

The Supreme Court holds that an Employee cannot be Denied the Right to Receive better of the available Benefit

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A division bench of the Supreme Court of India, comprising of Hon'ble Mr Justice Uday Umesh Lalit and Hon'ble Mr Justice Sanjiv Khanna, *vide* judgment dated 29 April 2020 in the matter of *BCH Electric Limited v Pradeep Mehra*, dealt with applicability of Section 4(5) of the Payment of Gratuity Act, 1972 (Act). It held that Section 4(5) of the Act will only apply if there are alternate options for the employee under the Act and under the terms of the contract with the employee and that the employee is entitled to receive higher available benefit amongst the two available options.

BRIEF FACTS

- In 1979, the appellant established a gratuity fund under a trust deed for providing gratuities to the employees of the appellant under the Gratuity Scheme (Scheme) of the appellant.
- The respondent joined the appellant in the year 2000 and retired in 2012 and the appellant paid the respondent a sum of Rs 10 lakhs towards gratuity. However, the respondent claimed to be entitled to a gratuity amount of Rs. 1,83,75,000.
- The respondent filed a claim under Section 7 of the Payment of Gratuity Act, 1972 (Act) contending before the Controlling Authority that balance amount towards gratuity ought to be paid along with an interest @ 18% per annum. The appellant, however, contended that the amount of gratuity was capped at the prevailing upper limit and the gratuity amount was reduced so it remains within the upper limit prescribed under the Act;
- Accordingly, the Controlling Authority under the Act allowed the claim petition of the respondent and observed that the employees are entitled to receive higher gratuity amount in view of their respective contract without any upper limit as per the formula of the Act as the respondent is covered under the Act as per the Scheme.
- The appellant preferred an appeal before the Appellate Authority under the Act and thereafter preferred a writ petition before the High Court, however both the forums upheld the findings of the Controlling Authority.

ISSUE FOR CONSIDERATION BEFORE THE SUPREME COURT

Whether the respondent was covered under the Scheme formulated by the appellant company or under the provisions of the Act?

MAIN ARGUMENTS BY THE PARTIES

- **Appellant contended that (i) respondent was not covered under the Act and was subject to the upper limit of Rs.10 Lacs as provided under Section 4(3) of the Act; and (ii) better terms under Section 4(5) of the Act could only be claimed under specific circumstances. The appellant placed reliance on the law**

laid down by the Supreme Court in *Beed District Central Cooperative Bank Limited v. State of Maharashtra and Union of India and Others v. C.G. Ajay Baby & Anr.* which held that that a combination of statutory provisions and contractual schemes cannot be followed while computing gratuity.

- **Respondent contented that (i) Section 4(5) of the Act has an overriding effect over Section 4 of the Act and the same would override Section 3 of the Act; and (ii) that the appellant's Scheme did not prescribe any ceiling limit thereby falling under Section 4(5) of the Act.**

JUDGMENT

The Supreme Court closely observed the historical background of the amendments to the provisions of the Act and observed that when the respondent resigned from the appellant company, the ceiling limit under Section 4(3) was fixed at “*ten lakh rupees*” and there was no upper limit for an employee to be covered under Section 2 (e) of the Act.

The Supreme Court held that Section 4(5) of the Act stipulates that if better terms are available to an employee under any contract or scheme provided by the employer, nothing in Section 4 shall affect the right of an employee to receive such better terms. The Supreme Court also delved into the clauses of the Scheme which stated that in case the employee is covered under the Act, the Scheme shall not be applicable for calculating the gratuity amount. Therefore, it was observed that as per the Scheme only those employees who are not covered under the Act shall accrue the benefit of the Scheme. In view of the aforesaid, it was held that Section 4(5) will be applicable only if there are two alternatives available to the employee, however no alternative is available to the respondent.

The Supreme Court distinguished its own decision in *Beed District Cooperative Bank Ltd (Supra)* stating that the position therein was where an employee had two available alternatives, however under the Scheme of the appellant company, an employee could avail the same only if it did not fall under the purview of the Act.

COMMENT

By way of the present judgment the Supreme Court has re-iterated the principle that employee benefit should hold the utmost priority for an organisation. This decision also clarifies that even though the employee can accrue the benefit of the best of the available option, an employee cannot go against its arrangement with the employer.

Thus, the Supreme Court has re-affirmed, that the essence of the Act is the interest of general public together with major focus on economic justice to the workmen.

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