

(1998) 02 RAJ CK 0040
In the Rajasthan High Court
Case No : C.S.A. No. 662 of 1996

Daily Navajyoti

APPELLANT

Vs

Appointed Authority u/S. 17(1) of Working Journalists Act
and Another

RESPONDENT

Date of Decision : 06-02-1998

Acts Referred:

Working Journalists and Other Newspaper Employees (Conditions of Service) and
Miscellaneous Provisions Act, 1955 — Section 17(1), 17(2), 5(1)

Citation : (1998) 2 LLJ 705 : (1998) 1 RLW 673 : (1998) 2 WLC 710

Hon'ble Judges : Rajendra Saxena, J; P.K. Tiwari, J

Bench : Division Bench

Advocate : R.K. Kala, for the Appellant; P.K. Sharma, for the Respondent

Final Decision : Partly Allowed

Judgement

Rajendra Saxena, J.—This special appeal has been directed against the order dated March 7, 1996 passed by the learned S.B. in S.B. Civil Writ Petition No. 300/1996, whereby appellant's writ petition was dismissed holding that the order dated November 2, 1995 (Ann. 7) passed by the Authority did not give any cause of action to the petitioner to file the writ petition.

2. A brief resume of the facts relevant for the disposal of this appeal can be recapitulated in a short compass. On April 24, 1995 Shri Mahesh Chand Sharma (Respondent No. 2) filed a claim (Ann.3) u/s 17(1) of the Working Journalists (Conditions of Service) & Miscellaneous Provisions Act, 1955 (briefly the Act) before the Authority (Respondent No. 1) with the averments that he was working as a Working Journalist with the daily Navajyoti News Paper Establishment (briefly establishment), that he retired on March 30, 1993 after serving for a period of 30 years, that the terms and conditions of his service were governed by the Standing Orders and the provisions of the Act, that at the time of his retirement the Establishment computed gratuity on the basis of his basic pay and dearness allowance only @ Rs. 5248/- per month whereas as per provisions of

Section 5(rr) of Industrial Disputes Act r/w Section 5 of the Act he was entitled to get the gratuity computed on his wages including all remuneration capable of being expressed in forms of money namely, free facility for telephone, news papers and conveyance allowance amounting to Rs. 6427/-per month as per details shown in his statement of claim. Since he had been continuously in service for 30 years, he was entitled for gratuity equivalent to 15 months wages. But the Establishment has only computed his gratuity for 12 years & six months only. Besides that, his monthly salary ought to have been computed following the pattern of fixation of wages @ 26 working days in a month. Thus his gratuity amount works out to Rs. 1,37,206.00. Besides that, as per Standing Order No. 13 of Navajyoti Service Rules (Standing Orders), he was also entitled to three months notice prior to his retirement or in lieu thereof three months pay, which amounts to Rs. 23,782.50 but the appellant has paid him Rs. 65,613/- only as gratuity. Respondent No. 2 further averred that during service he was getting free telephone facility @ Rs. 500/- per month, free news paper facility @ Rs. 250/- per month and Rs. 750/- p.m. as reimbursement of petrol for the conveyance. Thus, he is also entitled to get the gratuity on this amount of Rs. 1,500/- per month.

3. The Respondent No. 1 vide its letter dated June 19, 1995 (Ann. 4) directed the appellant to make the payment of Rs. 95,375.50 as per claim filed by the Respondent No. 2 and to intimate by the next date about the payment so made failing which ex-parte order for the recovery of the money due shall be passed against him. The appellant challenged the letter (Ann.4) by filing S.B. Civil Writ Petition No. 2957/1995, which was allowed by the learned Single Bench vide its order dated September 7, 1995 and it was directed that letter Ann.4 be treated only as a show cause notice to the appellant, who shall be free to appear and raise all objections with regard to the claims in question including the jurisdiction of the Authority to decide the matter.

4. On October 26, 1995, the appellant submitted its reply along with preliminary objections before the Authority, wherein he inter alia averred that the claim of Rs. 95,375.50 in respect of gratuity has been filed by Respondent No. 2 after two years of his retirement, that at the time of his retirement, vide letter dated February 28, 1993 (Ann. 1) he was informed about his retirement, which was to be effective from March 31, 1993, that at that time Respondent No. 2 was drawing Rs. 5,248/- per month as salary, that the calculation of the gratuity was done in accordance with the provisions of Payment of Gratuity Act and an amount of Rs. 65,613/- was paid to him vide Ann.2, which he accepted without any objection. Therefore, there remains no dispute between the parties regarding the payment of gratuity amount. The appellant also raised an objection that under the Payment of Gratuity Act, Labour Commissioner, Jaipur has been designated as Appellate Authority to hear and dispose of the appeals arising out of the decisions given by the Authority appointed under the said Act. Therefore, Respondent No. 1 had no jurisdiction to entertain the claim. The appellant raised yet another objection that Shri Mahesh Chand Sharma was not entitled for

gratuity as per provisions of the Act. Thus, there is apparently a dispute as to whether in the instant case the provisions of the Act shall apply or the provisions of the Payment of Gratuity Act, 1972 shall apply. Hence, the matter does not fall u/s 17(1) of the Act and such a disputed question cannot be decided by the Authority and the matter has to be referred through the State Government to the Labour Court. The appellant also asserted that at the time of retirement Mahesh Chand Sharma was not enjoying the facility of free telephone, free news papers and conveyance allowance. Moreover the claim for the said facilities @ Rs. 500/-, Rs. 250/- & Rs. 750/- per month is false and without foundation and therefore, the said amount of Rs. 1,500/- per month cannot be included in wages for computing his gratuity amount. Since Shri Mahesh Chand Sharma retired on attaining the age of superannuation he was not entitled to claim 3 months pay. The appellant, therefore, prayed the Authority to decide the question of jurisdiction before entering into the merits of the case.

5. The Authority after hearing the parties by its impugned order dated November 2, 1995 held that since the Act is a Special Act its provisions shall override the provisions of the General Act viz. the Payment of Gratuity Act, 1972 and that the Respondent No. 2 was entitled to claim gratuity as per provisions of the Act, which are more beneficial to him. The Authority further held that it had the jurisdiction to investigate the matter and that other questions would be decided by him while deciding the matter as to whether or not any question arises warranting reference by the State Government to the Labour Court in terms of Section 17(1) of the Act. The learned S.B. dismissed the writ petition filed by the appellant by the impugned order dated March 7, 1996. Hence this Special Appeal.

6. We have heard the learned counsel for the parties at length and carefully perused the relevant record.

7. Shri R.K. Kala has vigorously canvassed that Respondent No. 2, who was appointed as a Working Journalist, continuously served with the appellant Establishment for about 30 years, that he attained the age of superannuation in 1992 but he was formally retired from service w.e.f. March 31, 1993, that at that time he was getting Rs. 3,995/- as basic pay, Rs. 1,253/- as dearness allowance, Rs. 30/- as city compensatory allowance and Rs. 399.50 as house rent allowance i.e. a total amount of Rs. 5,677.50 per month. In addition to this, one copy of Daily Navajyoti was supplied free to him at his residence for which payment @ Rs. 4/- per month was paid by the Establishment to the hawker. Respondent No. 2 was neither paid any telephone allowance nor any conveyance allowance as he was not maintaining any Car. Respondent No. 2 accepted the gratuity amount without any objection vide Ann.2 and as such for the purpose of computation of gratuity he is not entitled for any other amount in the name of special allowance. Shri Kala submitted that since a question has arisen as to the amount due under the Act, the matter squarely falls u/s 17(2) of the Act and the Authority has no jurisdiction to decide such a dispute. On the other hand, the State Government is required to refer the question to the Labour Court for adjudication.

8. On the other hand, Shri P.K. Sharma, the learned counsel for Respondent No. 2 has strenuously contended that admittedly, Shri Mahesh Chand Sharma was a Working Journalist, who has been in continuous service with the appellant for about 30 years and therefore, he is entitled for payment of gratuity as per provisions of Section 5 of the Act, which is a Special Act. He has asserted that the mode of calculation of monthly wages must be based treating 26 working days in a month and gratuity should be calculated on that basis as per law laid down by the Apex Court in *Digvijay Woollen Mills Ltd. v. Mahendra Prataprai Buck* 1981 SLJ 101 . Another limb of his argument is that car allowance, benefit of free telephone and free news paper should be regarded as part of wages in calculating gratuity because such amenities fall within the meaning of wages u/s 2(rr) of the Industrial Disputes Act, 1947 forming the component part of monthly wages payable to Respondent No. 2. He has contended that simply by accepting the gratuity amount vide Annexure 2, the Respondent No. 2 is not estopped from claiming the gratuity on the basis of the aforementioned amenities. For this, he has placed reliance on the case of *Bennett Coleman and Co. (P) Ltd. Vs. Punya Priya Das Gupta*, He has submitted that as per Rule 13 of the Standing Orders, of the appellant establishment after completing the age of 58 years a Working Journalist at the time of termination of his service is entitled for three months notice or notice pay. Thus, according to him, the amounts claimed by Respondent No. 2 are legally payable to him under the Act. Therefore, the Authority has jurisdiction to investigate the matter and determine the claim u/s 17(1) of the Act. As regards the disputes raised by the appellant for the entitlement of the monetary value of the amenities (free telephone, free news papers and the conveyance allowance), Shri P.K. Sharma has submitted that if the Authority feels that it is a disputed question then such dispute can be referred by the State Government to the Labour Court u/s 17(2) of the Act.

9. We have given our most anxious and thoughtful consideration to the rival submissions. A careful perusal of the statement of claim (Ann.3) and the reply as also the preliminary objections (Ann.6) raised by the appellant clearly indicate that there is a genuine dispute between the parties in respect of the following matters:

- (i) Whether for computing the gratuity of Respondent No. 2, the provisions of the Act shall apply or those of Payment of Gratuity Act, 1972 are applicable?
- (ii) Whether Respondent No. 2 is entitled to get his wages computed @ 26 working days per month for the purpose of computation of gratuity?
- (iii) Whether the petitioner is entitled to get three months notice pay as per Clause 13 of Standing Orders?
- (iv) Whether at the time of retirement Respondent No. 2 was getting Rs. 750/- as special allowance as claimed by him?
- (v) Whether Respondent No. 2 was, getting the benefit/facility of free telephone, free supply of news papers and reimbursement of petrol expenses as conveyance

allowance @ Rs. 500/-, Rs. 250/- and Rs. 750/- per month respectively, as claimed by him?

10. There is no dispute between the parties that Respondent No. 2 was a Working Journalist within the meaning of Section 2(f) of the Act. Section 5 of the Act specifically provides for the payment of gratuity to a Working Journalist. The Working Journalists and Other News Paper Employees (Conditions of Service) & Misc. Provisions Act, 1955 has been enacted to regulate certain conditions of service of Working Journalists and other persons employed in News Paper Establishments. Hence it is a Special Act and its provisions regarding payment of gratuity and mode of calculation thereof shall override the provisions of the general Act viz. the Payment of Gratuity Act, 1972. The case of Respondent No. 2 clearly falls u/s 5(1)(a)(ii) of the Act, because he has retired from service on reaching the age of superannuation, and, as such, he is entitled for gratuity, which shall be equivalent to 15 days average pay for every completed year of service or any part thereof in excess of six months. Vide para 2 of the memo of appeal, it has been specifically pleaded that Respondent No. 2 had served the appellant Establishment as a Working Journalist for about 30 years continuously till his retirement. Thus, in view of clear, cogent and unambiguous provisions of Section 5(1)(a)(ii) of the Act, the gratuity equivalent to 15 days" average pay for every completed year of service i.e. for 15 months is apparently due to Respondent No. 2, whereas he has been paid gratuity amount for a period of 12 years and 6 months only. Hence the Respondent No. 2 is entitled to get 15 months wages as gratuity.

11. In the case of Digvijay Woollen Mills (supra) the Apex Court while interpreting the provisions of Section 4(2) of the Payment of Gratuity Act, 1972 has explained the mode of calculation of monthly wages and has held that the monthly wage must be treated as wage for 26 working days and gratuity should be calculated on that basis. In that case the dispute was between the workmen of the Woollen Mills and the management. As per Section 4 of the Payment of Gratuity Act, 1972, the payment of gratuity has to be computed at the rate of wages last drawn by the employee and not on the basis of 15 days" average pay for every completed year of service as provided u/s 5 of the Act. Thus, it is manifest that the provisions of Section 5 of the Act and those of Section 4 of the Act of 1972 are not similar and identical but are different. The provisions of Section 5 of the Act are more beneficial to a working Journalist. Therefore, the law laid down in Digvijay Woollen Mills Ltd."s (supra) case regarding computation of gratuity, i.e. @ 26 working days in a month cannot be pressed into service in the instant case and gratuity to Respondent No. 2 has to be computed as per provisions of Section 5(1)(a)(ii) of the Act.

12. Section 17 of the Act runs as under:

"17. Recovery of money from an employer : (1) Where any amount is due under this Act to a news paper employee from an employer, the news paper employee himself, or any person authorised by him in writing in this behalf, or in the case

of the death of the employee, any member of his family may without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to him and if the State Government, or such authority, as the State Government may specify in this behalf, is satisfied that any amount is so due, it shall issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.

(2) If any question arises as to the amount due under this Act to a newspaper employee from his employer, the State Government may, on its own motion or upon application made to it refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 or under any corresponding law relating to investigation and settlement of Industrial Disputes in force in the State and the said Act or law shall have effect in relation to the Labour Court as if the question so referred were a matter to the Labour Court for adjudication under that Act or law."

13. A careful perusal of Section 17(1) of the Act makes it amply clear that it can only be pressed into service when there is no dispute of any nature, either with regard to the status claimed by the person as the news paper employee or Working Journalist or the quantum of amount claimed as due by him or the employer. The Authority, therefore, has the jurisdiction u/s 17(1) to compute the amount of gratuity due when there is no dispute of any nature. But in the case at hand there is an apparent dispute as to whether the Respondent No. 2 was getting special allowance @ Rs. 750/- per month as claimed by him in the annexure appended to his statement of claim. Therefore, it is a contentious/ disputed issue and such a dispute falls u/s 17(2) of the Act and the Authority has no jurisdiction to investigate and determine as to whether Respondent No. 2 was getting special allowance @ Rs. 750/-per month.

14. Similarly, there is a substantial dispute between the parties as to whether Respondent No. 2 at the time of his retirement was getting benefit of free telephone, free newspaper and conveyance allowance @ Rs. 500/-, Rs. 250/-and Rs. 750/- per month respectively. These matters also fall u/s 17(2) of the Act and the Authority has no jurisdiction to decide such a dispute u/s 17(1) of the Act.

15. In *Rennet Coleman & Co. Ltd.*'s case (supra), the Working Journalist was indisputably getting the amenities like free telephone, free supply of newspaper and the Car allowance. The Apex Court held that the said amenities were liable to be included as wages u/s 2(rr) of the Industrial Disputes Act for the purpose of computing the gratuity. But in the case at hand, the factum of providing the alleged benefits to Respondent No. 2 have been seriously disputed and questioned by the appellant. Therefore, the claim in this regard dearly falls u/s 17(2) of the Act for which the State Government is obliged to make reference to the Labour Court.

16. As per Clause 3 of the Standing Order of the appellant, Respondent No. 2 was entitled to three months' notice pay. Hence this part of the claim falls u/s 17(1) of the Act.

17. In our considered opinion, the learned S.B. has not correctly interpreted the provisions of Section 17(1) & (2) of the Act and wrongly held that no cause of action has arisen to him by the impugned order. The Authority, has also committed patent error in holding that it has the jurisdiction u/s 17(1) of the Act to hear and decide the claim filed by the Respondent No. 2 and to this extent, the impugned orders cannot be sustained in toto.

18. In the result, this special appeal is partly allowed and it is directed that the Authority shall, after making necessary enquiry, perusing the documents and hearing the parties and after being satisfied about the gratuity amount, which is so due under the provisions of Section 5(1)(a)(ii) of the Act in respect of the undisputed amounts of basic salary, dearness allowance, city compensatory allowance and house rent allowance, pass necessary order and issue the certificate u/s 17(1) of the Act for the unpaid gratuity amount in favour of Respondent No. 2. Since there exists substantial dispute between the parties in respect of the gratuity amount calculated on the basis of special allowance @ Rs. 750/-p.m. and benefit of facility of free telephone, free supply of news papers and conveyance allowance amounting to Rs. 1,500/- per month, the Authority has no jurisdiction to decide such contentious questions and for which the State Government may promptly take appropriate action u/s 17(2) of the Act and refer the question to the appropriate Labour Court for adjudication in accordance with law.

19. The parties are directed to appear before the Authority (Respondent No. 1) on....."