanding anything contained in these rules a gratuity shall become due and be payable and shall always have been deemed to have become due and payable only in such instalments and over such period or periods as may be fixed by the Board of Directors of the Company or subject to the direction of the Board by the Managing Agent. Until any such instalment shall become or have become due and payable, the employee or any dependent who qualifies for payment under the Gratuity Rules shall not be eligible to receive or be paid any such instalment of the gratuity.

10. All retiring gratuities granted under these rules other than special gratuity to be paid under the provisions of Rule 22 hereof shall be at the absolute discretion of the Company irrespective of whether an employee has or has not performed all or any of the conditions hereinafter stated, and no employee howsoever otherwise eligible shall be deemed to be entitled as of right to any payment under these rules. (Amended vide Board Resolution No. V dated August 25, 1955.)

7. The contention of the respondent is that the plaintiff did not retire from service but he left the service of the Company by resigning his post. This aspect to some extent agitated the mind of the High Court. It may be dealt with first. It is not only not in dispute, but is in fact conceded that the plaintiff did render continuous service from December 31, 1929 till August 31, 1959. On exact computation, the plaintiff rendered service for 29 years and 8 months. Rules 6 (a) which prescribed the eligibility criterion for payment of gratuity provides that every permanent uncovenanted employee of the Company whether paid on monthly, weekly or basis will be eligible for retiring gratuity which shall be equal to half a month's salary or wages for every completed year of continuous service subject to a maximum of 20 years' salary or wages in all provided that when an employee dies, retires or is discharged under Rule 11 (2) (ii) and (iii) before he has served the Company for a continuous period of 15 years he sh

8. Rule 7, in our opinion, has hardly any relevance because it enables the Company to pay gratuity by instalments.

9. It is Rule 10 which is material for the purpose. It provides that payment of retiring gratuity granted under the Gratuity Rules, other than special gratuity to be paid under the provisions of Rule 22 which is not the case herein, shall be at the absolute discretion of the Company irrespective of whether an employee has or has not performed all or any of the conditions hereinafter stated, and no employee howsoever otherwise eligible shall be deemed to be entitled as of right to any payment under the rules. The stand taken by the respondent to deny gratuity to the plaintiff is that gratuity payable under the rules is a matter of employer's largesse to be distributed at the absolute discretion of the Company and cannot be claimed as a matter of right even if the concerned employee has fulfilled the eligibility criteria. It is the interpretation of this rule which would govern the outcome of this appeal.

10. It may be mentioned that the High Court which ultimately upheld the contention of the respondent has specifically held that gratuity was an implied condition of the plaintiff in accordance with the relevant rules. The High Court reached this conclusion by first referring to Words Standing Orders framed by the Company which govern the conditions of service of the plaintiff. In other words according to the High Court, the service conditions of the plaintiff were governed by the Works Standing Orders. It is therefore necessary to determine the character of the Works Standing Orders Ex. C framed by the Company. This aspect was overlooked by the High Court with the consequence that the High Court found it difficult to enforce the claim of gratuity against the respondent by a decree of the Court. What then is the character of the Works Standing Orders framed by the Company ? Are they mere unenforceable rules or are they statutory in character or have a statutory flavour ? If they are statutory in character and

11. The Parliament enacted the Industrial Employment (Standing Orders) Act, 1946 ('1946 Act' for short). The long title of the Act provides that it was an act to require employers in industrial establishments formally to define conditions of employment under them. The preamble of the Act provides that it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them. By Section 3, a duty was cast on the employer governed by the Act to submit to the Certifying Officer draft standing orders proposed by him for adoption in his industrial establishment. After going through the procedure prescribed in the Act, the Certifying Officer has to certify the draft standing orders. Section 8 requires the Certifying Officer to keep a

copy of standing orders as finally certified under the Act in a register to be maintained for the purpose. Sub-section (2) of Section 13 impose; a pena

In the sunny days of the market economy theory people sincerely believed that the economic law of demand and supply in the labour market would settle a mutually beneficial bargain between the employer and the workman. Such a bargain, they took it for granted, would secure fair terms and conditions of

1. (1974) 1 SCR 434 : (1974) 3 SCC 330 : 1974 SCC (L&S) 531 : (1973) 2 LLJ 403

employment to the workman. This law they venerated as natural law. They had an abiding faith in the verity of this law. But the experience of the working of this law over a long period has belied their faith.

The intendment underlying the Act and the provisions of the Act enacted to give effect to the intendment and the scheme of the Act leave no room for doubt that the Standing Orders certified under the 1946 Act become part of the statutory terms and conditions of service between the employer and his employee and they govern the relationship between the parties. *Workmen v. Firestone Tyre & Rubber Co. Workmen v. Buckingham and Carnatic Mills and Glaxo Laboratories v. Presiding Officer, Labour Court, Meerut.*

12. The High Court recorded the finding that service conditions of the plaintiff were governed by the Works Standing Orders. No exception has been taken to this finding. It may at once be noted that the Works Standing Orders of the Company are Certified Standing Orders, under the 1946 Act evidenced by Certificate No. 45 dated March 18, 1950. S. O. 54 provides that every uncovenanted employer of the Company shall retire from service on attaining the age of 60 years. This S. O. 54 is bodily incorporated in Rule 5 of the Gratuity Rules. Relying on S. O. 54 and the evidence recorded in the case, the High Court reached the conclusion that payment of gratuity was an implied condition of service of the plaintiff. Rule 6 (a) provides the subject to the conditions prescribed in the rules, every permanent uncovenanted employee of the Company will be eligible for a retiring gratuity in the manner and to the extent mentioned therein. Retiring gratuity becomes payable on retirement, which means termination of service by lied condition of service. It is well-settled by a catena of decisions, that Certified Standing Orders bind all those in employment at the time of service as well as those who are appointed thereafter. *Agra Electric Supply Co. Ltd. v. Alladin.* Now upon a combined reading of S. O. 54 along with Rules 5 and 6 (a) of the Gratuity Rules, it becomes distinctly clear that payment of gratuity was an express or statutory condition of service and to this limited extent the finding of the High Court has to be modified.

13. If payment of gratuity is thus shown to be a statutory or express condition of service governing the relationship between the plaintiff and the Company, it would be obligatory upon the Company to pay the gratuity on retirement of the plaintiff. If the Company declines or refuses to pay or discharge its statutory obligation, could the claim be enforced by a civil suit ? The High Court was of the opinion that even though payment of gratuity was a condition of service in view of the provision contained in Rule 10, the same cannot be claimed as a matter of right or its recovery cannot be enforced by a civil suit. The High Court was constrained to observe that Rule 10 which confers absolute discretion on the Company to pay the gratuity at its sweet will is unconscionable and incompatible with the modern notions or conditions which ought to govern the relations between employer and employee, and that upon an industrial dispute being raised, the Industrial Tribunal may be in a position to award the gratuity as

14. At this stage it would be appropriate to examine the effect of a breach of condition of service which is either statutory in character or has the statutory flavour. When under 1946 Act, an obligation is cast on the employer to specifically and precisely lay down the conditions of service. Section 13 (2) subjects the employer to a penalty if any act is done in contravention of the Standing Orders certified under the Act. It would appear that such conditions of service prescribed in Standing Orders get incorporated in the contract of service of each employee with his employer. A facet of collective bargaining is that any settlement arrived at between the parties would be treated as incorporated in the contract of service of each employee governed by the settlement. Similarly Certified Standing Orders which statutorily prescribe the conditions of service shall be deemed to be incorporated in the contract of employment of each employee with his employer. As far as the incorporation of the results of collecti

This would be all the more true of Certified Standing Orders governing conditions of service between workman and his employer. If the employer commits a breach of the contract of employment, the same can be enforced or remedied depending upon the relief sought by a civil suit. If contract for personal service is sought to be specifically enforced by a decree of civil court, the court will have to keep in view the provisions of Section 14 of the Specific Relief Act, 1963 which provides that contract for personal service cannot be specifically enforced. We are not concerned with the exceptions to this rule such as the power of Industrial Tribunal to grant relief of reinstatement. We are concerned with the exceptions to this rule such as the power of Industrial Tribunal to grant relief of reinstatement. We are concerned with the jurisdiction of civil court. The jurisdiction of civil court amongst others is determined by the nature of relief claimed. Now if the relief claimed is a money decree by enforcing statu

15. One more difficulty the High Court experienced in the way of the plaintiff maintaining the suit and recovering the amount of gratuity was that under Rule 10 gratuity was payable at the absolute discretion of the Company and cannot be claimed as a matter of right. Undoubtedly, Rule 10 confers discretion not he Company to pay the gratuity even if the same in is earned by satisfying the conditions subject to which gratuity becomes payable. Rule 10 provides that " all retiring gratuities granted under the rules shall be at the absolute discretion of the Company irrespective of whether an employee has or has not performed all or any of the conditions set out in the rules and no employee howsoever otherwise eligible shall be deemed to be entitled as of right to any payment under the rules". Such absolute discretion is wholly destructive of the character of gratuity as a retiral benefit. It is satisfactorily established and the High Court has so ruled that payment of gratuity was condition of service albeit imp

16. Pension and gratuity coupled with contributory provident fund are well-recognised retiral benefits. These retiral benefits are now governed by various statutes such as the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, the Payment of Gratuity Act, 1972. These statutes were legislative responses to the developing notions of fair and humane conditions of work, being the promise of Part IV of the Constitution. Article 37 provides that " the provisions contained in Part IV - Directive Principles of State Policy, shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws." Article 41 provides that "the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in oth

17. Can such social security measure be denuded of its efficacy and enforcement by so interpreting

the relevant rules that the workman could be denied the same at the absolute discretion of the employer notwithstanding the fact that he or she has earned the same by long continuous service ? If Rule 10 is interpreted as has been done by the High Court, such would be the stark albeit unpalatable outcome. It is therefore necessary to take a leaf out of history bearing on the question of retiral benefits like pension to which gratuity is equated. In *Burhanpur Tapti Mills Ltd. v. Burhanpur Tapti Mills Mazdoor Sangh* this Court observed that : " a scheme of gratuity and a scheme of pension have much in common. Gratuity is a lump sum payment while pension is a period payment of a stated sum". Undoubtedly both have to be earned by long and continuous service.

18. For centuries the courts swung in favour of the view that pension is either a bounty or a gratuitous payment for loyal service rendered depending upon the sweet will or grace of the employer not claimable as a right and therefore, no right to pension can be enforced through court. This view held the filed and a suit to recover pension was held not maintainable. With the modern notions of social justice and social security, concept of pension underwent a radical change and it is now well-settled that pension is a right and payment of it does not depend upon the discretion of the employer, nor can it be denied at the sweet will or fancy of the employer. *Deokinandan Prasad v. State of Bihar*, *State of Punjab v. Iqbal Singh* and *D. S. Nakara v. Union of India*. If pension which is the retiral benefit as a measure of social security can be recovered through civil suit, we see no justification in treating gratuity on a different footing. Pension and gratuity in the matter of retiral benefits and for recovering the

19. The question then is : can the Court ignore Rule 10? If gratuity is a retiral benefit and can be earned as a matter of right on fulfilling the conditions subject to which it is earned, any rule conferring absolute discretion not testable on reason, justice or fair play must be treated as utterly as utterly arbitrary and unreasonable and discarded. If rules for payment of gratuity became incorporated in the Standing Orders and thereby acquired the status of statutory condition of service, an arbitrary denial referable to whim, fancy or sweet will of the employer must be rejected as arbitrary. Section 4 of the 1946 Act which confers power on the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions would enable this Court to reject that part of Rule 10 conferring absolute discretion on the employer to pay or not to pay the gratuity even if it is earned as utterly unreasonable and unfair. It must be treated as ineffective and unenforceable. It is well

20. Viewed from a slightly different angle, our Constitution envisages a society governed by rule of law. Absolute discretion uncontrolled by guidelines which may permit denial of equality before law is the anti- thesis of rule of law. Absolute discretion not judicially reviewable inheres the pernicious tendency to be arbitrary and is therefore violative of Article 14. Equality before law and absolute discretion to grant or deny benefit of the law are diametrically opposed to each other and cannot coexist. Therefore, also the conferment of absolute discretion by Rule 10 of the Gratuity Rules to give or deny the benefit of the rules cannot be upheld and must be rejected as unenforceable.

21. The High Court reversed the decree of the trial court on the sole ground that Rule 10 confers an absolute discretion on the respondent- company to pay or not to pay gratuity at its sweet will. Once Rule 10 is out of the way, the judgment of the High Court has to be reserved (sic reversed). Accordingly, this appeal succeeds and will have to be allowed.

22. The trial court decreed the plaintiff's suit with costs and with interest at 6 per cent per annum. Interest at 6 per cent per annum has become utterly irrelevant in these days with devaluation of the rupee. Further in our opinion, the Company declined to meet its obligation on an utterly

unreasonable stand and denied to the plaintiff for a period of a quarter of a century what the plaintiff was legitimately entitled without the slightest shadow of doubt. Therefore, while allowing the appeal in order to compensate the loss suffered by the plaintiff who died before enjoying the fruits of his decree, we direct that the interest shall be paid at 15 per cent annum and full costs throughout.

23. Accordingly, this appeal is allowed and the judgment and decree of the High Court are set aside and the decree of the trial court is restored with this modification that the interest shall be paid on the principal amount of Rs. 14,040 at 15 per cent from July 1, 1959 till payment and full costs throughout be paid to the plaintiff. The costs of plaintiff in this Court is quantified at Rs. 5000. The payment shall be made within a period of two months from today.

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