

CASE NO.:
Writ Petition (civil) 162 of 1999

PETITIONER:
SHITLA SHARAN SRIVASTAVA & ORS.

Vs.

RESPONDENT:
GOVERNMENT OF INDIA & ORS.

DATE OF JUDGMENT: 25/07/2001

BENCH:
S. Rajendra Babu & Shivaraj V. Patil

JUDGMENT:

With
WRIT PETITION (C)NO. 138 of 2001

J U D G M E N T

Shivaraj V. Patil J.

Petitioners in the first writ petition are the individual pensioners and the petitioners in the second writ petition are associations representing the pensioners. Facts giving rise to the filing of the writ petitions and the questions of law raised are similar.

The petitioners in these writ petitions have sought for a declaration that the employees of the State Bank of India are entitled to enhanced gratuity of Rs. 2.50 lakhs with effect from 1.4.1995 and Rs. 3.50 lakhs with effect from 1.1.1996, and for direction to the respondent-State Bank of India to give enhanced gratuity amount to the retired employees with interest.

The basis for their claim is the recommendation of the 5th Pay Commission, the speech made by Union Finance Minister while presenting the Central Government Budget for the year 1997-98 and the Central Government and other several Government sector undertakings giving revised ceiling on gratuity with effect from 1.4.1995 and 1.1.1996. The claim for payment of enhanced gratuity amount is made by the employees who retired prior to 24.9.1997. The respondents contested the claim of the petitioners stating that the petitioners were entitled to payment of gratuity as provided under the Payment of Gratuity Act, 1972 (for short 'the Act'). Prior to 24.9.1997, the ceiling on maximum amount of gratuity payable under the Act was Rs. 1 lakh; the question of enhancing this ceiling to Rs. 2.50 lakhs was considered and decided to amend the Act accordingly. The Payment of Gratuity (Amendment) Bill, 1997 was introduced in the Rajya Sabha on 24.7.1997; since passing of the bill was taking time, in the interest of workers a Presidential Ordinance was promulgated and the ceiling on maximum amount of gratuity was enhanced from Rs. 1 lakh to 2.5 lakhs with effect from 24.9.1997. However, the Standing Committee of Parliament on Labour and Welfare after examining the provisions of the said Bill and Ordinance recommended that the ceiling limit on gratuity should be raised

from Rs. 1 lakh to Rs. 3.5 lakhs. Accepting the said recommendation, the Payment of Gratuity (Amendment) Act, 1998 was passed by the Parliament which was made effective from 24.9.1997 and that the Act does not provide for giving effect from the date prior to 24.9.1997. Government servants and industrial workers are governed by different set of rules. Further even the rules of different undertakings governing service conditions may be / are different. The recommendations of the 5th Pay Commission are applicable to Government servants only and not to the industrial workers including the petitioners who were the bank employees. Under Section 4(5) of the Act, there is no bar or prohibition for an employee to receive better terms of gratuity under any award or agreement or contract with the employer. Employees in Government service and even among the employees of different Government undertakings have varying financial advantages or other service conditions. Some may be more advantageous in one undertaking, the other conditions may be more advantageous in other undertakings. All the employees of the respondent-Bank who have retired before 24.9.1997 have been paid and have accepted the gratuity in terms of the Act. The answering respondent-Bank has also framed a scheme for compassionate gratuity which may be higher than that is payable under the Act. The officers who are governed by the pension rules like the petitioners are paid gratuity only in terms of the Act and hence the ceiling and effective date of revision in gratuity has to be only as per the Act as amended from time to time. Meeting the averment of the petitioners that the employees of Reserve Bank of India (RBI) / IDBI are getting enhanced gratuity, it is stated that the employees of RBI/IDBI are governed by different set of service rules. The employees of RBI are entitled to either pension or Contributory Provident Fund. In addition, gratuity is payable in terms of RBI Gratuity Fund Rules. However, the answering respondent-Bank, being an independent statutory body, has its own rules. Its employees are entitled for the following benefits at the time of retirement :-

- a) Contributory Provident Fund;
- b) Pension; and
- (c) Gratuity, subject to maximum prescribed under the Act. It is also stated that the service rules in force in one organization, especially statutory bodies, cannot be applied mathematically to other organizations / statutory bodies. Each organization has its own set of rules considering the nature of work / business performance by it and the staff strength, both qualitatively and quantitatively. Hence, relying upon circulars of other organizations is of no help to the petitioners.

The following contentions were urged before us on behalf of the petitioners:-

(1) The Central Government and other undertakings such as RBI / IDBI have given benefit of enhanced ceiling limit of gratuity to their employees. Hence the respondent-Bank cannot take a different stand and discriminate its employees in the matter of payment of gratuity.

(2) Having regard to the 5th Pay Commission recommendations and the speech of the Union Finance Minister made while presenting Union Budget for the year 1997-98, the respondent-Bank should have given the benefit of enhanced gratuity to the petitioners even though they had retired prior to 24.9.1997 as was done in respect of Central Government Employees and other Government undertakings to maintain uniformity.

(3) The respondent-Bank is in profit and even under scheme in respect of payment of compassionate gratuity, the Bank is giving Rs. 2.5 lakhs with effect from 1.4.1995 and Rs. 3.5 lakhs with effect from 1.1.1996. Hence, the gratuity under the Act could have been paid keeping the ceiling at Rs. 2.5 lakhs with effect from 1.4.1995 and Rs. 3.5 lakhs with effect from 1.1.1996.

(4) So far petitioner no. 1 in the first writ petition is concerned, the respondent-Bank itself has worked out a gratuity amount at Rs. 3,26,349/- and at least that amount should have been paid.

On the other hand, for the respondents, submissions were made supporting the stand of the Bank pointing out that the petitioners were retired prior to 24.9.1997. Sub-section 3 of Section 4 of the Act provided that the amount of gratuity payable to an employee shall not exceed Rs. 1 lakh. By the Amendment Act, 1998, the ceiling limit was raised to Rs. 3.50 lakhs to be effective from 24.9.1997. Since the petitioners had retired prior to the said date, were not entitled to the enhanced gratuity limit. The 5th Pay Commission recommendations and the speech of Finance Minister made while presenting the Budget for the year 1997-98 and the circulars or memorandums issued by the Central Government or other Government undertakings giving benefit of enhanced ceiling limit of gratuity amount either from 1.4.1995 or from 1.1.1996 as the case may be, are neither binding on the respondent-Bank nor they can be applied to the petitioners who have retired prior to 24.9.1997.

It is not disputed that the claim made in these petitions is in respect of the employees who retired prior to 24.9.1997. The respondent-Bank has its own service rules / schemes governing its employees. The 5th Pay Commission recommendations are in relation to the Central Government employees. A mere speech made by the Finance Minister without taking further steps to give the benefit of enhanced ceiling limit of gratuity amount specifically in the case of the respondent-Bank is of no help to the petitioners. The service rules governing employees of RBI/IDBI and Central Government employees are different. The Act was amended in 1998 fixing the ceiling of payment of gratuity at Rs. 3.5 lakhs effective from 24.9.1997. Assuming that the respondent-Bank had made profit, the claims of the petitioners cannot be allowed unless there is a sustainable foundation for such a claim. The respondent-Bank has pointed out that the officers of the Bank are governed by the pension rules and are paid gratuity, only in terms of the Act while the compassionate gratuity is a separate scheme to provide succour to the bereaved families of the officers who die in harness and the effective date of revision is fixed by the Executive Committee of the Central Board at Rs. 1 lakh with effect from 1.1.1986, Rs. 2.5 lakhs with effect from 1.4.1995 and Rs. 3.5 lakhs with effect from 1.1.1996. The compassionate gratuity, as stated above, is different from the gratuity amount payable under the Act. Office memorandum dated 27.10.1997 relied upon by the petitioners categorically provides that those orders apply to Central Government employees governed by CCS (Pension) Rules, 1972. Further, the 5th Pay Commission recommendations are applicable to Central Government employees only and are not made applicable to the employees of the respondent-Bank. Thus looking to the various aspects, we conclude that these petitions are devoid of merit, hence they are dismissed. No order as to costs.

.....J.

[S. Rajendra Babu]

.....J.

[Shivaraj V. Patil]

New Delhi;

July 25, 2001.

JUDIS