

(2001) 09 AP CK 0110

In the Andhra Pradesh High Court

Case No : WA No. 974 of 1996 and WP No. 3188 of 1994

D. Laxmi

APPELLANT

Vs

Andhra Pradesh Agricultural University, Rajendra Nagar,
Hyderabad

RESPONDENT

Date of Decision : 03-09-2001

Acts Referred:

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

Payment of Wages Act, 1936 — Section 2

Citation : (2001) 6 ALD 694 : (2002) 92 FLR 57

Hon'ble Judges : S.B. Sinha, C.J;V.V.S. Rao, J

Bench : Division Bench

Advocate : A.K. Jaya Prakash Rao, B. Siva Reddy, SC for Agricultural University and Government Pleader for Labour, for the Appellant;

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—The sole question that arises for consideration in the writ appeal and batch of writ petitions is as to whether the respondent-University is an establishment within the meaning of the provisions of Payment of Gratuity Act, 1970.

2. The Payment of Gratuity Act, 1972 (for short "the Act") was enacted to provide for a scheme for payment of gratuity to employees engaged in factories mines, oil fields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto. The Act applies to the whole of India. In terms of Clause (b) of Sub-section (3) of Section 1 of the Act, the Act is made applicable 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 12 months.

3. The fact that the respondent-University carried on an organised and systematic activity by employing ten or more persons on any day of the

preceding 12 months is not in dispute. The respondent-University, in the writ petition, inter alia contended that since it is an educational institution, the provisions of the Act are not applicable. It further contended that since the concerned workmen were daily rated workers, they did not satisfy even the prerequisites of an employee.

4. The learned single Judge allowed the writ petition. While doing so, he upheld the first contention raised by the respondent-University that it being an educational institution is not covered by the provisions contained in Section 1(3)(b) of the Act, and in view of the above, he declined to go into the second contention.

5. The learned single Judge while answering the first question relied upon the decision of a learned single Judge of this Court in *Chairman, Governing Body, S.M.V.M. Polytechnic, Tanuku Vs. Government of Andhra Pradesh and Others*, . It now appears that the subject-matter, as raised before us, earlier came up for consideration before a Division Bench of this Court in *V. Venkateswara Rao Vs. Chairman/Governing Body, S.M.V.M. Polytechnic and Others*, , wherein the Division Bench following the decision of the Apex Court in *State of Punjab Vs. Labour Court Jullunder and Others*, , reversed the view that the University is not an educational institution. The Apex Court in *State of Punjab v. Labour Court* (supra) while rejecting the contention that Section 1(3)(b) must be a law, which relates to both shops and establishments stated:

".....Section 1(3)(b) speaks of "any law for the time being in force in relation to shops and establishments in a State". It is difficult to accept such a contention because there is no warrant for so limiting the meaning of the expression "law" in Section 1(3)(b). The expression is comprehensive in its scope, and can mean a law in relation to shops and commercial establishments and a law in relation to shops as well as separately, a law in relation to establishments or a law in relation to non-commercial establishments... Had Section 1(3)(b) intended to refer to a single enactment, surely the appellant would have been able to point to such a statute, that is to say, a statute relating to shops and establishments both commercial and noncommercial.....Had the intention of Parliament been, when enacting Section 1(3)(b), to refer to a law relating to commercial establishments, it would not have left the expression "establishment" unqualified. We have carefully examined the various provisions of the Payment of Gratuity Act, and we are unable to discern any reason for giving the limited meaning to Section 1(3)(b) urged before us on behalf of the appellant. Section 1(3)(b) applies to every establishment within the meaning of any law for the time being in force in relation to establishments in a State....."

6. Although the aforesaid decision was rendered in the light of Section 2(g) of the Payment of Wages Act, defining "industrial establishment" in a State being the law in force, we are of the opinion, that the above decision would cover the instant case also. The Act refers to an establishment. It, therefore, embraces in its fold all types of establishments, including industrial establishments.

Furthermore, as noticed hereinbefore, the Act applies to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments. The Central Government also issued notification dated 19-2-1982 extending its applicability to a University, College - whether affiliated or not to a University held that the Act is applicable. The Apex Court in *A. Sundarambal v Government of Goa, Daman and Diu*, held that though school is an industry, the teachers employed therein are not workmen.

7. It however, appears that the appellant-workmen and the University, have taken recourse to proceedings under the Act. Since the questions raised in the writ petition involve disputed question of fact, we are of the opinion that the appropriate authority, before which the proceedings are pending, can well decide the contentions raised in the writ petition, or by the appellant authority, in the appeal, if any, to be preferred by the parties against the order to be passed by the appropriate authority. The appropriate authority may dispose of the proceedings expeditiously.

8. In the above view of the matter, we are of the opinion that the order impugned in the writ appeal cannot be sustained, and it is accordingly set aside. The writ appeal is allowed. Consequently, the writ petitions stand dismissed. No costs.