
(1998) 10 RAJ CK 0027
In the Rajasthan High Court
Case No : CW.P. No. 3914 of 1991

Dholpur Kraya Vikraya Sahkari Samiti Ltd.	APPELLANT
Vs	
Controller under Payment of Gratuity Act and Others	RESPONDENT

Date of Decision : 15-10-1998

Acts Referred:

Citation : (2000) 1 LLJ 663 : (1999) 3 WLC 450

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : M.C. Sharma, for the Appellant; Tripurari Sharma, for the Respondent

Final Decision : Dismissed

Judgement

J.C. Verma, J.—The respondent No. 2 Ram Charan had served the petitioner society for about more than 21 years from March 1, 1968 to August 31, 1988, when he had retired after retaining the age of superannuation. He was employed as driver. Even though he had served the petitioner society for more than 21 years but he was not paid the gratuity. He claimed gratuity of 13 months" pay. Nothing was paid with the result the respondents had to approach the respondent No. 1 for determining the gratuity. It was the case of petitioner that it being a co-operative society, it was not liable to pay any gratuity and the matter should have been decided by the Registrar exercising the powers u/s 75 of the Act. The order was passed on March 22, 1991 by the Competent Authority to the effect that respondent driver was entitled for payment of gratuity as per law, and therefore, the gratuity was ordered to be paid to the tune of Rs. 10,750/- along with the interest thereon, amounting to Rs.15,584/- which was to be paid to the driver within a period of 30 days. The order was passed on March 22, 1991 (Annexure 1).

2. The petitioner is aggrieved against the order dated March 22, 1991, and therefore, prayed in the writ petition that the order dated March 22, 1991 be quashed. It is the case of petitioner that Section 75 authorises the Registrar to

adjudicate upon the dispute arising in between the parties which touch the constitution of Society, therefore, the authority under Gratuity Act had no power to adjudicate or to determine the gratuity. To support his contention, the petitioner relies on a judgment of Madhya Pradesh (Indian Co-operative Cases (2) page 271), wherein Madhya Pradesh Court had held that the reference made by the Government to Labour Court in regard to service condition of employee of Co-operative Society was illegal as the matter could only be decided by Registrar. Even though the facts involved in that case are distinguishable but with utmost respect to the judgment of Madhya Pradesh Court, even on the point where the matter should be decided by Labour Court or by the Registrar, I am of the view that in case of industrial dispute arising between the parties if a competent authority is of the opinion that the matter should be referred for adjudication to Labour Court u/s 10(1)(c), it is only the Labour Court which got the jurisdiction to decide the matter. The Registrar may be having some administrative control on society, but it cannot be said that the powers conferred by special Act under the Payment of Gratuity Act are totally ousted. The Registrar has been authorised to decide certain dispute arising in the affairs of the Society touching the constitution of the Society.

3. Apart from above, here is the case of an employee, who served more than 21 years, the employer is taking technical objections about maintainability of the application for Payment of gratuity to employee. The payment of Gratuity Act is special Act for the benefit of employee wherein a machinery has been provided by the Legislature to adjudicate and decide the cases arising between the employer and employee in regard to payment of gratuity. Even non payment of gratuity had been made punishable under the Act. It was never the intention of Legislature to deprive the employee for the benefit falling within the ambit of Gratuity Act by referring the matter to any other forum when the forum under Gratuity Act was available to him.

4. For the reasons mentioned above, I am not inclined to interfere in the impugned order. The writ petition is dismissed with cost Rs. 500/-.

5. In case the gratuity or any part of the gratuity has not been paid to respondent employee, so far, the same shall be paid to respondent employee within a period of two months from the date of receipt of certified copy of this order. The interest at the rate of 9% has been awarded by the Authority which is to be paid till the date of payment of gratuity. In case the payment of gratuity is not made within the stipulated period as mentioned above, the petitioner shall be liable to pay the interest at the enhanced rate of 15% from the due date till payment of the gratuity.

6. For the reasons mentioned above, the writ petition is dismissed.