

CASE NO.:
Appeal (civil) 5956-5958 of 1999

PETITIONER:
E I D PARRY (I) LIMITED

Vs.

RESPONDENT:
G. OMKAR MURTHY & ORS.

DATE OF JUDGMENT: 27/03/2001

BENCH:
S. Rajendra Babu & S.N. Variava

JUDGMENT:

J U D G M E N T
RAJENDRA BABU, J. :
L...I...T.....T.....T.....T.....T.....T.....T...J

In these cases the respondents-employees were in the employment of the appellant between the years 1958 and 1984. On October 1, 1984 voluntary retirement scheme was introduced and the respondents availed of that benefit and left the services after obtaining the terminal benefits as provided under the Payment of Gratuity Act, 1972 (hereinafter referred to as the Central Act]. Thereafter petitions were filed under Section 44 of the Andhra Pradesh Shops and Establishments Act, 1966 (hereinafter referred to as the State Act] claiming the difference between the gratuity received by them and the gratuity payable under Section 40 of the State Act. Before the Authority under the State Act, three objections were raised that (i) there has been inordinate delay in preferring the claim; (ii) for payment of gratuity the Central Act prevails over the State Act, and (iii) the question whether the gratuity payable under the Central Act is more favourable than the State Act could not be examined by the trial court concerned. The trial court, however, gave relief to the workmen. The appellate authority dismissed all the three appeals. Revision petitions filed before the High Court also stood dismissed. Hence these appeals by special leave.

Four contentions are put forth before us, namely, that

(i) The Central Act prevails over the State Act by virtue of Article 254 of the Constitution and Section 40(3) is invalid and the claims are unsustainable;

(ii) Section 40(3) of the State Act stood repealed on the coming into force of the Andhra Pradesh Shops and Establishments Act, 1988 and gratuity became payable under Section 47(5) of the State Act where payment of gratuity is not payable under the Central Act;

(iii) Section 14 of the Central Act overrides other enactments in relation to gratuity, and

(iv) The respondents have been paid gratuity under the Central Act for the period covered and for the balance period of service gratuity is paid under the prevailing trust scheme.

At the relevant time when the respondents voluntarily retired from service the definition of employee under Section 2(e) of the Central Act read as not to include employee whose wages exceeded Rs. 1,000/- per mensem while the respondents-employees were all getting wages more than Rs. 1,600/- per mensem and, therefore, the Central Act could not be applied. If that is so, it is certainly permissible for the respondents to have made an application for payment of gratuity under Section 40(3) of the State Act. Further the scheme of the Central Act would indicate that it would not be applicable in cases where the State Act is more beneficial than the Central Act. In this case, the finding is that the State Act is more beneficial than the Central Act. Therefore, the contentions sought to be advanced on behalf of the appellant as to repugnancy or otherwise of the State Act would not arise at all. If both the enactments can co-exist and can operate where one Act or the other is not available then we find no difficulty in making the State Act applicable on the fact situation available as has been done in the present case. Therefore, we find that the contentions raised on behalf of the appellant are unsustainable.

Shri Narayan B. Shetye, the learned Senior Advocate appearing for the appellant, submitted that the Central Act is a complete code containing detailed provisions and creates right of payment of gratuity and, therefore, the Central Act should prevail over the State Act. Reliance has been placed on the decision of this Court in *State of Punjab v. Labour Court, Jullundur & Ors.*, 1980 (1) SCR 953. In that case the issue before the Court was whether for payment of gratuity an application could be made under Section 33-C(2) of the Industrial Disputes Act, 1947, and it was held that such an application could not be filed under the said Act. Therefore, this decision cannot be of any assistance to the appellant inasmuch as the question before us is whether the Central Act or the State Act would apply for payment of gratuity.

The decision in *M.S.R. Murthy v. Arva Somayajula Yagneswara Chenulu*, 1985 LAB I.C. 189, also is of no use to the appellant inasmuch as the State Act is held not to operate to the extent the Central Act prevails. In the present case, on facts, it is found that the Central Act is not applicable.

Therefore, we find no substance in any of the arguments advanced by the appellant. The appeals, therefore, stand dismissed. No costs.