(2016) 04 TP CK 0011

In the Tripura High Court

Case No : WP(C) 578 of 2015

Dipak Debnath APPELLANT

Vs

The State of Tripura and Others RESPONDENT

Date of Decision : 06-04-2016

Acts Referred:

Payment of Gratuity Act, 1972 — Section 1(3), Section 1(3) (b), Section 1(3)(b), Section 2(ii) (g), Section 2(ii)(g), Section 5, Section 7(3), Section 7(3)(A)
Payment of Wages Act, 1936 — Section 2(ii), Section 2(ii) (g)

Citation : (2016) 04 TP CK 0011

Hon'ble Judges : Deepak Gupta, C.J. and S.C. Das, J.

Bench : Division Bench

Advocate : P.R. Roy Barman and S. Bhattacharji, Advocates, for the Appellant; T.D. Majumder, G.A. and S. Chakraborty, Addl. G.A., for the Respondent

Final Decision : Disposed off

Judgement

Deepak Gupta, C.J.

1. The petitioner by means of this writ petition has prayed that the gratuity be released to him by taking the upper limit to be Rs. 10,00,000/- (rupees ten lakhs) instead of Rs. 3,50,000/- (rupees three lakhs fifty thousand) as has been paid by the respondent No. 2.

2. Briefly stated the facts of the case are that the petitioner joined service on 04.07.1980. He retired from service on attaining the age of superannuation on 31.07.2011. His grievance is that his gratuity has been calculated by taking the maximum gratuity payable at Rs. 3,50,000/-, whereas, according to him, he is entitled to gratuity as per the Payment of Gratuity Act, 1972 to a maximum of Rs. 10,00,000/-.

3. It is not disputed by Mr. T.D. Majumder that the petitioner is entitled to a maximum gratuity of Rs. 10,00,000/- (rupees ten lakhs). He states that the gratuity has already been paid or is being offered to the petitioner.

4. It would be pertinent to mention that with regard to the Tripura Road Transport Corporation, identical question was involved and wherein this Court had framed the following questions:

"4. Two questions arise:

(i) Whether the T.R.T.C. is covered under the provisions of The Payment of Gratuity Act, 1972; and

(ii) Whether the State has any powers to issue any memorandum like Annexure R-1."

5. Thereafter, the Court had answered these questions in the following terms:

"5. As far as the first issue is concerned, Section 1(3) of The Payment of Gratuity Act, 1972, reads as follows:

"It shall apply to-

(a) every factory, mine, oilfield, plantation, port and railway company;

(b) 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;

(c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf".

6. The Apex Court considered the provisions of this Section in State of Punjab v. Labour Court, Jullunder and others, reported in , (1980)1 SCC 4, and held that the Section 1(3) applies to industrial establishments falling within the meaning of Section 2(ii)(g) of Payment of Wages Act. The Apex Court has therefore held that any establishment which is covered by Section 2(ii)(g) of the Payment of Wages Act is also covered by the Payment of Gratuity Act.

7. The Apex Court in the State of Punjab v. Labour Court, Jullunder and others case held as follows:

"In this appeal, the learned Additional Solicitor General contends on behalf of the appellant that the Payment of Gratuity Act, 1972 cannot be invoked by the respondents because the Project does not fall within the scope of Section 1(3) of that Act. Section 1(3) provides that the Act will apply to:

(a) every factory, mine, oilfield, plantation, port and railway company;

(b) 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;

(c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.

According to the parties, it is clause (b) alone which needs to be considered for deciding whether the Act applies to the Project. The Labour Court has held that the Project is an establishment within the meaning of the Payment of Wages Act, section 2(ii) (g) of which defines an "industrial establishment" to mean an "establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on." It is urged for the appellant that the Payment of Wages Act is not an enactment contemplated by section 1(3)(b) of the Payment of Gratuity Act. The Payment of Wages Act, it is pointed out, is a central enactment and section 1(3)(b), it is said, refers to a law enacted by the State Legislature. We are unable to accept the contention. Section 1(3) (b) speaks of "any law for the time being in force in relation to shops and establishments in a State." There can be no dispute that the Payment of Wages Act is in force in the State of Punjab. Then, it is submitted, the Payment of Wages Act is not a law in relation to "shops and establishments". As to that, the Payment of Wages Act is a statute which, while it may not relate to shops, relates to a class of establishments, that is to say, industrial establishments. But, it is contended, the law referred to under section 1(3) (b) must be a law which relates to both shops and establishments, such as the Punjab Shops & Commercial Establishments Act, 1958. It is difficult to accept that 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 as well as, separately, a law in relation to establishments, or a law in relation to shops and commercial establishments and a law in relation to noncommercial 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 non-commercial. The Punjab Shops & Commercial Establishments Act does not relate to all kinds of establishments. Besides shops, it relates to commercial establishments alone. 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 "establishments" 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. Such an establishment would include an industrial establishment within the meaning of section 2(ii) (g) of the Payment of Wages Act. Accordingly, we are of opinion that the Payment of Gratuity Act applies to an establishment in which any

work relating to construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on. The Hydel Upper Bari Doab Construction Project is such an establishment, and the Payment of Gratuity Act applies to it".

8. Section 2(ii) of the Payment of Wages Act, 1936, defines industrial or other establishment and clause (a) reads as follows:

"tramway service, or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;"

It is thus clear, that a road transport corporation is an establishment within the meaning of this Section.

11. Next comes the question, as to whether the State has any power to exempt any establishment which falls within the purview of the Payment of Gratuity Act. Here reference may be made to Section 5 of the Payment of Gratuity Act, 1972, which reads as follows:

"5. Power to exempt.--(1) The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act if, in the opinion of the appropriate Government, the employees in such establishment factory, mine, oilfield, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act."

12. A bare reading of Section 5 makes it absolutely clear that the State can exempt any establishment etc. from the provisions of the Act only after the State is satisfied that the employees of such establishment etc. are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under the Act. Therefore, every employee who is covered under the Act must get the amount which is payable under the Act. However, if an employer provides such terms of employment which are more beneficial to the employees than the provisions of the Payment of Gratuity Act then only can the State Government exempt such establishment from the rigours of Payment of Gratuity Act. This is not the case here.

13. Coming to the issue of interest, gratuity is payable to an employee immediately on his retirement or termination of his service. Earlier the maximum gratuity payable was Rs. 3,50,000/- but this has been enhanced to Rs. 10,00,000/-. Under Section 7(3), the employer must arrange to pay the amount of gratuity within 30 (thirty) days from the date it becomes payable. Therefore, at the most, gratuity should be paid within 30 (thirty) days of retirement. Section

7(3)(A) of the Payment of Gratuity Act, reads as follows

"7(3)(A) If the amount of gratuity payable under subsection (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground"

14. Admittedly, there is no fault of the employee in the present case and, therefore, the petitioner is entitled to interest. The interest should not exceed the rate notified by the Central Government for repayment of long term deposits. The rate of long term deposits is 9% or 10%. Therefore, the petitioner is held entitled to interest @9% per annum."

6. This case is squarely covered by the judgment cited above. Therefore, the writ petition is allowed and it is held that the petitioner is entitled to be paid gratuity by taking the upper limit of gratuity payable at Rs. 10,00,000/- (rupees ten lakhs). Therefore, the respondents are directed to pay the balance amount of gratuity payable to the petitioner along with interest @9% per annum from the date of his retirement till payment of the amount.

7. With these observations the writ petition is disposed of.

