

CASE NO.:
Appeal (civil) 1289 of 2007

PETITIONER:
Life Insurance Corporation of India and others

RESPONDENT:
Retired L.I.C. Officers Association and others

DATE OF JUDGMENT: 12/02/2008

BENCH:
S.B. SINHA & HARJIT SINGH BEDI

JUDGMENT:
JUDGMENT

CIVIL APPEAL NO. 1289 OF 2007

S.B. SINHA, J.

1. Jurisdiction of the Chairman of the Life Insurance Corporation of India (Corporation) to issue instructions in terms of Regulation 51 of the Life Insurance Corporation of India Class-I Officers (Revision of Terms and Conditions of Service) Instructions, 1996 is in question in this appeal which arises out of a judgment and order dated 29th September, 1995 passed by a Division Bench of the Kerala High Court in Writ Appeal No. 32 of 2004.

2. We may notice only the admitted facts herein.

Respondent No.1 is an Association of officers who have retired from the services of the appellant-Corporation which is a statutory authority constituted and incorporated under the Life Insurance Corporation Act, 1956.

During the period of 1st August, 1992 and 31st July, 1994 a revision of scales of pay of the offices and employees of the Corporation took place. Different cut off dates were fixed for grant of different nature of allowances as also pay by the Chairman of the Corporation in purported exercise of his power under Regulation 51 of the Regulations. Whereas 1st April, 1993 was the cut off date for revision of pay; 1st August, 1994 was fixed as the cut off date for the purpose of payment of gratuity on the basis of revised pay. However, so far as those employees who had retired prior to 1st August, 1994 are concerned, they were directed to be entitled to reduce gratuity based on the reduced scale of pay with effect from 1st April, 1993 only. The arrears of pay were directed to be paid only w.e.f. 1st April, 1993.

3. Indisputably, whereas the Gujarat and Kerala High Court upheld the validity of the instructions issued by the Chairman of the appellant-Corporation, the Karnakata High Court took a different view.

4. The claim of Respondent No.1 was allowed in part by a learned Single Judge of the High Court by his order dated 8th July, 2003 holding :-

"A reading of Ext.P.3 (instructions issued by the Chairman for supplementary of Revisionist in respect of class I officers and claimed IV will definitely go to show that it cannot operate as far as the claims for gratuity is concerned. It is admitted that at least certain officers, represented by the petitioner Association were deemed as having revised salary from April, 1993 onwards. In that view, at the time of retirement, they were

deemed as getting a salary which alone could have been taken notice of for computing gratuity, if Regulation No.77 has any application. It is definite that the restriction in Ext. P.3 and benevolence in Regulation No.77 could not have co-existed because the Corporation is offering gratuity at the rate less than the amount an employee had notionally drawn at the time of their respective retirement. It is also pertinent to note that when powers were conferred on the Chairman under Regulation No.51(2), specific reference was there about the incidents of DA and other allowances. There is no reference to any alteration permissible in respect of gratuity. It leads to the position that the regulation did not permit the Chairman to disturb criterion for gratuity payment by exercise of powers under Regulation No.51 (2)."

It was further held :-

"There was no power on the part of the Bank Management in that case to disturb the settlement, and the gratuity was to be paid on the basis of last drawn pay. Likewise, in the present case, it would not have been permissible for the Chairman to unsettle the benefits that had been spoken to by Regulation No.77 while issuing Ext.P.3 order."

5. A Division Bench of the said High Court on an intra court appeal preferred by the appellants herein upheld the said findings.

6. Mr. Patwalia, learned senior counsel appearing on behalf of the appellants, in support of this appeal, submitted :-

i) Pension and Gratuity having two different concepts, the High Court committed a serious error in holding that the Chairman of the Corporation had no jurisdiction to issue the instructions.

ii) Sub-regulation (2) of Regulation 51 being of wide amplitude, the jurisdiction of the Chairman to fix cut off dates was not only applicable in respect of pay and allowances covered by Schedule II of the Regulations but also included "gratuity" as envisaged under Regulation 77, as the quantum thereof has a direct nexus with the payment of salary.

iii) An employer, subject to the applicability of the doctrine of reasonableness and non-arbitrariness, can fix a cut off date for the implementation of the revised pay and allowances.

iv) The amount of gratuity payable has to be calculated upon the permanent pay and once the gratuity has been paid, no further amount is payable only because the salary has been revised.

7. Mr. P.S. Narasimha, learned counsel appearing on behalf of the respondents, on the other hand, contended that the power of the Chairman of the Corporation to issue instructions being limited to Chapter IV of the Regulations, it has no application in relation to the payment of gratuity as provided for in Regulation 77 thereof.

8. Appellant-Corporation in exercise of its powers conferred upon it by clauses (b) and (bb) of sub-section (2) of Section 49 of the Life Insurance Corporation Act, 1956, with the previous approval of the Central Government, made Regulations known as "Life Insurance Corporation of India (Staff) Regulations, 1960 (in short 'the Regulations')". Chapter IV of the said Regulations deal with "Pay and Allowances". Regulation 51 thereof reads as under :-

"Scales of Pay :

51.(1) The scales of pay, dearness allowance and other allowances (wherever payable) applicable to the employees of the Corporation in India shall be as prescribed in Schedule II hereto.

(1A) The basic pay and other allowance admissible from time to time to an employee belonging to Class II shall be regulated in accordance with the provisions contained in Schedule III.

(2) Whereas the scales of pay, dearness allowance or other allowances applicable to the employees of the Corporation or any class of them are revised in pursuance of any award, agreement or settlement, or otherwise, the method of fixation of pay in the new scales, the eligibility for the benefit of revision, the date from which the revision shall apply, and other matters connected therewith or incidental thereto shall be regulated by instructions issued by the Chairman in this behalf."

(Emphasis supplied)

9. Chapter VII of the said Regulations deals with Miscellaneous Matters. Regulation 76 deals with Provident Fund. Regulation 77 deals with Gratuity. Regulation 78 deals with Superannuation Fund. Regulation 79 deals with Travelling Allowance Rules. There are other provisions also dealing with some other benefits which are to be granted to the employees of the Corporation.

10. Regulation 51 indisputably confers power upon the Chairman to fix a date from which the revision in pay shall apply. It applies to pay, dearness allowance and other allowances applicable to the employees of the Corporation. The question, as would appear from the discussions made hereinafter, is as to whether the expression "the date from which the revisions shall apply, and other matters connected therewith or incidental thereto", would also include the matter relating to payment of gratuity which is otherwise covered by Regulation 77 thereof.

11. Although Mr. Patwalia has relied upon a large number of decisions of this Court for the purpose of making a distinction between the terms "pension" and "gratuity" as also the jurisdiction of the employer to fix a cut off date, it may not be necessary to deal with all of them.

12. We may, however, note some precedents operating in the field. Recently in H.E.C. Voluntary Retired Employees Welfare Society and another vs Heavy Engineering Corporation Ltd. and others : (2006) 3 SCC 708 this Court observed :-

"24. In State of A.P. v. A.P. Pensioners Assn. this Court categorically held that the financial implication is a relevant criterion for the State Government to determine as to what benefits can be granted pursuant to or in furtherance of the recommendations of a Pay Revision Committee. A' fortiori while taking that factor into account, an employer indisputably would also take into consideration the number of employees to whom such benefit can be extended."

{See also U.P. Rahavendra Acharya and others vs. State of Karnataka and others [(2006) 9 SCC 630]}

13. It is also interesting to notice a decision of this Court in State of Andhra Pradesh and another vs. A.P. Pensioners' Association and others : (2005) 13 SCC 161 wherein it was opined :-

"28. Computation of retirement gratuity payable to a

government servant is, therefore, required to be done on the basis of the formula laid down therein. A bare perusal of the aforementioned Rule clearly shows that for the purpose of computation either 1/4th of the emoluments for each completed six-monthly period of service, or 3/16th of emoluments for each completed six-monthly period of service, is to be taken into consideration. Such emoluments necessarily were payable either immediately before the date of retirement or the date of death. On 1-4-1999, in view of the clear expressions contained in the aforementioned GO No. 114, those employees who retired between the period 1-7-1998 and 1-4-1999 would have received the actual benefit calculated in terms of the said Rule. The submission of Mr Lalit to the effect that they became entitled to enhanced pay and, therefore, to enhanced gratuity from 1-7-1998 is not wholly correct. They became entitled thereto but only notionally for the purpose of calculation of such recurring liability of the State which became payable with effect from 1-4-1999. The High Court has heavily relied upon the purported legal fiction created in the said Rule to the effect that the same would come into force with effect from 1-7-1998. The legal fiction undoubtedly is to be construed in such a manner so as to enable a person, for whose benefit such legal fiction has been created, to obtain all consequences flowing therefrom."

It was further observed :-

"30. The case at hand indeed poses a different problem. Although like Gurupad Khandappa Magdum a notional revision of pay was to be considered as if the same took effect from 1-7-1998, but the Rules went further and stated that the actual monetary benefit thereof shall be given with effect from 1-4-1999. The Rules, therefore, not only create a legal fiction but also provide the limitations in operation thereof. If the effect of the legal fiction is extended in the manner suggested by Mr Lalit, clause (4) (sic Rule 4) of the Rules will become otiose. In other words, all the consequences ordinarily flowing from a rule would be given effect to if the rule otherwise does not limit the operation thereof. If the rule itself provides a limitation on its operation, the consequences flowing from the legal fiction have to be understood in the light of the limitations prescribed. Thus, it is not possible to construe the legal fiction as simply as suggested by Mr Lalit."

[See also State of Tamil Nadu vs. Seshachalam : 2007 (11) SCALE 239].

14. The Regulations are subordinate legislation. Chairman of the Corporation is a statutory authority. Power to fix a cut off date has been conferred upon him by way of statutory provision. The same requires a strict interpretation. Chapter IV of Regulations envisages scales of pay. It also talks of dearness allowance and other allowances as envisaged under the IIInd Schedule thereof. Clause (2) of the said Regulation, as indicated hereinbefore, confers jurisdiction on the Chairman of the Corporation to regulate the same as also other matters connected therewith or incidental thereof by issuance of instructions.

15. It may be true, as was contended by Mr. Patwalia, that the cut off dates were fixed upon holding negotiations with the Unions.

However, the jurisdiction of the Chairman to fix a cut off date is in question in terms of sub-regulation (2) of Regulation 51. Instructions have been issued under the said provision alone. Instructions not only cover the scales of pay from a particular date but different dates have been fixed for

different types of allowances. We have noticed hereinbefore that whereas dearness allowance and some other allowances, as for instance 'house rent allowance' and 'city compensatory allowance' are envisaged by IInd Schedule appended to the said Regulations, the other allowances, and for instance, the 'Provident Fund' and 'Gratuity' have nothing to do therewith. Provident Fund and Gratuity are ordinarily governed by the Acts enacted by the Parliament, subject to the conditions contained therein.

16. Regulation 77 of the Regulations, specifies the employees who would be entitled to payment of gratuity. Clause (2) of Regulation 77 provides for the manner in which the amount of gratuity shall be payable. Neither the payment of Provident Fund nor the payment of Gratuity is thus covered by the provisions contained in Chapter IV of the Regulations.

19. Clause (1) of Regulation 51 postulates grant of pay, dearness allowance and other allowances in the manner as prescribed in the IInd Schedule. The basic pay and other allowances to Class II employees are regulated under the provisions contained in Schedule III thereof. Revision of pay, dearness allowance and other allowances applicable to the employees of the Corporation *stricto sensu* are not covered by clause (2) of Regulation 51. It merely states that when a revision takes place pursuant to or in furtherance of any award, agreement or settlement or otherwise, the Chairman of the Corporation will have the jurisdiction in regard to :-

- a) the method of fixation of pay in the new scales ;
- b) the eligibility for the benefit of revision ; and
- c) the date from which the revision shall apply.

20. Method of fixation, eligibility for the benefit of revision and the date from which the revisions shall apply are thus, the only areas within which the Chairman can exercise jurisdiction. The effect of revision of pay scales on other spheres and which are otherwise governed by another statute or other provisions of the said Regulations would not come within the purview thereof.

21. The terminology used "and other matters connected therewith or incidental thereto" must, therefore, be held to have a direct nexus with any one of the aforementioned three elements. The same has nothing to do with the construction of any other provision of the Regulations. The words "incidental to" cannot be interpreted too broadly. It cannot be read independently of the main provision. It cannot serve some other purpose which is not covered by Regulation 51 of the Regulations. It cannot be permitted to encroach upon an area which is not within the jurisdiction of the Chairman of the Corporation.

22. It is one thing to say that the court while exercising its jurisdiction would be entitled to exercise such incidental power for determination of the principal issue but it is another thing to say that a statutory authority in such matters would be held to have such power which is beyond the scope and purport of the principal provisions.

23 The word "Incidental" has been defined in Advanced Law Lexicon 3rd (2005) Edition, Book 2 at 2275 to mean :-

"According to Stroud's Judicial Dictionary, a thing is said to be incidental to another when it appertains to the principal thing. According to the ordinary Dictionary meaning, it signifies a subordinate action. *Hukumchand Jute Mills Ltd. vs. Labour Appellate Tribunal*, AIR 1958 Cal. 68, 70. (*Industrial Disputes Act (14 of 1917)*, S. 10(4)].

The word "incidental" does not imply any casual or fortuitous connection. In a legal sense as applied to powers, it means a power which is subsidiary to that which has been expressed, and of an instrumental nature in relation thereto, which is both necessary and proper for the carrying into execution of the main power which has

been expressly conferred. (Dunichand and Co. vs. Narain Das and Co. (1947) 17 Comp. Cas. 195 (FB)."

24. Each word employed in a statute must take colour from the purport and object for which it is used. The principle of purposive interpretation, therefore, should be taken recourse to.

25. Revision of scales of pay as also other allowances is technical in nature. When a benefit is extended to a group of employees the effect of such benefit, if otherwise comes within the purview thereof must be held to be applicable to other groups of employees also. An employee is entitled to gratuity. It is not a bounty. It is payable on successful tenure of service. Regulation 77 provides as to how the amount of gratuity is to be calculated. Regulation 51 provides for a rule of measurement. Only because it employed the word "permanent basic pay", the same will not itself lead to the conclusion that once an employee has retired, he would not be entitled to any revision of the amount of gratuity.

26. The Chairman of the Corporation has himself given a retrospective effect to revision in scales of pay. Such a retrospective effect has also been given so as to benefit a class of employees. The employees, irrespective of the fact whether they had superannuated or not, were given the benefit of arrears of pay from 1st August, 1993. By reason of grant of such benefit both to serving employees as also the superannuated employees, both the class of employees became entitled thereto as of right. If by reason thereof, even a retired employee, as on the date of retirement, became entitled to the benefit of the revised scale of pay, the same for all intent and purpose must be taken to be the permanent basic pay, apart from other allowances, if any, which are required to be taken into consideration for the purpose of computation of the amount of gratuity.

27. In Indian Bank and another vs. N. Venkatramani : 2007 (10) SCALE 475 : this Court gave effect to the beneficial provision in the light of the rule of measurement, stating :-

"13. It may be true that various provisions of the Regulations as for example Regulations 16, 17, 19, 23, etc. provided for qualifying service. Regulation 18 is not controlled by any of the said provisions. It does not brook any restrictive interpretation. It only provides for a rule of measurement. An employee, as noticed hereinbefore, was entitled to pension provided he has completed the specified period of service. How such a period of service would be computed is a matter which is governed by the statute. It is one thing to say that a statute provides for completion of fifteen years of minimum service, but if a provision provides for measurement of the period, the same cannot be lost sight of. Provision of the Regulations which are beneficial in nature, in our opinion, should be construed liberally."

28. Contention of Mr. Patwalia that the Chairman of the Corporation having power even to fix the cut off dates for different purposes, the jurisdiction exercised by him to do so for payment of gratuity, which has a direct nexus with the revised pay of scale cannot be accepted. Once he fixes a cut off date for the purpose of giving effect to the agreement vis-à-vis the payment of arrears in terms thereof, he cannot exercise further jurisdiction in respect of a matter which is not controlled by Chapter IV but is controlled by other provisions of statutes and Parliament Acts governing the field. A delegatee must exercise its powers within the four-corners of the statute. The power of a sub-delegatee is more restricted. A delegatee cannot act in violation of a statute. A sub-delegatee cannot exercise any power which is not meant to be conferred upon him by reason of statutory provisions. It must conform not only to the provisions of the Regulations and the Act but also other Parliamentary Acts. [See Kurmanchal Inst. of

Degree and Diploma and Ors. vs. Chancellor, M.J.P. Rohilkhand Univ. and Ors. (2007) 6 SCC 35, Kerala Samsthana Chethu Thozhilali Union vs. State of Kerala and Ors. (2006) 4 SCC 327 Bombay Dyeing & Mfg. Co. Ltd. vs. Bombay Environmental Action Group & Ors. (2006) 3 SCC 434, State of Kerala and Ors. vs. Unni and Anr (2007) 2 SCC 365, State of Orissa and another vs. M/s. Chakobhai Ghelabhai and Company : 1961 (1) SCR 719 and M/s. Shroff and Co. vs. Municipal Corporation of Greater Bombay and another : (1989) Supp. 1 SCC 347].

28. We, however, do not intend to lay down the law that the expression "incidental" or "connected" would be matters which are of a casual nature only, but, we reiterate that the same must have something to do with the nature of power granted to the authority concerned.

29. Unfortunately before the Gujarat High Court and the Karanataka High Court, both the counsels have missed in bringing to the Court's notice this aspect of the matter.

30. We, therefore, do not find any merit in this appeal which is accordingly dismissed with costs. Counsel's fee assessed at Rs.25,000/-.