

Bombay High Court

A.S. Iyer vs Union Of India (Uoi) And Ors. on 17 October, 2003

Equivalent citations: 2004 (3) BomCR 333, (2004) ILLJ 885 Bom

Author: N Mhatre

Bench: R Kochar, N Mhatre

JUDGMENT Nishita Mhatre, J.

1. By this petition, the Petitioner claims that his retiral benefits such as pension and gratuity be computed, taking into account the service rendered by him with the Institute of Sugarcane Research, Lucknow from July 27, 1953 to November 17, 1965 and for setting aside the order of Respondent Nos. 3 and 4 levying penal rent on the Petitioner and recovering it from the gratuity payable by Respondent Nos. 3 and 4. The Petitioner has also sought a writ striking down the Rule imposing ceiling on the amount of gratuity payable to the petitioner as also for a direction to Respondent Nos. 1 and 2 to pay to him pro-rata pension for the service rendered by him with the erstwhile employer.

2. The Petitioner was initially employed with the Institute of Sugarcane Research, Lucknow as an Assistant Agricultural Engineer from July 27, 1963. He resigned on November 17, 1965 and immediately on then next day, joined the services of Oil and Natural Gas Commission (hereinafter referred to as 'ONGC') as an Executive Engineer. On December 31, 1985 on attaining the age of superannuation, he retired from the service of ONGC. Thus, the Petitioner put in a total of 12 years service with the Institute of Sugarcane Research which was governed by Respondent Nos. 1 and 2 and 19 years with the ONGC. According to the Petitioner, although his entire service rendered with both his employers is to be considered for the purposes of computation of retiral benefits, the respondents have failed to do so. According to him, on his retirement, he was entitled to earned wages for the month of December 1984, gratuity to the tune of Rs. 69,014.42 and pro-rata pension. It appears that the ONGC did not clear the dues of the Petitioner as the Petitioner continued to occupy the service quarters allotted to him. Time and again, the Petitioner sought for extension of the period for staying in the service quarters as the private accommodation which he wished to avail of was not available.

3. Notice was issued to him under the Public Premises (Eviction of Unauthorised Occupants) Act by the Estate Officer and a penal rent was imposed on the Petitioner. On November 3, 1989, the Petitioner received an amount of Rs. 12,237.40 towards the gratuity after deducting the penal rent of Rs. 23,762.60. The Petitioner protested against this amount as the gratuity had been calculated by imposing a ceiling of Rs. 36,000. Moreover, the service rendered by him with the Institute of Sugarcane Research, Lucknow was not considered for the purpose of computing the gratuity. The ONGC had merely considered the service rendered by the Petitioner with it of 19 years rather than a total of 29 years taking into account the services of the Petitioner with both his employers. According to the Petitioner, he has been paid an amount of Rs. 56,777.02 less than the amount due and payable to him as gratuity. As regards pension the Petitioner has claimed pro-rata pension as those Central Government Employees, who had been absorbed in service or posted in a Corporation or company wholly or substantially controlled by the Central Government, were entitled to pension on the basis of the services rendered with the Central Government under Rule 37 of the Central Civil

Services (Pension) Rules, 1972. Although, the unpaid salary was paid on December 4, 1990, the Petitioner now claims interest on this amount as well as the other amounts which are due and payable to him.

4. Mr. Naidu, appearing for the Petitioner, submits that although the number of years of service on the basis of which gratuity was payable was not in dispute, the ONGC had imposed a ceiling on the quantum of gratuity fixing the maximum at Rs. 36,000/-. He submits that in view of the enactment of Payment of Gratuity Act, 1972, the Petitioner would be entitled to payment of gratuity under this Act where the ceiling imposed under Section 4(3) of the Payment of Gratuity Act is at 20 months wages as the maximum gratuity on retirement, He submits that the ONGC has imposed a ceiling of Rs. 36,000/- under Regulation 4(1) of the Regulations framed by the ONGC under Section 32 of the ONGC Act, 1959. He submits that with the enactment of the Payment of Gratuity Act and specifically Section 14 of the Act, the Regulations which are inconsistent with the Act would have to yield to the provisions of the Payment of Gratuity Act. The reliance placed on the ONGC Regulations of 1989 is misconceived as, according to Mr. Naidu, the provisions of the Payment of Gratuity Act, 1972 have an overriding effect.

5. He then submits that the respondents had no right to deduct any amounts towards rent of the accommodation which the Petitioner had availed of after his retirement from the gratuity payable to the Petitioner. He submits that in view of the judgment of this Court in the case of V. U. Warriar v. Secretary, Oil and Natural Gas Commission & Ors. reported in 2003-II-LLJ- 918, it was impermissible to deduct any amount from the gratuity payable to the Petitioner on account of his unauthorised occupation of official accommodation after his retirement.

6. Mr. Cama, appearing for Respondent Nos. 3 and 4 on the other hand, submits that the Petitioner had in fact by a letter dated March 25, 1985 permitted the respondents to deduct amounts from his gratuity dues towards rent chargeable for the accommodation which he continued to occupy even after his retirement. He submits that the Petitioner should not be shown any sympathy whatsoever as he has come to the Court with unclean hands and cannot avail of the writ jurisdiction in these circumstances. He also submits that on June 27, 2003, the Petitioner had given an undertaking on the basis of which he was paid "Agrani Samman" under a scheme floated by ONGC. While accepting this amount, the petitioner had executed an undertaking. Clauses 3 and 4 of this undertaking are substantially to the effect that he had not entered into any litigation against the ONGC on matters related to his service. The learned counsel submits that despite the pendency of the present Writ Petition, the Petitioner had executed this undertaking and, therefore, the conduct of the Petitioner does not warrant any sympathy from the Court or any relief under Article 226 of the Constitution of India. In respect of the claim for payment of gratuity, Mr. Cama submits that the ONGC is established under the ONGC Act, 1959. Under Section 32 of the Act, regulations have been framed governing the service conditions of the employees of ONGC. These regulations include regulations in respect of payment of gratuity and therefore, according to him, the Petitioner would be entitled to gratuity only under these Regulations and under no other enactment. He submits that under Regulation 5 of the ONGC (Death, Retirement and Terminal Gratuity) Regulations, power is vested with the ONGC to recover its dues from the retiral and terminal benefits payable to an officer even without obtaining his consent and therefore, the respondents have rightly deducted the amount

towards penal rent. Moreover, at the insistence of the Petitioner to continue in accommodation as his private accommodation was not immediately available upon his retirement he was permitted to continue in the Official quarters. The petitioner had permitted ONGC by his letter dated March 25, 1985 to effect deductions towards rent from his gratuity.

7. Mr. Cama then submits that the Payment of Gratuity Act being a general Act would not have any bearing on the service conditions of the employees of the ONGC who were covered by a special legislation viz., the ONGC Act, and the Regulations framed thereunder. He submits that the regulations are statutory in nature and, therefore, all employees would be bound by these Regulation and the respondents were liable to pay gratuity only on the basis of these regulations and not under the Payment of Gratuity Act. He, therefore, submits that the calculations of the Respondents are correct. He relies on the judgments in the cases of Jain Ink Manufacturing Company v. Life Insurance Corporation of India and Anr. and State of Uttar Pradesh and Ors. v. Babu Ram Upodhya, in support of his submission that a special statute, namely, the Regulations framed under the ONGC Act will override the provisions of the Payment of Gratuity Act. According to him, since both the Payment of Gratuity Act and the Regulations operate in different fields, there is nothing inconsistent between them and, therefore, the Regulation will prevail over the Payment of Gratuity Act.

8. The Payment of Gratuity Act has been enacted as a special legislation for the purpose of payment of gratuity. Section 1(3) of the Act is applicable to every factory, mine, oil field, plantation, port, railway company as well as every shop or establishment in which 10 or more persons are employed on any day of the preceding 12 months and such other establishments notified by the Central Government where 10 or more employees are employed. Under Section 4 of the Act, gratuity is payable to all employees employed in the aforesaid establishments at the rate of 15 days' wages per year of service. However, Section 4 Sub-section (5) permits an employee to draw a higher amount of gratuity if the rules governing the service conditions so permit. The Regulations framed under the ONGC Act were framed in 1989 and cover the service conditions in respect of death-cum-retirement and terminal gratuity applicable to the employees of the ONGC. The regulations being framed prior in point of time to the enactment of the Payment of Gratuity Act, would not prevail over the Payment of Gratuity Act so far as the payment of gratuity is concerned. In fact, Section 14 of the Payment of Gratuity Act, which is a non obstante clause, makes it very clear that anything inconsistent with the Payment of Gratuity Act should not be given effect to. Admittedly, the Regulations of the ONGC and the Payment of Gratuity Act are not identical. The Regulations impose a ceiling of Rs. 36,000/- for payment of gratuity. However, such a ceiling is not present in the Payment of Gratuity Act. At the time when the petitioner retired in 1984, the maximum gratuity payable to an employee was 20 months salary. We see no reason why the gratuity payable to the Petitioner should not be paid in accordance with the Payment of Gratuity Act.

9. The reliance placed by Mr. Cama on the judgments in the cases of Jain Ink (supra) and the State of Uttar Pradesh (supra) is misplaced. In the case of Jain Ink (supra), the Apex Court was considering the effect of a non obstante clause contained in two or more laws operating in the same field and the effect if they operate in two different spheres though there may be some amount of overlap. The Apex Court was considering the provisions of the Delhi Rent Control Act and the Public

Premises (Eviction of Unauthorised Occupants) Act. The Apex Court held that the Public Premises (Eviction of Unauthorised Occupants) Act as compared to the Rent Control Act had a broader spectrum and that the Public Premises (Eviction of Unauthorised Occupants) Act being a special Act overrides the provisions of the Rent Control Act, especially since it was subsequent to the. Rent Control Act. They also considered the provisions of the Slum Areas (Improvement and Clearance) Act, 1956 in juxtaposition with the Public Premises (Eviction of Unauthorised Occupants) Act and held that the Public Premises (Eviction of Unauthorised Occupants) Act overrides the Slum Areas (Improvement and Clearance) Act. In the present case, the Payment of Gratuity Act is a special legislation for the payment of gratuity to employees working in certain establishments whereas the Regulations framed under the ONGC Act operate qua the employees of the ONGC. A harmonious construction and interpretation of the Payment of Gratuity Act and the Regulations leads us to the inevitable conclusion that the former will prevail. The Payment of Gratuity Act is a later enactment specially enacted for the payment of gratuity in establishments mentioned in Section 1 and, therefore, that Act would prevail over the regulations so far as the payment of gratuity is concerned. In the case of State of Uttar Pradesh (supra), the Apex Court considered whether the Rules framed under a statute were to be treated for all purposes of construction or obligation exactly as if they were in the Act and whether they were to be given the same effect as if contained in the Act. There is no doubt that the Regulations would have a statutory force of law. However, this does not mean that the Regulations would automatically prevail over the provisions of the Payment of Gratuity Act.

10. Therefore, the gratuity payable to the Petitioner would have to be calculated on the basis that he is entitled to gratuity under the Payment of Gratuity Act and, ought to have been paid without any deductions as held in the case of V.U. Warriar (supra). In fact this judgment dealt with the same Regulations and it has been held that the legal position is no more *res integra* that pension and gratuity have become valuable rights and property in the hands of employees on their retirement and payment of the same cannot be withheld even if the employee has remained in unauthorised occupation of the employer's accommodation and has become liable to pay damages under the allotment rules for every day. The Division Bench of this Court relied on the judgments in the cases of R. Kapur v. Director of Inspection (Painting and Publication), Income Tax and Anr. and Gorakhpur University and Ors. v. Shitla Prasad Nagendra and Ors. 2001 III CLR 262 and came to the conclusion that it is impermissible to deduct or set off any amount against the gratuity payable to an employee. However, in the present case, by his letter dated March 25, 1985, the Petitioner had requested permission to continue in occupation of the residential accommodation allotted to him and had permitted the ONGC to recover from his gratuity, rent for the said premises. The employee has continued to remain in unauthorised occupation of the premises for over a period of six years. In fact, he had sought permission to extend his stay in the premises from time to time. In these circumstances, the judgment in V.U. Warriar's case (supra) is clearly distinguishable and we have no manner of doubt that the rent which is charged to the Petitioner for occupying the premises must be deducted from his gratuity, in the facts of the present case. However, the rent deducted will not be the penal rent but the rent which employees pay while in authorised occupation of the residential accommodation.

11. In respect of the pro-rata pension, it was submitted on behalf of the Petitioner by Mr. Naidu that the petitioner was entitled to pension while in employment of the Institute of Sugarcane Research,

Lucknow and that since he had exercised his option to join the pension scheme of the ONGC, his services rendered with the Institute of Sugarcane Research under the Central Government would have to be considered as pensionable service. He submits that under Rule 37 of the Central Civil Service (Pension) Rules direct Respondent Nos. 1 and 2 to pay pro-rata pension after he retired from service from the date he would have normally superannuated had he continued in the Government service. He submits that despite these provisions of law the Central Government that is, Respondent Nos. 1 and 2, have not bothered to pay pension to the Petitioner.

12. This position was not disputed by the learned counsel appearing for Respondent Nos. 1 and 2. Therefore, the Petitioner would be entitled to pro-rata pension on his superannuation from the ONGC on December 31, 1984. Mr. Naidu has also submitted that the Petitioner is entitled to interest on the amount due and payable to him. However, we are not inclined to award the Petitioner any interest in view of the fact, we have directed that penal rent shall not be levied on the Petitioner.

13. In the result, the Petitioner is entitled to gratuity as payable under the Payment of Gratuity Act. However, the amount payable towards rent may be deducted from his gratuity in view of the letter of March 25, 1985 from the Petitioner permitting such a deduction. The Petitioner shall also be entitled to pro-rata pension to be paid by Respondent Nos. 1 and 2. All the dues of the Petitioner shall be paid to him within eight weeks from today.

14. Writ petition is disposed of accordingly. Parties to act on an ordinary copy of this order duly authenticated by the Court Associate.