

CASE NO.:

Appeal (civil) 3715-3716 of 2001
Appeal (civil) 3717 of 2001
Appeal (civil) 3718 of 2001
Writ Petition (civil) 499 of 2000

PETITIONER:

DTC RETIRED EMPLOYEES' ASSOCIATION & ORS., ETC.ETC. ..

Vs.

RESPONDENT:

DELHI TRANSPORT CORPORATION, ETC

.. RESPONDENTS

DATE OF JUDGMENT: 08/05/2001

BENCH:

S. Rajendra Babu & K.G. Balakrishnan

JUDGMENT:

K.G. BALAKRISHNAN, J.

Leave granted.

L...I...T.....T.....T.....T.....T.....T.....T...J

In all these appeals, the judgment of the Division Bench of the Delhi High Court passed on 16.3.2000 in L.P.A. Nos. 294/97, 297/97 and 13/99, is challenged by DTC Retired Employees' Association and others. Writ petition No.499 of 2000 is filed by a separate group of retired employees of the Delhi Transport Corporation.

The Delhi Transport Corporation (for short, "DTC") introduced a Pension Scheme on 27.11.1992 for its retired employees. The Central Govt. sanctioned this scheme and it was to be operated by the Life Insurance Corporation of India on behalf of DTC. As per the scheme, all employees of DTC retiring on or after 3.8.1981 were to be covered for the purpose of pension benefit. The existing employees and those who retired on or after 3.8.1981 had to exercise their option for the Pension scheme. The retired employees opting for the Pension Scheme had to refund the employer's share of provident fund received by them under the Employees Provident Fund Act with interest thereon. Those employees, who joined the service of DTC with effect from 27.11.1992 and thereafter, had no option but to be compulsorily covered under the Pension Scheme.

It seems that because of certain financial difficulties, the Pension Scheme could not be implemented in time. The various employees associations filed writ petitions before the Delhi High Court seeking implementation of the Pension scheme. In addition, some retired employees of the DTC also filed writ petitions before the Delhi High Court praying that the Pension Scheme should be made applicable to those employees also who had retired under the Voluntary Retirement Scheme. The High Court accepted that plea and

held that the Pension Scheme be extended to them also provided they refund the employer's share of provident fund received by them under the E.P.F. Act at the time of retirement, with interest thereon. A yet another set of employees also filed a writ petition contending that while exercising their option, they were not liable to pay interest on the employer's share of provident fund. This writ petition was dismissed by the High Court.

L.P.A. No. 33 of 1998 was an appeal filed before the Delhi High Court by DTC. Along with all other connected matters, the said L.P.A. was heard and a common judgment was passed on 16.3.2000 in all the matters, including those giving rise to the present appeals. Before the Division Bench of the High Court, various questions were raised by the parties. The DTC Retired Employees Association contended that DTC was not entitled to charge interest on the amount of employer's share of provident fund which is required to be refunded by the retired employees while exercising option to avail the Pension Scheme. The Employees Association also contended that the excess amount of gratuity received by them was not liable to be returned and even if it is to be returned, they were not liable to pay interest on such gratuity. Some of the retired DTC employees had not exercised their option within the stipulated period. They contended that in view of Clause 9 of the Scheme even if they had not exercised their option, they would be deemed to have exercised their option in favour of the Scheme and thus they are entitled to get pension.

In the writ petition filed by the retired employees under Article 32 of the Constitution, it is alleged that even though the Central Govt. had approved the Pension Scheme, no steps were taken by DTC to implement the same and the DTC Workers Union had to file a writ petition before this Court seeking implementation of the Scheme and pursuant to the orders passed by this Court, the scheme was initiated, but the DTC later failed to implement the Scheme and the Life Insurance Corporation also withdrew its co-operation in implementing the Scheme. The employees who had retired and opted for pension had not collected their share of employer's provident fund and other benefits and were forced to back out and change their options for pension and later took their share of provident fund and gratuity because of the financial difficulties faced by them. It is alleged by them that though they had opted out of the Pension Scheme, they are also entitled to Pension. In the writ petition, it is prayed that the respondents may be directed to extend the benefit of Pension to the writ petitioners and other employees irrespective of the fact whether they had opted for or opted out of the Pension Scheme, on the same terms and conditions as contained therein and to direct the respondents to pay arrears of pension.

In the counter affidavit filed on behalf of DTC, it is alleged that the employees of DTC who were originally governed by the Contributory Provident Fund scheme, filed a writ petition before this Court seeking directions for introduction of Pension Scheme for its employees and an assurance was given to this Court for introduction of a scheme. It is stated that pursuant to the said assurance, the Pension Scheme was introduced on 27.11.1992, and an option was given to the employees to switch over to the

Pension Scheme. The Scheme was approved by the Central Govt. but as the same could not be implemented, the employees initiated proceedings under the Contempt of Courts Act. It is stated that meanwhile on 3.3.1993, a Voluntary Retirement Scheme was also notified. Certain writ petitions were filed by the employees before the Delhi High Court. In some of the writ petitions, the question was whether the employees having less than 20 years of service but more than 10 years of service were entitled to Pension. The High Court held that those who had less than 20 years of service but more than 10 years of service would be entitled to get pro rata pension. In another writ petition, it was held by the High Court that those employees, who opted to retire under the Voluntary Retirement Scheme would be entitled to get pension, provided they refund the employer's share of provident fund and gratuity with interest thereon. In writ petition No. 1469 of 1996, the Delhi High Court held that DTC was not entitled to charge interest on the excess amount of gratuity to be refunded by the employees, but the DTC would be entitled to charge interest on the amount of employer's share of provident fund. In another writ petition, a learned Single Judge of the High Court directed DTC to pay pension not only to those who had exercised their option within the stipulated period or within the extended period, but also to all other employees who would come forward to claim pension on the basis of their service with DTC. In writ petition No. 1292 of 1990, the High Court directed the DTC to pay pension to the writ petitioners who had not exercised their option within the prescribed period. It is further stated that DTC filed a writ appeal against these judgments and the Division Bench held that the employees who retired between 3.8.1981 and 27.11.1992 and had not exercised their option were not entitled to pension. However, it was held that the retired employees having less than 20 years qualifying service but more than 10 years were entitled to pension, even if they had opted for voluntary retirement. It was held that DTC was not entitled to charge interest on the excess amount of gratuity, though interest could be charged on the amount of employer's share of provident fund received by the retired employees. Those employees who resigned from service after completing the qualifying period of service would also be entitled to get pension. It was held that those who had retired after 3.8.1981 but before 27.11.1992, and had not exercised their option were not entitled to get pension. Therefore, it is contended that the prayer in the writ petition to extend the benefit of pension to the petitioners therein and other employees irrespective of the fact whether they had exercised their option initially on the terms and conditions as contained therein, is without any basis.

We heard the learned counsel for the appellants and the writ petitioners as also learned counsel for the respondents. Mainly two contentions have been raised by the counsel for the appellants. The first contention of the counsel for the appellants is that the employees of DTC who retired on or after 3.8.1981 are entitled to get pension under the Scheme irrespective of the fact whether they had exercised their option or not. It was argued by senior counsel, Shri P.P. Rao that by virtue of Clause 9 of the Pension Scheme notified on 27.11.1992, those who have not exercised their option in favour of the Scheme would be deemed to have opted for the Pension Scheme benefits and therefore they are entitled to get pension.

The main features of the Pension Scheme as is evident from the office order No. 16 dated 27.11.1992 are as follows.

Even though the Scheme itself was launched on 27.11.1992, it would take effect from 3.8.1981. By Clause 3 of the Scheme all existing employees as on 27.11.1992 and the employees who retired with effect from 3.8.1981 onwards have to exercise option for the Pension Scheme or the Employees Contributory Provident Fund within 30 days of the date of issue of G.O. By Clause 4, the Pension Scheme would be compulsory for all the new employees joining DTC with effect from 23.11.1992. Clause 5 says that the Scheme would be operated by LIC on behalf of DTC.

Clause 6 says that the employees who have retired on or after 3.8.1981 and the existing employees who have drawn the employer's share under E.P.F. Act partly or wholly shall refund the same with interest in case they opt for Pension Scheme.

Clause 8 says that a statement would be prepared in respect of retired employees opting for Pension Scheme and the amount to be paid/refunded would be worked out by the concerned unit wherefrom the employees retired from service.

Clause 9 on which the appellants rely reads as follows :

"If any of the employee of DTC who does not exercise any option within the prescribed period of 30 days or quits service or dies without exercising an option or whose option is incomplete or conditional or ambiguous, he shall be deemed to have opted for the Pension Scheme benefits."

Based on the above clause, it is contended by appellants' counsel that those employees who retired after 3.8.1981 shall be deemed to have exercised their option for the Scheme and the DTC should direct these retired employees to return the employer's share of provident fund with interest and that they should be brought on the roll of pensioners. Counsel for DTC, on the other hand, contended that Clause 9 has no application to the employees who had retired on or after 3.8.1981, but it is intended for employees who were on the rolls as on 27.11.1992 and were later retired or who quit the service without exercising an option.

It is to be noted that those who had retired by the time the Pension Scheme was introduced must have definitely availed of the benefit under the Provident Fund Scheme and as per the Pension Scheme they were liable to refund the employer's share of provident fund with interest thereon, if they wanted to opt for the Pension Scheme. On the contrary, some such retired employees might not have been interested in refunding the money received by them and having utilised such amount would also find it difficult to raise the funds for repayment. It cannot be assumed that they are bound by the Scheme and would automatically come under its purview. The Pension Scheme cannot be thrust upon such employees even if it may, prima facie, be beneficial to them. As regards the existing employees as on 27.11.1992, the employer could always ask them to exercise their option within a stipulated period and if they failed to exercise their option, the deeming provision can be invoked and it could be said that they are covered by the Scheme. It is also important to

note that as per Clause 4 of the Scheme, those employees who joined DTC with effect from 23.11.1992 are compulsorily covered by the Scheme. Therefore, the Division Bench is perfectly justified in holding that the employees who retired on or after 3.8.1981 but before 27.11.1992 and had not exercised their option within the stipulated period or within the extended period, are not entitled to pension under the Scheme.

The next contention urged by the appellants' counsel is that DTC was not entitled to charge interest on employer's share of provident fund received by the employees on retirement. Prior to the Pension Scheme, the employees were entitled to get benefit of the Contributory Provident Fund. These employees on retirement accepted the employer's share of provident fund. The Scheme specifically provided that those who wanted to opt for Pension should return the employer's share of provident fund with interest. However, the retired employees had utilised the money received to their advantage. Therefore, they are bound to return the same along with interest; otherwise, a section of the employees would be unduly benefited vis-à-vis other employees. Therefore, we do not think that such a clause in the Scheme is irrational or illegal. We do not find any infirmity in the findings recorded by the High Court.

The learned counsel for the appellants further contended that the direction to refund the gratuity paid to the employees who had opted for Pension Scheme is illegal and even if they had opted for Pension they are not liable to refund the gratuity already received by them. Reliance was placed on Section 4 of the Payment of Gratuity Act, 1972, relevant portion of which is to the following effect :

"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
.....
.....

(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.

....."

It was argued that in view of sub-clause (5) of Section 4, the employees can receive better terms of gratuity under any award or agreement or contract with the employer and as the provisions contained in the Payment of Gratuity Act itself contemplate better terms of gratuity or other payment than what is permissible under the Act, the present Pension Scheme could only be construed as an award or agreement for better terms. It was argued that in view of that circumstance, the appellants are not liable to refund the gratuity.

The argument advanced on behalf of the appellants is without any merit. Sub-clause (5) of Section 4 is an exception to the main section under which gratuity is payable to the employee. In all welfare legislations, the amount

payable to the employees or labourers is fixed at the minimum rate and there will not be any prohibition for the employer to give better perquisites or amounts than what is fixed under law. The employer, who is more concerned with industrial peace and better employer-employee relations, can always give benefit to the employees irrespective of any statutory minimum prescribed under law in respect of such reliefs. Therefore, the provision contained in Sub-clause (5) of Section 4 is of no assistance to the appellants.

The appellants contended that gratuity is an amount earned by the employee after long service. Therefore, the direction to refund the same is illegal.

A gratuity is essentially a retiring benefit payable to a workman which as per the Statute has been made payable on voluntary resignation as well. Gratuity is a reward for good, efficient and faithful service rendered for a considerable period. A workman gains experience during his tenure of employment. An experienced workman is capable of securing another employment with better emoluments. He can also be tempted by other employers with more lucrative salary. The exit of an experienced workman would surely be a loss for his employer. In *British Paints (India) Ltd. vs. Workmen* AIR 1966 SC 732, it was held that "a longer minimum in the case of voluntary retirement or resignation makes it probable that the workmen would stick to the company where they are working. That is why gratuity schemes usually provide for a longer minimum in the case of voluntary retirement or resignation."

In *Ahmedabad Municipal Corporation Workmen vs. Ahmedabad Municipal Corporation*, 1955 LAC 155, it was held as under :

"The fundamental principle in allowing gratuity is that it is a retirement benefit for long services, a provision for old age and the trend of the recent authorities as borne out from various awards as well as the decisions of this Tribunal is in favour of double benefit....We are, therefore, of the considered opinion that Provident Fund provides a certain measure of relief only and a portion of that consists of the employee's wages, that he or his family would ultimately receive, and that this provision in the present day conditions is wholly insufficient relief and two retirement benefits when the finances of the concern permit ought to be allowed."

The appellants were paid gratuity for their long service, but at the time of receipt of this amount, they were not entitled to get Pension. Now the appellants have opted for Pension. That is a similar relief given to them for the longer service rendered by them. The appellants cannot have the benefit of both the Pension and Gratuity. The appellants relied on a decision reported in *State Govt. Pensioners' Association & Ors. vs. State of Andhra Pradesh* 1986 (3) SCR 383 and contended for the position that the gratuity is a one-time payment and once it has been paid the transaction is completed and closed and the same cannot be reopened at a later date. It was argued that in view of that decision, the appellants cannot be asked to refund the same. That is a case where the appellants therein were Govt. employees who retired before April 1, 1978. They contended that Gratuity is a part and parcel of the pension and the same cannot be looked separately from other

pensionary reliefs and therefore they are entitled to the benefit of Gratuity "retrospectively" at the enhanced rate, as they had been paid Gratuity at the time of retirement at the then prevailing rate. This plea was not accepted and it was held that upward revision of Gratuity takes effect from the specified date with "prospective" effect only. This decision also is of no assistance to the appellants.

Yet another decision relied on by the appellants is Janpad Panchayat & Zila Panchayat Karamchari Sangh & Ors. vs. State of M.P. & Ors. 1998(8) SCC 568. This decision, though apparently seems to support the appellants' case, does not really do so. In this case, the question arose whether the employees of Panchayat and Zila Parishad were entitled to pension and gratuity. While interpreting the Madhya Pradesh Panchayat Act, 1962, it was observed that Section 75, 147 and 189 of that Act enabled the employees to get gratuity and pension subject to the previous approval of the competent authority. These observations were made in view of the specific provisions contained in the relevant Statutes. Whereas in the present case the appellants received gratuity at the time of their exit from the service, subsequently they opted for pension which had never been a part of their service conditions. It is a condition precedent that in order to get the benefit of the Pension Scheme, they have to refund the gratuity received by them. It is neither illegal nor unjust.

Learned counsel for the petitioners in the writ petition No. 499 of 2000 contended that the petitioners had initially opted for the Pension Scheme in 1992, but as they were apprehensive regarding DTC's ability to implement the Pension Scheme, they were compelled to opt out of the Pension Scheme. It is submitted that in 1995 only under the threat of contempt notice from this Court, the DTC came forward to implement the Pension Scheme, but no fresh option was given to the employees. It is also argued that DTC had not communicated to all its employees that they were going to implement the Scheme. It is also submitted that Pension is neither a bounty nor a charity. Therefore, all the retired employees should have been given the benefit of the Pension Scheme.

It is true that there was some delay in implementing the Scheme, but all the retired employees were given sufficient opportunity to exercise their option. In paragraph 9 of the counter affidavit filed on behalf of DTC it is stated that as far as the time to fill up pension option form is concerned, the letter dated 23.11.1992 conveyed by the Govt. of India, Ministry of Surface Transport, contained that the DTC shall obtain option from its employees within 30 days from the date of issue of circular. However, the DTC, in fact, extended the time twice, namely, firstly upto 15th January, 1993, and secondly upto 1st February, 1993. Therefore, the retired employees had, in fact, more than one month's time to exercise their option. We do not think that sufficient time was not given to the employees to exercise their option for the Pension Scheme. Those employees who had received the benefit of employer's provident fund scheme failed to exercise their option and thus disentitled themselves from getting the Pension benefit. The Pension Scheme was implemented on the basis of certain guidelines; it is not for the Court to interfere with the same. The Division Bench has rightly taken the view that those who had not exercised their option are not entitled to get Pension.

The appeals and the writ petition are without any merit and these are dismissed without, however, any order as to costs.

JUDIS