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**(1991) 02 OHC CK 0013**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 1883/85**

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|--------------------------------------|------------|
| Administrator, Shri Jagannath Temple | APPELLANT  |
| Vs                                   |            |
| Jagannath Padhi and Others           | RESPONDENT |

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**Date of Decision :** 21-02-1991

**Acts Referred:**

Payment of Gratuity Act, 1972 — Section 1(3), 4

**Citation :** (1991) 71 CLT 752 : (1992) 65 FLR 946 : (1992) 2 LLJ 863 : (1991) 2 OLR 251

**Hon'ble Judges :** Hansaria, C.J;A. Pasayat, J

**Bench :** Division Bench

**Advocate :** Bijan Ray, for the Appellant; Additional Government Advocate for Opp. Parties Nos. 2 and 3, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Pasayat, J.—A short but interesting question relating to applicability of the provisions of the Payment of Gratuity Act, 1972 (in short the "Act") to the employees of Shri Jagannath Temple (in short the "Temple") forms subject-matter of dispute in this application.

2. There is practically no factual controversy. Opposite Party No. 1 (described hereinafter as the "Claimant") was an employee of the famous temple of Lord Jagannath at Puri and retired on superannuation with effect from April 31, 1983. On an application being made by him, the authorities under the Act held that the Temple was liable to pay gratuity to the claimant. They did not accept the contention raised that the Temple was not an "establishment" to come within the ambit of Section 1(3) (b) of the Act. A reference was made to the definition of "establishment" within the meaning of the terms as given in the Industrial Disputes Act, 1947 and the Orissa Shops and Commercial Establishments Act, 1956 for negating the contention.

3. It is contended on behalf of the petitioner-Temple before us that the Temple

occupies a unique place and is primarily a spiritual institution. It is submitted that the Temple is a body corporate incorporated under Shri Jagannath Temple Act, 1954 and is not a trust as held by the authorities and even otherwise the said Act provides for payment of gratuity to its employees and the claimant had been paid his entitlements under such Act and regulations framed thereunder, disentitling him from making further claim for the benefit of gratuity under the Act. The term "establishment" has not been defined in the statute. Section 1(3) (b) of the Act makes it clear that it applies to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months. As observed by the Supreme Court in *State of Punjab Vs. Labour Court Jullunder and Others*, (1990) 32 OJD 42: *Executive Officer, Cuttack Municipality, Cuttack v. Appellate Authority under Payment of Gratuity Act-cum-Labour Commissioner, Orissa* (to which one of us, Pasayat, J. was a party) and O.J.C. Nos. 1129 to 1131 of 1985: *The Executive Officer, Puri Municipality v. Rama Naik etc. etc.*, disposed of on November 30, 1990 (to which my Lord the Chief Justice was a party), the Act is not restricted to only commercial establishments, but to establishments within the meaning of any law for the time being in force in relation to establishments in a State. The question that falls for determination, therefore, is whether the term "establishment" as defined in any law operating in the State includes within its ambit a "Temple". The authorities under the Act have observed that the Industrial Disputes Act and the statute relating to shops and commercial establishments include "Temple Trust" and therefore, the Temple is included therein. It would be relevant at this stage to refer to a decision of this Court reported in (49) 1980 CLT 252, *Gopichand Agarwala v. State of Orissa*, wherein the question whether deity is an establishment or an undertaking under the Orissa Prevention of Land Encroachment Act came up for consideration and it was held that deity is neither an establishment nor an undertaking within the meaning of that Act. It was observed that the word "establishment" was not defined in the concerned statute and therefore to be assigned the commonsense meaning; it is difficult to conceive that a religious institution like a Hindu temple can constitute an establishment in the sense the words have been used in Section 2(e) of the Orissa Prevention of Land Encroachment Act, 1972.

4. According to the Compact Edition of the Oxford English Dictionary, Vol. I, page 897 (Reprinted 1972), "establishment" means a public institution, a school; a factory; a house of business etc. In 1851, D. Wilson in *Prech Ann* (1863) II iv i 192 referred to "the religious establishment founded at Iona". "Establishment" also has been defined to be the ecclesiastical system established by law. As observed by the Allahabad High Court in 1986 (53) FLR 227; *Municipal Board v. Appellate Authority and Addl. L.C.* to which reference was made by this Court in *Executive Officer, Puri Municipality's case* (supra), the definition of establishment is very wide, and keeping in view the objective of the Act, it was held that the same is applicable to the retired persons of municipalities. Keeping in view that

laudatory objects of the Act, and the same being a part of the social justice, this Court observed that the legislation was to be applied liberally and a wider meaning was to be given.

5. "Gratuity", as observed by the Supreme Court in its etymological sense, means a gift, especially for services rendered or return for favours received. See *Delhi Cloth and General Mills Co., Ltd. Vs. Workmen and Others etc.*, . The general principle underlying the gratuity scheme is that by their length of service, workmen are entitled to claim a certain amount as a retiral benefit. See *The Indian Hume Pipe Co. Ltd. Vs. The Workmen and Another*, . Gratuity has to be considered to be an amount paid unconnected with any consideration and not resting upon it, and has to be considered something given freely or without recompense. It does not have foundation on any legal liability, but upon a bounty stemming from appreciation and graciousness. Long service carries with it expectation of an appreciation from the employer and a gracious financial assistance to tide over post-retiral difficulties. Judged in that background, we feel that it would be unconscionable to keep temple out of the purview of the Act, more particularly when opposite party No. 1, a low paid employee has served the temple for a very long span of time.

6. The writ application is, therefore, devoid of merit and is accordingly dismissed.

7. HANSARIA, C.J.

I agree