KATHEEJA BAI

v.

THE SUPERINTENDING ENGINEER & ORS.

May 10, 1984

[O. CHINNAPPA REDDY, A.P. SEN AND

E.S. VENKATARAMIAH, JJ.]

Tamil Nadu Electricty Board Contributory Provident Fund Regulations framed by Tamil Nadu Electricity Board under Electricity Supply Act, 1948—Regulation 37—Whether Special Contribution to be made by Electricity Board to the Contributory Provident Fund of the employees is same as Gratuity under Payment of Gratuity Act, 1972—Whether Payment of Gratuity under Payment of Gratuity Act debars payment of Special Contribution to be made under Regulation 37.

Public Interest Litigation—Letter to Judge treated writ petition.

Regulation 37 of the Tamil Nadu Electricity Board Contributory Provident Fund Regulations framed by the Tamil Nadu Electricity Board under the Electricity-Supply Act, 1948 provides that the Electricity Board shall credit to a member's provident fund account a special contribution calculated in the specified manner, in addition to the contribution credited under Regulation 11, if the Board is satisfied that the service of the member has been good efficient and faithful and the member has not been dismissed from service or the member has not been removed from service in which case the sanction of the Board had to be obtained.

The Payment of Gratuity Act, 1972 which was also applicable to the Tamil Nadu Electricity Board provided for the payment of greatiuty to employees who would retire after rendering service for a specified number of years.

The petitioner's husband retired in 1976 after serving the Tamil Nadu Electricity Board for about 34 years and died three months thereafter. The petitioner was paid her husband's subscription to the Contributory Provident Fund and interest and the Electricity Board's contribution and interest and also the gratuity under the payment of Gratuity Act, 1972. The Electricity Board did not pay the Special Contribution to be made by it to the contributory Provident Fund under Regulation 37 on the ground that the special contribution being nothing other than the payment of gratuity, they could not be asked to pay gratuity twice over, once under Payment of Gratuity Act and again under Regulation 37. The petitioner having got no relief from anywhere wrote a letter to a Judge of the Supreme Court which was treated as a writ petition.

Allowing the petition,

HELD : The Electricity Board cannot avoid payment of the special Contribution to Provident Fund under their own Provident Fund Regulations on the pretext that it is akin to or the same as Gratuity payable under the Payment of Gratuity Act. In the first place, the Board, in their Regulations, have themselves labelled the Special Contribution under Regulation 37 as a Special contribution to Provident Fund and not as Gratuity. It is not as if they were unaware of the word 'Gratuity' and what it meant since it is found that there is a reference in Regulation 5 to a Gratuity Scheme of the Tamil Nadu Government which had been adopted by the Board. The Special Contribution under Regulation 37 is part of a well thought out Provident Fund Scheme designed to benefit 'good, efficient and faithful' employees (borrowing the words from the Regulation itself) by making annual contributions in addition to the monthly contributions under Regulation 11. This is what appears from Regulation 37 itself. There is no justification for first dubbing it as a gratuity on the ground that it has some of the known characteristics of gratuity and then proceeding to deny the employees the benefit of it on the ground that the Board are paying gratuity under the Payment of Gratuity Act. If the Special Contribution has some common features with gratuity, it has also distinctive features which distinguish it from gratuity payable under the Payment of Gratuity Act. [803B-F]

In view of the finding that Special Contribution under Regulation 37 is not the same as gratuity under Payment of Gratuity Act, the argument that the provision for Special Contribution under Regulation 37 was inconsistent with the provisions of the Payment of Gratuity Act and therefore the latter should prevail to the exclusion of the former must fail. [804H ; 805A]

ORIGINAL JURISDICTION : Writ Petition No. 13009 of 1983.

(Under article 32 of the Constitution of India)

Gopal Subramaniam (A.C) for the Petitioner.

Dr. Y.S. Chitale, A.V. Rangam and Mrs. Sarla Chandra for the Respondent.

The Judgment of the Court was delivered by

CHINNAPPA REDDY, J. Smt. Katheeja Bai, is the widow of Abdul Salam who retired as a Line Inspector, Grade I, in the employment of the Tamil Nadu State Electricity Board on 31.7.76 and who unfortunately died on 15.10.76. Smt. Katheeja Bai failed to get from her late husband's employers certain amounts which she claimed were due to her husband. She knocked continuously, but in vain, at the doors of the Regional Provident Commissioner, Madras, Central Provident Commissioner, New Delhi and the Minister for Labour Government of India for several years for

redress. In sheer desperation she ultimately turned to this Court as a last resort. Unable to engage a lawyer, she addressed a letter to a learned judge of the Court setting forth her grievance. After being processed in the Registry, the letter was treated as a Writ Petition under Art 32 of the Constitution. A Rule Nisi was issued and the Tamil Nadu State Electricity Board have appeared before us through counsel. At our request Sri Gopala Subramanyam argued the case for the widow as amicus curiae. He presented the case with understanding and thoroughness and we are grateful to him, as also to Dr. Chitaley who presented the employer's case with his usual fairness.

In exercise of the powers conferred by s.79(c) of the Electricity Supply Act, 1948, the Tamil Nadu Electricity Board made the Tamil Nadu Electricity Board Contributory Provident Fund Regulations. Regulation 3 Provides for the establishment of a fund known as the Tamil Nadu Electricity Board Employees' Contributory Provident Fund, with effect from 1.7.57. Regulation 3-A to 3-K provide for the management and administration of the fund by the Board of Trustees. Regulation 4 prescribes that the Fund shall be governed by regulation as may be in force for the time being but provides that no addition, alteration or repeal, of any regulation which may adversely effect a subscriber shall be retrospective. Regulation 5 provides that all employees who are eligible for the Contributory Provident Fund (Tamil Nadu) Scheme and Gratuity Scheme of the Government of Tamil Nadu except certain categories of employees with whom we are not concerned shall become subscribers to the fund on completion of three months continuous service. Regulation 6 prescribes that an account shall be opened in the name of each member in which shall be credited, the member's subscriptions and interest thereon, the contributions made by the Electricity Board to his account and interest thereon and the pre-existing account before the Electricity Department was taken over by the Electricity Board. Regulation 9 provides for subscription to the fund by members at the rate of 7-1/2% of pay plus dearness allowance. Regulation 11 provides for contribution by the Electricity Board to the account of each member at the rate of 7½% of pay plus dearness allowance. The member's subscription along with the Electricity Board's Contribution is required to be credited to the individual account of the member before the 15th of every month. Regulation 37 prescribes that the Electricity Board shall credit to a member's Provident Fund account a special contribution calculated in the specified manner. in addi-

tion to the contribution credited under Regulation 11, if the Board is satisfied that the service of the member has been good, efficient and faithful and the member has not been dismissed from service or the member has not been removed from service in which case the sanction of the Board has to be obtained. In the case of a Class I or Class II employee who quits service on attainment of the age of superannuation, he is to be credited, if his service exceeds 18 years with six months pay plus half a month's pay for each completed year of service after the 18th but not so as to exceed, in all, twelve months' pay or rupees twenty-five thousand, whichever is less. If the employee's service does not exceed 18 years, he is to be credited with half a month's pay for each completed year of service so as not to exceed six months' pay. In the case of a Class III or Class IV employees who has attained the age of superannuation after 15 years' service, the Electricity Board is required to credit his account with half a month's pay for each completed year of service, but not so as to exceed to 15 months' pay. If the service is short of 15 years, he is to be credited with half a month's pay for each completed year of service so as not 15 exceed six months' pay. It is provided in Regulation 37 that pay for the purpose of reckoning special contribution shall be the pay last drawn during the last three years of service, whichever is more. The Board is also empowered to withhold or reduce the Special Contribution in any particular case.

At this stage, we may refer to s.12 of the Employees' Provident Funds, And Miscellaneous Provisions Act, 1952 which prohibits an employer from reducing directly or indirectly the total quantum of benefits in the nature of old age pension, gratuity or Provident Fund or Life Insurance to which the employee is entitled under the terms of his employment, express or implied, by reason only of his liability for the payment of any contribution to the Fund (which is defined by s.2 (h) as meaning a Provident Fund established under the Employees' Provident Fund Scheme framed under s.5).

In 1972, Parliament enacted the Payment of Gratuity Act, 1972 to provide for a scheme for the payment of gratuity to employees in certain establishments. There is no dispute that the Act applies to the Tamil Nadu State Electricity Board. Section 4 of the Act requires payment of gratuity to an employee who has rendered continuous service for not less than five years, on the termination of his employment on superannuation or on retirement or on his

death or disablement due to accident or disease. The employer is required to pay the gratuity to the employee at the rate of fifteen days' wages for each completed year of service or part thereof in excess of six months. The amount of gratuity is not to exceed 20 months' wages. The employer is not required to pay any gratuity to an employee if the service of the employee has been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, or if the services of the employee have been terminated for riotous or disorderly conduct or any other act of violence on his part or if his services have been terminated for any act involving moral turpitude provided that such offence is committed by him in the course of his employment. Section 14 provides that the contribution of the Act shall have effect notwithhstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than the Payment of Gratuity Act.

Abdul Salam, who held a non-pensionable post, retired on 31.7.76, after a service of 34 years and five months. He died on 15.10.76 within three months after his retirement. He was entitled or, in this case his widow was entitled to the payment of the entire amount standing to his credit in his Provident Fnnd account and the gratuity payable under the Payment of Gratuity Act. The Electricity Board, however, took the stand that she was entitled to be paid the member's subscription and interest, the employer's contribution and interest and gratuity but not the special contribution under Regulation 37 of the Tamil Nudu State Electricity Board Contributory Provident Fund Regulations. The reason for the Board's attitude was that the special contribution required to be paid under Regulation 37 was nothing other than payment of gratuity and that they could not be asked to pay gratuity twice over, once under the Payment of Gratuity Act and again under Regulation 37. Since they were ready to pay the gratuity payable under the Payment of Gratuity Act, which was more favourable to the employee, they were not obliged to make payment of the contribution under Regulation 37. We may mention here that the Board has paid to the widow, the member's subscription with interest and the employer's contribution with interest but not the special contribution under Regulation 37. The Board has paid a sum of Rs.4275/- towards gratuity under the payment of Gratuity Act but a sum of

Rs. 3167/- is admittedly yet due from the Board towards gratuity. In the counter affidavit filed on behalf of the Electricity Board we are not able to find any reason for non-payment of the balance of gratuity.

We are unable to appreciate how the Electricity Board can avoid payment of the Special Contribution to Provident Fund under their own Provident Fund Regulations on the pretext that it is akin to or the same as Gratuity payable under the Payment of Gratuity Act. In the first place, the Board, in their Regulations, have themselves labelled the Special Contribution under Regulation 37 as a Special Contribution to Provident Fund not as Gratuity. It is not as if they were unaware of the word 'Gratuity' and what it meant since we find that there is a reference in Regulation 5 to a Gratuity Scheme of the Tamil Nadu Government which had been adopted by the Board. The Special Contribution under Regulation 37 is part of a well thought out Provident Fund Scheme designed to benefit 'good' efficient and faithful employees (we borrow the words from the Regulation itself) by making annual contributions in addition the monthly contributions under Regulation 11. This is what appears from Regulation or itself, we see no justification for first dubbing it as a gratuity on the ground that it has some of the known characteristics of gratuity and then proceeding to deny the employees the benefit of it on the ground that the Board are paying gratuity under the Payment of Gratuity Act. If the Special Contribution has some common features with gratuity, it has also distinctive features which distinguish it from gratuity payable under the payment of Gratuity Act, For example, one important feature which discriminates the Special Contribution under Regulation 37 from gratuity under the Payment of Gratuity Act is that while the Payment of the latter is obligatory and can only be denied if the employee's services have been terminated for his riotous or disorderly conduct or any other act of violence on his part or any act which constitutes an offence involving moral turptitude and can also be denied to the extent of the damage or loss caused by the employee, where the employee's services have been terminated for any act, wilful omission or negligence causing any damage or to loss, or destruction of, property belonging to the employer, the payment of the former is discretionary and may not be made if the service of the employee has not been good, efficient and faithful. The employer has also the discretion to with-hold or reduce the Special Contribution in any particular case. Of course,

A the employer cannot arbitrarily claim that the employee's service was not good, efficient and faithful, or with-hold or reduce the Special Contribution in an arbitrary fashion. Even so, the distinction between the mandate of the Payment of Gratuity Act and the discretion involved in making the Special Contribution under Regulation 37 is intelligibly clear. Another feature which distinguishes B the two is that the benefit of the Payment of Gratuity Act is confined to persons drawing wages not exceeding Rs. 1000 and does not extend to persons employed in a managerial or administrative capacity whereas the Special Contribution under Regulation 37 is not so confined and extends to every employee of the Board C except casual employees, State or Central Government employees employed with the Board on foreign service terms etc. etc. For the purpose of contribution of Provident Fund under Regulation 11 or Regulation 37 it makes no difference that a person is employed in a managerial or administrarive capacity on that he draws wages more than Rs. 1000 per month. A third feature which marks the D two apart is that the contribution to the Provident Fund whether under Regulation 11 or Regulation 37 becomes part of the Fund established by Regulation 3 and is to be managed and administered by trustees under Regulation 3-A to 3-K, whereas the payment of Gratuity Act does not provide for the Constitution of a fund to be managed and administered by trustees. In addition to these broad E features, we have the outstanding circumstance that the Board themselves have described the contribution under Regulation 37 as a contribution to Provident Fund and have chosen to include it in their Provident Fund Scheme. That should conclude the matter.

Dr. Chitaley invited our attention to s.14 of the Payment of F Gratuity Act, 1972 which provides,

> "The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in an enactment other than this Act or in any instrument or contract having effect by virtue of any G enactment other than this Act,"

He argued that the provision for Special Contribution under Regulation 37 was inconsistent with the provisions of the Payment of Gratuity Act and therefore the latter should prevail to the H exculusion of the former. This argument is dependent on the assumption that the Special Contribution under Regulation 37 is the samething as the gratuity contemplated by the Payment of

Gratuity Act. We have held that it is not and the argument, therefore, fails. A

There was then the usual lament that a large number of employees were involved and, therefore, the cost will be heavy. We do not understand this argument at all. Does it mean that beneficent legislations and beneficent schemes must be confined to small establishments employing a few workers only ? On the other hand, it is misleading to say that the cost is heavy. The cost is made to appear heavy divorced from the size of the establishment. If the establishment is huge and if a large number of workmen are employed the total wage-bill may appear to be heavy, but is it really so ? Is it disproportionate to the size of the estblishment, its resourees, its revenues and its other expenditure ? Is the individual wage-bill also very high ? To talk of heavy cost without reference to other circumstances is to present an entirely unfaithful picture. We need make no further comment. B C

In the result we direct the respondent Board to pay to the petitioner the whole of the Special Contribution under Regulation 37 which was payable to her husband and the balance of the gratuity payable under the Payment of Gratuity Act, part of which we are told has been paid leaving the sum of Rs. 3167 unpaid. These amounts should be paid to the petitioner with interest at 15% per annum from the date on which the amounts fell due. The respondent Board should also pay a sum of Rs. 2500 to the petitioner towards compensatory costs. We must add that the case had left us with the feeling of uneasiness and distress at the plight of helpless persons like the petitioner whose repeated representations to those in authority were left uncared for so the tediously long despite frequent protestations of social justice. D E F

H.S.K. *Petition allowed.*