SUPREME COURT OF INDIA

Beed District Central Co-Operative Bank Ltd.

Vs.

State of Maharashtra

C.A.No.4327 of 2006

(S.B. Sinha and Dalveer Bhandari JJ.)

29.09.2006

JUDGMENT

S.B. SINHA, J.

Leave granted.

Appellant (Bank) is a co-operative society registered under the Maharashtra Co-operative Societies Act, 1960. Respondents are its employees. On their superannuation they were entitled to payment of gratuity. A policy decision was taken by the Bank to extend the benefit of better rate of gratuity to a large number of its employees. A scheme was formulated therefor which was linked with a policy of Life Insurance Corporation of India who were on its roll on and from 1.12.1975. In terms of the said scheme, the rate of gratuity was to be calculated on one month's salary .for every completed years of service with ceiling limit of 20 months' salary. It was operative from 1975 to 19.7.1996. The employees of the Bank accepted the said scheme and availed the benefits thereof. The said scheme was amended providing for payment of gratuity at the rate of 26 days' salary for every completed year of service with a ceiling limit of Rs. 1.7 lakhs. The said scheme was operative from May, 1994 to 24.9.1997. Yet again, a scheme was floated raising the ceiling limit of Rs.1.7 lakhs to Rs.2.50 lakhs. Payment of Gratuity Act, 1972 (for short, `1972 Act') was enacted by the Parliament to provide for a scheme for the payment of gratuity to its employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto. "Completed year of service" has been defined to mean continuous service for one year. Payment of gratuity is provided for in Section 4 thereof; the relevant portion whereof reads as under:

"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:

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned.

(3) The amount of gratuity payable to an employee shall not exceed three lakhs and fifty thousand rupees.

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer."

In terms of the provisions of the said Act, the ceiling limit of the amount of gratuity was raised to 2.50 lakhs. The rate of gratuity, however, was to be determined at the rate of 15 days' salary for every completed year of service. The said ceiling limit, however, was later on increased to 3.50 lakhs by reason of an amendment made by Payment of Gratuity (Amendment) Act, 1998 (for short, `1998 Act'), which was given a retrospective effect from September, 1997.

Respondents retired during the currency of the scheme of the Bank in terms whereof, although the rate of gratuity was to be calculated at the rate of 26 days' salary for every completed year of service, the ceiling limit thereof was 1.7 lakhs and 2.50 lakhs between the period 20.7.1996 and 30.11.1999; and the period 1.12.1999 and 17.1.2005 respectively. The amount of gratuity offered to them in terms of the scheme was accepted. However, they raised a claim that they were entitled to the benefit of both the schemes as also the ceiling limit fixed under the 1998 Act. The said contention of Respondents was accepted not only by the Deputy Commissioner of Labour, Aurangabad by a judgment and order dated 12.7.2005, but also by the High Court in terms of its order dated 9.8.2005.

The short question which arises for our consideration is as to whether, keeping in view the provisions contained in Sub-Section (5) of Section 4 of 1972 Act, Respondents herein although would be entitled to the benefit of ceiling limit of 3.5 lakhs, the rate of gratuity should be calculated at the rate of 26 days' instead and in place of 15 days salary for every completed year of service in terms of the 1972 Act.

Mr. U.U. Lalit, learned Senior Counsel appearing on behalf of Appellant submitted that Respondents are not entitled to the said benefit.

Mr. Shekhar Naphade, learned Senior Counsel appearing on behalf of Respondents, on the other hand, submitted that different Sub-Sections of Section 4 of the 1972 Act provided for different terms and in that view of the matter, statutory term shall prevail over the contractual term. Having regard to the Sub-sections of Section 4, unless that portion of the contractual term, which is contrary to or inconsistent with the statutory term, shall stand deleted so as to give way to the intention of the Parliament. The learned counsel would contend that for the aforementioned purpose the contract can be severed upon applying the `doctrine of blue pencil'.

It is not in dispute that Appellant-Bank had its own gratuity scheme. The said scheme constituted one of the terms of contract of employment between the parties. Under the scheme, employees were entitled to gratuity on the following terms :

(i) eligibility to receive gratuity Minimum 5 years of service (ii) rate of gratuity 26 days' wages for every completed year of service

(iii) the maximum amount of Rs.2,50,000/- gratuity

Whereas Respondents intended to have benefit of rate of gratuity under the aforesaid terms (i) and (ii); according to them, in the above table; term (iii) contained in the contract of employment being repugnant to Section 4(3) of the 1972 Act and void under Section 23 of the Contract Act, must be replaced by Section 4(3) of the 1972 Act.

The `doctrine of blue pencil' was evolved by the English and American Courts. In Halsbury's Laws of England (4th Edn. Vol.9), p.297, para 430, it is stated:

"430. Severance of illegal and void provisions - A contract will rarely be totally illegal or void and certain parts of it may be entirely lawful in themselves. The question therefore arises whether the illegal or void parts may be separated or "severed" from the contract and the rest of the contract enforced without them. Nearly all the cases arise in the context of restraint of trade, but the following principles are applicable to contracts in general"

In P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edn. 2005, Vol. l,p.553-554, it is stated:

"Blue pencil doctrine (test). A judicial standard for deciding whether to invalidate the whole contract or only the offending words. Under this standard, only the offending words are invalidated if it would be possible to delete them simply by running a blue pencil through them, as opposed to changing, adding, or rearranging words. (Black, 7th Edn., 1999)

This doctrine holds that if Courts can render an unreasonable restraint reasonable by scratching out the offensive portions of the covenant, they should do so and then enforce the remainder. Traditionally, the doctrine is applicable only if the covenant in question is applicable, so that the unreasonable portions may be separated. E.P.I, of Cleveland, Inc. v. Basler, 12 Ohio App2d 16:230 NE2d 552, 556.

Blue pencil rule/test. - Legal theory that permits a judge to limit unreasonable aspects of a covenant not to compete.

Severance of contract. - "severance can be effected when the part severed can be removed by running a blue pencil through it without affording the remaining part. Attwood v. Lamont, (1920) 3 K 571 (Banking)

A rule in contracts a Court may strike parts of a covenant not to compete in order to make the covenant reasonable. (Merriam Webster)

Phrase referring to severance (q.v.) of contract. "Severance can be effected when the part severed

can be removed by running a blue pencil through it" without affording the remaining part. Attwood v. Lamont, (1920) 3 KB 571. (Banking)"

The matter has recently been considered by a learned Judge of this Court while exercising his jurisdiction under Sub-Section (6) of Section 11 of the Arbitration and Conciliation Act, 1996 in the case of Shin Satellite Public Co, Ltd. v. Jain Studios Ltd., [2006] 2 SCC 628.

We, however, are of the opinion that the said doctrine cannot be said to have any application whatsoever in the instant case. Undoubtedly, the Payment of Gratuity Act is a beneficial statute. When two views are possible, having regard to the purpose, the Act seeks to achieve being a social welfare legislation, it may be construed in favour of the workman. However, it is also trite that only because a statute is beneficent in nature, the same would not mean that it should be construed in favour of the workmen only although they are not entitled to benefits thereof. (See Regional Director, Employees' State Insurance Corporation, Trichur v. Ramanuja Match Industries, AIR (1985) SC 278).

Applying the `Golden Rule of Interpretation of Statute', to us it appears that the question should be considered from the point of view of the nature of the scheme as also the fact that the parties agreed to the terms thereof. When better terms are offered, a workman takes it as a part of the package. He may volunteer therefor, he may not. Sub-Section (5) of Section 4 of the 1972 Act provides for a right in favour of the workman. Such a right may be exercised by the workman concerned. He need not necessarily do it. It is the right of individual workman and not all the workmen. When the expression "terms" has been used, ordinarily it must mean "all the terms of the contract". While interpreting even a beneficent statute, like, Payment of Gratuity Act, we are of the opinion that either contract has to be given effect to or the statute. The provisions of the Act envisage for one scheme. It could not be segregated. Sub-Section (5) of Section 4 of the 1972 Act does not contemplate that the workman would be at liberty to opt for better terms of the contract, while keeping the option open in respect of a part of the statute. While-reserving his right to opt for the beneficent provisions of the statute or the agreement, he has to opt for either of them and not the best of the terms of the statute as well as those of the contract. He cannot have both. If such an interpretation is given, the spirit of the Act shall be lost. Even in Shin Satellite (supra), this Court stated :

"The proper test for deciding validity or otherwise of an agreement or order is "substantial severability" and not "textual divisibility". It is the duty of the court to sever and separate trivial or technical parts by retaining the main or substantial part and by giving effect to the atter if it is legal, lawful and otherwise enforceable. In such cases, the court must consider the question whether the parties could have agreed on the valid terms of the agreement had they known that the other terms were invalid or unlawful. If the answer to the said question is in the affirmative, the doctrine of severability would apply and the valid terms of the agreement could be enforced, ignoring invalid terms. To hold otherwise would be

"to expose the covenanter to the almost inevitable risk of litigation which in nine cases out of ten he is very ill-able to afford, should he venture to act upon his own opinion as to how far the restraint upon him would be held by the court to be reasonable, while it may give the covenantee the full benefit of unreasonable provisions if the covenanter is unable to face litigation."

It is significant that in the event the amount of gratuity is calculated at the rate of 26 days' salary for

every completed year of service, vis-a-vis, 15 days5 salary therefor, the tenure of an employee similarly situate will vary. Whereas in the former case an employee may receive the entire amount of gratuity while working for a lesser period, in the latter case an employee drawing the same salary will have to work for a longer period.

We are, therefore, of the opinion that the workman cannot opt for both the terms. Such a construction would defeat the purpose for which Sub-Section (5) of Section 4 has been enacted. For the reasons aforementioned, the impugned judgment cannot be sustained, which is set aside accordingly. The appeal is allowed. No costs.