A UNION OF INDIA AND ANR.

v.

MANIK LAL BANERJEE

JULY 26, 2006

B [S.B. SINHA AND DALVEER BHANDARI, JJ.]

Service Law:

Payment of Gratuity Act, 1972; Ss. 2(e) & 2(f)/Railway Service (Pension)
C *Rules, 1993; Rule 15(4)(ii):*

Payment of Death-cum-Retirement Gratuity—1972 Act or Railway Services (Pension) Rules– Applicability of - Held: Section 2(c) of 1972 Act excluding from its purview an employee holding a post under Central
D *Government and whose terms & conditions of service governed by any other Act/Rules providing for payment of gratuity—Since, non-applicability of 1972 Act and consequent applicability of the Railway Services Pension Rules to Railway employees was not in issue in the decided case of Pritam Singh, Tribunal erred in placing reliance on the principle evolved in that case while deciding the issue in favour of the employee—Both the Courts below failed to*
E *properly construe the provisions of 1972 Act—Hence, the employee in question not entitled to payment of gratuity in terms of 1972 Act.*

Fifth Pay Commission's Recommendation—Increase in dearness pay—Effective date—Entitlement to—Held: Since Central Government accepted the
F *recommendations with prospective effect from 1.4.1995 and the employee in question retired on 31.1.1995, benefit of the recommendations not applicable to him.*

Words and Phrases:

'Employee' and 'Employer'—Meaning of in the context of Payment of
G *Gratuity Act, 1972.*

The question which arose for determination in this appeal was as to whether a Railway employee who retired from service on 31.1.1995 was entitled to get gratuity in terms of provisions of the Payment of Gratuity

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Act, 1972 in preference to the Railway Services Pension Rules, 1993. A

Appellant contended that Section 2(e) of the 1972 Act will have no application in view of the fact that the Respondent being a railway servant was an employee of the Central Government and was governed by the 1993 Rules.

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Respondent-employee submitted that Section 2(e) of the 1972 Act should be interpreted conjointly with Section 2(f) of the Act while defining 'employment' and Section 2(a)(i) of the Act in defining 'establishment' and construing so, it must be held that the 1972 Act is applicable to the cases of railway employees also; that in view of Rule 15(4)(ii) of the 1993 Rules, the pension and commuted value thereof are only governed by the Pensions Act, 1871, therefore, the matter relating to payment of gratuity could not have been brought within the purview of the 1993 Rules; that since pension and gratuity are not bounties, the same should be given a liberal construction; that the decision of the Authorities to pay 20% dearness allowance in emoluments to him for the purpose of gratuity being not a decision under a legislative act, the same is subservient to the provisions of the 1972 Act; and that the Fifth Pay Revision Commission having made an interim report that 90% of dearness allowance should be paid to the employees who have retired during the period from 1.4.1995 to 31.12.1995, the Respondent should not be deprived of such benefit.

C D E

Allowing the appeal, the Court

HELD:1.1. The interpretation clause contained in Section 2(e) of the Payment of Gratuity Act takes out from its purview a person who holds *inter alia* a post under the Central Government and whose terms and conditions of service are governed by an Act or the Rules providing for payment of gratuity. [72-D]

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1.2. Since railway servants are governed by the provisions of the 1993 Rules, they shall not be governed by the 1972 Act. The High Court noticed the definition of 'employee' contained in Section 2(e) of the 1972 Act, however, while deciding the issue it fell into an error in coming to the conclusion that there was nothing in the 1972 Act so as to exclude the benefit thereof to a railway employee. It failed to properly construe the said provision. [74-C-D-E]

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2.1. The Tribunal granted relief to the Respondent-employee solely H

A relying on or on the basis of a decision of the Central Administrative Tribunal in the case of *Pritam Singh.* However, in that case, indisputably, the question as regards non-applicability of the 1972 Act and consequent applicability of the Railway Services Pension Rules, 1993 had not arisen for consideration. [73-B]

B *Union of India* v. *Pritam Singh,* Civil Appeal No.937 of (1995) decided by the Supreme Court on 13.2.2002 and *Federation of Central Government Pensioners' Association Organisations, Calcutta* v. *Union of India,* O.A. NO.700 of 2004 decided by the Principal Bench of the Central Administrative Tribunal on 1.10.2004, referred to.

C 2.2. It is well-settled that a decision is an authority for what it decides and not what can logically be deduced therefrom. The decision in Pritam Singh case having indisputably not taken into consideration, the exclusionary clause contained in Section 2(e) of the 1972 Act cannot be held to be an authority for the proposition that despite the provisions of D the 1993 Rules, the 1972 Act would apply in the case of the railway servants. [73-G-H; 74-A]

2.3. It is now well-settled that if a decision has been rendered without taking into account the statutory provision, the same cannot be considered to be a binding precedent. This Court, in the case of *Pritam Singh,* while E exercising its discretionary jurisdiction, might have refused to interfere with the decision. The same, therefore, did not constitute any binding precedent. The Tribunal and consequently the High Court, therefore, committed a manifest error in holding otherwise. [74-B]

F *Union of India* v. *Pritam Singh,* Civil Appeal No.937 of 1995 decided by the Supreme Court on 13.2.2002, referred to.

3.1. The Fifth Pay Commission no doubt recommended that dearness pay be linked to All India Consumer Price Index of 12.1.1966 as on 1.7.1993 but, the entitlements of the employees in terms thereof was G directed to be prospectively effected with effect from 1.4.1995. The Central Government accepted the said recommendations only with prospective effect from 1.4.1995 in terms whereof 97% of the dearness allowance was to be paid to those who were drawing salary up to Rs. 3500/- as basic pay. The Respondent retired on 31.1.1995. The recommendations of the Fifth Pay Commission, thus, were not applicable in his case. [75-C-D]

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3.2. It is now a well-settled principle of law that financial implication is a relevant factor for accepting revision of pay. The matter might have been different if the revised scale of pay in terms of the recommendations of the Fifth Pay Commission would have been made applicable to the cases of the employees who had also retired prior to 1.4.1995. [75-E-F]

Hec Voluntary Retd. Emps. Welfare Soc. & Anr. **v.** *Heavy Engineering Corporation Ltd. & Ors.,* **(2006) 2 SCALE 660;** *State of Andhra Pradesh and Anr.* **v.** *A.P. Pensioners Association & Ors.,* **JT (2005) 10 SC 115 and** *U.P. Raghavendra Acharya and Ors.* **v.** *State of Karnataka & Ors.,* **(2006) 6 SCALE 23, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3166 of 2006.

From the Judgment and Order and dated 14.3.2005 of the High Court of Calcutta in W.P.C.T. No. 124/2005.

K.P. Pathak, A.S.G., V. Mohana and B. Krishna Prasad for the Appellants.

Manik Lal Banerjee, Respondent-In-Person.

The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted.

The Respondent was a Station Master working in Sodepur Railway Station, Eastern Railway. He retired on 31.1.1995. He was paid 16½ months emoluments comprising basic salary and 20% dearness allowance towards Death-Cum-Retirement Gratuity.

One Pritam Singh who is said to be similarly situated, however, claimed and obtained such benefits of gratuity in terms of the provisions contained in the Payment of Gratuity Act, 1972 (for short "the 1972 Act") in terms whereof the element of dearness allowance was calculated at the rate of 125% of basic salary. A special leave petition filed thereagainst was dismissed by this Court by an order dated 13.2.2002 holding:

> "This is not a fit case for our interference under Article 136 of the Constitution. Hence the appeal is dismissed."

Principally, relying on the said decision, the Respondent filed an original

A application before the Central Administrative Tribunal claiming payment of gratuity on the same terms and for recovery of purported arrears of the difference of gratuity. The Tribunal by an order dated 25.2.2004 directed the Appellant to consider the Respondent's case whereupon a speaking order was passed by the Appellant on 4.6.2004 *inter alia* holding that the case of the
B Respondent was not governed by the provisions of the 1972 Act but by the provisions of the Railway Services (Pension) Rules, 1993 (for short "the 1993 Rules").

Another original application was filed by the Respondent questioning the validity of the said order before the Tribunal which was registered as OA
C No. 576 of 2004. The said application was allowed by an order dated 1.12.2004 holding *inter alia*:

> "Mr. De, the learned counsel for the respondents to a query replied that *Pritam Singh* case was complied with by the Railway Authorities. It is most unfortunate to state here that the DRM treated the matter
> D in a different manner in order to avoid payment and has passed such illegal order by stating that dismissal of SLP by the Hon'ble Supreme Court does not amount to a decision on merits. He has lost sight of the fact that the CAT does not hold the jurisdiction to sit in appeal against the order passed by the Controlling Authority under the Gratuity Act. In *Pritam Singh's* case an independent direction was
> E passed by the CAT by invoking the provisions of Gratuity Act. Similar benefit ought to have been given to the present applicant. From the totality of the facts and circumstances of the case, I direct the respondent No. 2 to pay the Gratuity as claimed by the applicant in terms of Section 4 of the Indian Gratuity Act, 1972 together with the
> F interest @12% per annum from the date when it became due till the date of payment and file compliance report within four months, failing which appropriate action, as deemed fit, will be taken."

A writ petition filed by the Appellant questioning the legality of the said Order was dismissed by a Division Bench of the High Court holding that
G the 1993 Rules do not make an employee of the Railways disentitled to the benefit of gratuity under the 1972 Act. It was furthermore held that there was no reason as to why the decision of the Tribunal in *Pritam Singh* would not be given effect to.

Mr. K.P. Pathak, learned Additional Solicitor General appearing on
H behalf of the Appellant urged that Section 2(e) of the 1972 Act will have no

application in view of the fact that the Respondent being a railway servant was an employee of the Central Government and was being governed by the 1993 Rules. A

Mr. Manik Lal Banerjee, Respondent appearing in person, on the other hand, contended that Section 2(e) of the 1972 Act should be interpreted conjointly with Section 2(f) defining 'employment' and Section 2(a)(i) defining 'establishment' and so construed, it must be held that the same is applicable to the cases of railway employees also. Strong reliance in this behalf has been placed on *The Executive Engineer (Construction) Southern Railway, Quilon and Ors.* v. *M.P. Sankara Pillai,* [ILR 1981 (1) Ker 164] B C

It was urged that in view of Rule 15(4)(ii) of the 1993 Rules, as pension and commuted value thereof are only governed by the Pensions Act, 1871, the matter relating to payment of gratuity could not have been brought within the purview of the 1993 Rules. As pension and gratuity are not bounties, the same should be given a liberal construction. Mr. Banerjee furthermore contended that the decision of the Joint Consultative Machinery (JCM) to pay 20% dearness allowance in emoluments for the purpose of gratuity being not a decision under a legislative Act, the same is subservient to the provisions of the 1972 Act. In any event, the Fifth Pay Revision Commission having made an interim report that 90% of dearness allowance should be paid to the employees who have retired from 1.4.1995 to 31.12.1995, there is no reason as to why the Respondent should be deprived from the benefit thereof. D E

The 1972 Act was enacted to provide for a scheme *inter alia* for payment of gratuity to employees in relation to railway companies.

Section 2(e) of the 1972 Act defines 'employee' to mean "any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity." The definition, thus, excludes an employee holding civil post under the Central Government and government by another Act or Rules providing for gratuity. F G H

Section 2(f) of the 1972 Act defines 'employer' *inter alia* to mean, in

A relation to any railway company belonging to or under the control of the Central Government or the State Government, a person or authority appointed by the appropriate government for the supervision and control of the employees. Section 4 provides for payment of gratuity to an employee on the termination of his employment after he has rendered continuous service for not less than five years *inter alia* on his superannuation. Sub-section (2) of Section 4 provides that for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned, which amount in view of sub-section (3) of Section 4 shall not exceed three lakhs and fifty thousand rupees.

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The 1972 Act is applicable *inter alia* to the 'establishment' belonging to a railway company. The amount of gratuity, however, is payable to an employee. The interpretation clause contained in Section 2(e) takes out from the purview of the said Act a person who holds *inter alia* post under the Central Government and whose terms and conditions of service are governed by an Act or the Rules providing for payment of gratuity. The 1993 Rules provides for payment of gratuity in Rule 70 in the following terms:

> "70. *Retirement gratuity or death gratuity.*—(1)(a) In the case of a railway servant, who has completed five years' qualifying service and has become eligible for service gratuity or pension under rule 69, shall, on his retirement, be granted retirement gratuity equal to one-fourth of his emoluments for each completed six monthly period of qualifying service subject to a maximum of sixteen and one-half times the emoluments and there shall be no ceiling on reckonable emoluments for calculating the gratuity...."

Rule 49 of the 1993 Rules provides for the manner in which emoluments of such an employee should be calculated. 'Pay' in those rules means the pay in the revised scales under the Fourth Pay Commission Report.

Following representations made on behalf of the employees; the Central Government in a JCM conceded grant of a part of dearness allowance to be reckoned as dearness pay (DP) for the purpose of computing the amount of gratuity and the same was treated an additional advantage over and above those allowed in the recommendations of the Fourth Pay Commission. The quantum of such dearness pay was taken on the Consumer Index as on 1.7.1988 and 20% of dearness allowance was declared to be payable as

dearness pay. Such benefit was extended also to the railway employees whose retirement had taken place on or after 16.9.1993. A

The Tribunal indisputably granted relief to the Respondent solely relying on or on the basis of the decision in *Pritam Singh.* In *Pritam Singh's* case indisputably the question as regards non-applicability of the 1972 Act and consequent applicability of the 1993 Rules had not arisen for consideration. B The controlling authority in *Pritam Singh's* case proceeded on the basis that the provisions of the 1972 Act were applicable. The Tribunal in *Pritam Singh* opined:

> "...The Controlling Authority has considered the definition of term 'wages' and came to the conclusion that the applicant is eligible for getting the gratuity. We do not see any infirmity or illegality on the order as averred by the Petitioner in this Original Application. According to us, there is no merit in the application which is only to be dismissed. Accordingly, we dismiss Original Application with no order as to costs." C D

Our attention has also been drawn to the fact that the Central Administration Tribunal, Principal Bench in OA No. 700 of 2004 in the matter of *Federation of Central Government Pensioners' Association Organisations, Calcutta* v. *Union of India,* by a judgment and order dated 1st October, 2004 held that the decision of the Tribunal in *Pritam Singh* was rendered *per incuriam* and, thus, did not create any binding precedent. The Railway Administration in terms of its speaking order dated 4.6.2004 also held so. The Tribunal, unfortunately, did not apply its mind to that aspect of the matter and proceeded to grant relief to the Respondent herein solely relying on or on the basis of the said decision. Pritam Singh, in our opinion, did not create any binding precedent. Only because this Court dismissed the special leave petition, the same would not mean that any law within the meaning of Article 14 of the Constitution was laid down thereby. Pritam Singh was evidently rendered *per incuriam* as the statutory provisions relevant for determining the issue had not been taken into consideration. E F G

It is well-settled that a decision is an authority for what it decides and not what can logically be deduced therefrom. The decision in *Pritam Singh* having indisputably not taken into consideration, the exclusionary clause contained in Section 2(e) of the 1972 Act cannot be held to be an authority for the proposition that despite the provisions of the 1993 Rules, the 1972 H

A Act would apply in the case of the railway servants.

It is now well-settled that if a decision has been rendered without taking into account the statutory provision, the same cannot be considered to be a binding precedent. This Court, in *Pritam Singh*, while exercising its discretionary jurisdiction, might have refused to interfere with the decision.
B The same, therefore, did not constitute any binding precedent. The Tribunal and consequently the High Court, therefore, committed a manifest error in holding otherwise.

Submission of Mr. Banerjee that if the 1972 Act applies to an
C establishment belonging to a railway company and the persons specified in Section 2(f) are the employers, despite exclusion of railway servants governed by the provisions of the 1993 Rules from the purview of the definition of 'employee' in terms of Section 2(e) of the Act, the case shall be governed by the 1972 Act, cannot be accepted.

D The High Court noticed the definition of 'employee' contained in Section 2(e) of the 1972 Act but while deciding the issue it fell into an error in coming to the conclusion that there was nothing in the 1972 Act so as to exclude the benefit thereof to a railway employee. It failed to properly construe the said provision.

E The Kerala High Court in *M.P. Sankara Pillai* (supra), whereupon strong reliance has been placed by Mr. Banerjee, was considering a case of casual labour. Indian Railway Administration although was held to be an establishment within the meaning of the 1972 Act, it was clearly stated that where the person was employed in Railway Administration as casual labourer
F on wages not exceeding Rs. 1000/- per mensem and was holding Civil Post in the Central Government, but subsequently absorbed in temporary regular service as temporary laskar in the same establishment; it would be impossible to escape the conclusion that the person was not an employee as defined in Section 2(e) and he would be entitled to claim gratuity allowance in respect
G of the period of his service as casual labourer in Railway Administration under Section 4, even in the Central Government at the time of retirement.

The decision of the Kerala High Court, thus, does not advance the case of the Respondent herein. Therein the question raised herein was not raised.

H Reliance of Mr. Banerjee upon Rule 15(4)(ii) of the 1993 Rules is misplaced. Rule 15 provides for recovery and adjustment of Government or

railway dues from pensionary benefits. Sub-rule (1) of Rule 15 enjoins a duty on the Head of Office to ascertain and assess Government or railway dues payable by a railway servant due for retirement, whereas sub-rule (2) thereof provides for recovery of the dues against the retiring railway servant in terms of sub-rule (4). Clause (ii) of sub-rule (4) of Rule 15 stipulates recovery of losses specified in sub-clause (a) of clause (i) of sub-rule (4) and which has nothing to do with the computation of the amount of payment of gratuity. A B

We have noticed hereinbefore that in terms of the 1993 Rules the emoluments were to be paid in terms of the recommendations made by the Fourth Pay Commission. The Fifth Pay Commission no doubt recommended that dearness pay be linked to All India Consumer Price Index of 12.1.1966 as on 1.7.1993 but, the entitlements of the employees in terms thereof was directed to be prospectively affected with effect from 1.4.1995. The Central Government accepted the said recommendations only with prospective effect from 1.4.1995 in terms whereof 97% of the dearness allowance was to be paid to those who were drawing salary up to Rs. 3500/- as basic pay. The Respondent retired on 31.1.1995. The recommendations of the Fifth Pay Commission, thus, were not applicable in his case. C D

It is now a well-settled principle of law that financial implication is a relevant factor for accepting revision of pay. [See *Hec Voluntary Retd. Emps. Welfare Soc. & Anr.* v. *Heavy Engineering Corporation Ltd. & Ors.*, (2006) 2 SCALE 660 and *State of Andhra Pradesh and Anr.* v. *A.P. Pensioners Association & Ors.*, JT (2005) 10 SC 115. E

The matter might have been different if the revised scale of pay in terms of the recommendations of the Fifth Pay Commission would have been made applicable to the cases of the employees who had also retired prior to 1.4.1995 as was noticed by this Court in *U.P. Raghavendra Acharya and Ors.* v. *State of Karnataka & Ors.*, (2006) 6 SCALE 23. F

For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. No costs. G

S.KS. Appeal allowed.