
(1978) 09 MAD CK 0001
In the Madras High Court

Executive Engineer, Construction Etc., Etc.	APPELLANT
Vs	
K.J. Verghese, Etc., Etc.	RESPONDENT

Date of Decision : 20-09-1978

Acts Referred:

Factories Act, 1948 — Section 2
Payment of Gratuity Act, 1972 — Section 1, 2, 4

Citation : (1979) ILR (Mad) 1 : (1978) 2 LLJ 423

Hon'ble Judges : T. Ramaprasada Rao, C.J.;Ramanujam, J

Bench : Division Bench

Judgement

Ramanujam, J.—The first respondent herein was employed by the Southern Railway administration under the Executive Engineer

(Construction) Erode as a casual labour from 16-9-1961. He was retrenched from service on 20-7-1974. At the time of retrenchment he was

working as a lorry driver. On the ground that he had worked for more than five years continuously and was drawing a daily rate of Rs. 10-40 at

the time of his retrenchment, he made an application claiming a sum of Rs. 2,028 as gratuity under the Payment of Gratuity Act, 1972 (hereinafter

referred to as the Act). The second respondent who is the controlling authority under the Act dismissed that application holding that the first

respondent was not eligible for any gratuity under the said Act as the said Act is not applicable to persons working under the Railway

Administration and that in any event the first respondent who has been paid retrenchment compensation under the Industrial Disputes Act cannot

claim gratuity.

2. Aggrieved against the order of the Controlling Authority the first respondent preferred an appeal to the third respondent contending that the

Railway Administration will come under the definition of "Railway Company" as defined under the Act and that, therefore, he is eligible for

gratuity under the Act. He also contended that even retrenched employees who have received the retrenchment compensation under the Industrial

Disputes Act are entitled to the payment of gratuity u/s 4 of the Act. On the other hand, the contention of the Railway Administration before the

third respondent was that the Railway Administration owned and operated by the Union of India cannot be construed as a "Railway Company" for

the purpose of the Act and that in any event the first respondent who was only a casual employee and having been retrenched on payment of

retrenchment compensation such retrenchment will not amount to a termination of employment as contemplated by Section 4 of the Act. The

Appellate Authority accepted the contention of the first respondent both the points, and held that Sections 3(4) and 3(5) of the Indian Railways

Act indicate that State owned Railway Administration is also a railway company, that retrenchment under the Industrial Disputes Act will amount to

termination of employment as contemplated by Section 4 of the Act and that, therefore, the first respondent is eligible for payment of gratuity under

the Act.

3. Aggrieved against the said order of the appellate authority, the Railway Administration has filed this writ petition. It is contended by the Railway

Administration that the impugned order passed by the Appellate Authority is clearly erroneous in that the Railway Administration cannot be

brought within the definition of a Railway Company which alone comes under the Payment of Gratuity Act, and that the retrenchment of an

employment so as to attract Section 4 of the Act. Thus, the two questions that arise for consideration in this writ petition are these :

1. Whether the Railway Administration can be considered as a Railway Company as defined in Section 3(5) of the Indian Railways Act for the purpose of payment of gratuity.

2. Whether a retrenched employee is eligible for payment of gratuity u/s 4 of the Act.

4. With regard to the first contention, it has been urged by the Railway Administration that the Railway Company having been defined in Section

2(p) of the Act, unless the Railway Administration comes within the definition of

Railway Company it cannot be taken to be covered by the

Payment of Gratuity Act as that the Act applies only in a Railway Company and not to Railway Administration. To appreciate this contention it is

necessary to be seen through the provisions of the Act. (Section : (3) makes the Act applicable of every factory, mine, oil field, plantation, port and

railway company, every shop or an 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, and such other, establishments or class of establishments, as the Central Government may, by

notification, specify.

5. Section 2(a) defines "" appropriate Government"" as meaning in relation to an establishment of a major part, mine, oil field Or railway company,

the Central Government.

6. Section 2(e) defines an employee as a person employed in any establishment, factory mine, oil field, plantation, port, railway company or shop,

to do any skilled, semi-skilled, Or unskilled, manual, supervisory technical or clerical work.

7. 2(f) of the Act defines ""employer"" as meaning in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop

(1) belonging to, or under the control of the Central Government or a State Government, a person or authority appointed by the appropriate

Government or where no person or authority has been so appointed, the head of the Ministry or the Department concerned.

(ii) belonging, to or under the control of any local authority, the person appointed by such authority for the supervision and control of employment

or where no person has been so appointed, the chief executive officer of the local authority.

(iii) in any other case, the person, who or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield,

plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing

director or by any other name.

8. Section 2(p) of the Act defines Railway Company and it says that Railway Company will have the same meaning as in Clause 5 of Section 3 of

the Indian Railways Act, 1890.

9. Section 4 of the Act provides for payment of gratuity to an employee on the termination of his employment after he has rendered continuous service for not less than five years-Co) on his superannuation or (b) on his retirement or resignation, or (c) on his death or disablement due to accident or disease.

10. It is in the light of these provisions the tenability of the first contention urged by the writ petitioner has to be considered. It is the case of the

petitioner that the Railway Administration having been separately defined in Section 3(6) of the Indian Railways Act, it cannot be brought in within

the definition of "Railway Company" in Section 3(5) of the same Act. The definition of Railway Company in Section 2(p) of the Payment of

Gratuity Act takes in only the definition contained in Section 3(5) and not the definition of Railway Administration contained in Section 3(6) of the

Indian Railways Act. The Railway Company as defined in Section 3(5) of the Indian Railways Act is as follows :

Railway Company" includes any persons, whether incorporated or not, who are owners or lessees of a railway or parties to an agreement for working a railway.

Railway Administration, has been separately defined in Section 3(6) as follows :

Railway Administration " or " Administration" in the case of a railway administered by the Government means the manager of the railway and

includes the Government, and, in the case of a railway administered by a railway company, means the railway company.

As per the definition the railway company denotes the owners or lessees of railway or parties to an agreement for working a railway. The Railway

Administration in the case of a railway administered by the Government, means the manager of the railway or the Central Government and in the

case of a railway, administered by a railway company, the railway company itself. It is contended by the first respondent-employee that the Central

Government being the owner of the Southern Railway will come under the definition of a Railway Company and the definition of Railway Company

will, therefore, take in the Railway Administration as well. In this case, the question is how far the said submission of the employee could be

accepted. Railway Administration and Railway Company have been separately defined under the Indian Railway Act and the Payment of Gratuity

Act is made applicable only to a Railway Company. Having regard to the said separate definitions, railway company should be taken to have been

treated differently from a railway administration owned or administered by the Central Government, Indian Railways Act. It is true that the

definition railway administration will take in a railway company in the case of a railway administered by that company. The provisions in the Indian

Railways Act also make a clear-cut distinction between a railway company and a railway administered by the Central Government, though the

administrative machinery of both the railways is generally termed as railway administration. A close reading of Sections 3(5) and 3(6) of the

Railways Act would indicate that while the definition of railway administration will take in a railway company, the definition of railway company will

not take in a railway administered by Central Government. Section 47 of the Indian Railways Act creates two separate rule making authorities in

respect of a railway administered by the Central Government and a railway administered by a Railway Company. Section 49 contemplates a

railway company entering into agreement with Central Government for the construction of rolling stock, plant or machinery used by the railways or

for leasing or taking on lease any rolling stock, plant, machinery or equipments required. Section 50 of the Act contemplates a railway company

entering into agreement with the sanction of the Central Government with any other railway administration. Section 51 contemplates a Railway

Company carrying on certain activities with the sanction of the Central Government. Section 51(a) permits a railway company to frame schemes

for providing major transport or aircraft services for passengers, animals, goods, etc., with the sanction of the Central Government. Section 51(a)

(5) enables Central Government to withdraw the sanction given to a railway company under Sub-section (1) after giving six months notice.

Section 140 provides for service of notices, in the case of a railway administered by the Government, on its Manager or the Chief Commercial

Superintendent, and in the case of a railway administered by a railway company, on its Agent in India. Section 145 also makes a distinction

between a railway administered by the Central Government and a railway administered by a railway company. Having regard to these provisions it

is clear that a railway administered by the Central Government is treated differently from a railway administered by a railway company. Though the

definition of the "railway administration" contained in Section 3(6) of the Indian Railways Act will take in a railway company when used in relation to the administration of that railway company, Railway owned and administered by the Central Government cannot be taken to be covered by the definition of a "railway company". In the face of the definition of railway administration which refers to two categories of administration, one, a railway owned and administered by the Central Government and the other administered by the railway company the definition of railway company cannot in any sense be taken to include a railway administered by the Central Government. In this case, the first respondent has claimed gratuity against the Southern Railway which is administered by a railway company. Learned Counsel for the employee/first respondent would say that the Central Government owning the Southern Railway will also come under the definition of a Railway Company which according to him includes all persons owning railways, Perhaps if there is no separate definition of railway administration, there may be scope for such an argument. But, when the definition of "railway administration" contemplates two railways one administered by the Central Government and the other administered by the railway company, it cannot be said that railway company includes a railway administered by the Central Government. The definition of the "railway company" has necessarily to be understood in the light of the definition of railway administration contained in Section 3(6) of the Act. Therefore, we are not in a position to construe the definition of "railway company" occurring in 3(5) of the Indian Railways Act as including all railways either owned or administered by the Central Government, or owned by others. That definition will have to be understood only as referring to the railway administered by persons other than the Central Government. In this view, we cannot accept the view taken by the third respondent that the Southern Railway owned and administered by the Central Government has to be treated as railway company for the purpose of payment of gratuity.. Learned Counsel for the first respondent would also submit that even if the Southern Railway does not fall within the definition of "railway company" as defined in Section 3(5) of the Indian Railway Act, it will come under the definition of an "establishment" or a "factory" belonging to or under the control of the Central Government, and such being the case, the Southern Railway will come under the definition of an employer under

the Act. The question then is whether the Southern Railway will come under the definition of an "establishment" or "factory". Section 1(3) of the

Payment of Gratuity Act says that the Act applies to every factory, mine, oilfield, plantation, port and railway company and 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. Admittedly, the Madras

Shops and Establishments Act, 1947 which applies to the entire State of Tamilnadu will not cover Southern Railway. The definition of

establishment" in Madras Shops and Establishments Act, 1947 refers only to a shop, commercial establishment, restaurant, eating-house,

residential hotel, theatre or any place of public amusement or entertainment and includes any such establishment as may be notified by the State

Government. "Commercial establishment" means an establishment which is not a shop but which carries on the business of advertising,

commission, forwarding or commercial agency, or which is a clerical department of a factory or Industrial undertaking. The Southern Railway does

not obviously fall within the definition of an establishment under that Act. It is not in dispute that the railway administration has not been notified as

an establishment u/s 1(3)(c) of that Act. Therefore, the Southern Railway can be brought within the Payment of Gratuity Act only if it comes within

the definition of a factory. In this case, the first respondent has not come forward with a case that the Southern Railway is a factory, as defined in

Section (m) of Section 2 of the Factories Act, 1948, It is not, therefore, possible to go into the question as to whether the first respondent works in

a factory and can claim gratuity on that basis. That has to be considered by the authorities under the Payment of Gratuity Act as and when such a

claim is put forward.

11. Learned Counsel for the petitioner then submits that having regard to the objects of the Payment of Gratuity Act which is to confer benefit on

all the employees, the employees working under the railways administered by the Central Government cannot be taken to be excluded from the

purview of the Act. It is true that the Act is a beneficial measure, even then its applicability has to be considered with reference to the provisions of

the Act and not with any assumed intention of the Legislature. The employees of the railways administered by the Central Government are entitled

to get gratuity under the Service Rules applicable to them and perhaps for that reason the provisions of Gratuity Act has not been extended to

them. Learned Counsel for the petitioner refers to the rules called the Pensionable Inferior Railway Servants (Gratuity, Pension and Retirement)

Rules under which the gratuity is payable to the Railway employees on discharge from the railway on account of reduction of its establishment or

on retirement on the ground of permanent incapacity or on superannuation, la this view we are not considering the tenability of the second

contention.

12. In the light of the above discussion, we have to quash the impugned order of the third respondent holding that the first respondent is entitled to

gratuity under the Payment of Gratuity Act. Learned Counsel has referred to the following decisions in Chandra Mohan v. Union of India AIR

1953 Gua. 193 Kerala State v. G.M.S. Rly. Madras AIR 1968 Kerala 277, Jetmull Bhojraj v. D.H. Railway, AIR 1962 1879 and N.

Mohammed Kutty Vs. High Court of Kerala and Others, . However, on a perusal of the said decisions, as find that these decisions are not of any

assistance in determining the scope of the provisions of the Payment of Gratuity Act and their applicability to the railway administered by the

Central Government. The writ petition is, therefore, allowed and rule nisi is made absolute. But, there will be no order as to costs.