
(2000) 07 MP CK 0034

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 2938, 3491-3503, 3505-3510 and 3512-3513 of 1999

H.E. Education Society, Barkheda, Bhopal

APPELLANT

Vs

The Appellate Authority and another

RESPONDENT

Date of Decision : 20-07-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Minimum Wages Act, 1948 — Section 2, 27, 3, 7

Payment of Gratuity Act, 1972 — Section 1(3), 2, 3, 4, 7(4)

Citation : (2001) 1 LLJ 691 : (2001) 2 MPHT 383 : (2001) 4 MPLJ 26

Hon'ble Judges : Mr. S.K. Kulshrestha, J

Bench : Single Bench

Advocate : Shri Waheed Khan, for the Appellant; Shri Ajay Mishra, for the Respondent

Final Decision : Allowed

Judgement

S.K. Kulshrestha, J.

The petitioner-Society has challenged the common order Annexure P-I passed by the Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as "the Act"), Bhopal Division, Bhopal in Gratuity Appeal No. 16/99 to 39/99, by which the order dated 19-2-1999 passed under sub-section (4) of Section 7 of the Act by the Controlling Authority holding that the respondent No. 2 in each case, being a retired teacher, was entitled to gratuity, has been affirmed and the appeals filed by the petitioner have been dismissed.

The petitioner is a Society registered under the provisions of the M.P. Societies Registration Act and, inter alia, runs a school in which the respondent No. 2 was a teacher who retired long back on attaining the age of superannuation. According to the petitioner, prior to the notification dated 3-4-1997 issued in exercise of the powers conferred by clause (c) of sub-section (3) of Section 1 of the Act, the educational institutions were outside the purview of the Act and

although the notification even in cases of educational institutions was prospective in application and did not cover the cases of the employees who stood retired before the date of the publication thereof, the respondent No. 2 in W.P. Nos. 2938 of 1999, 3492 of 1999, 3497 of 1999 and 3495 of 1999 who retired on 15-5-1984, 27-10-1989, 30-4-1993 and 31-3-1994, made applications before the Controlling Authority for payment of gratuity under the provisions of the Act and the preliminary issues raised by the petitioner about maintainability of the application was rejected. Thereafter, the Controlling Authority decided the matter, holding the respondent No. 2 entitled to gratuity under the provisions of the Act and in appeal the respondent No. 1 has maintained the order passed by the Controlling Authority. The petitioner has, therefore, challenged the impugned order on the ground that the applicant before the Controlling Authority, not being an employee as defined in Section 2(e) of the Act was not entitled to claim any gratuity under the provisions thereof and such of the employees who had retired prior to the date of the notification Annexure P-3 which was prospective, could not have made any claim, even otherwise, under the provisions of the said Act. The validity of the order has also been assailed on the ground that till 30-9-1987, the persons drawing wages above 1600/- per month and from 1-10-1987 the employees drawing wages above 2500/- per month till removal of the ceiling by Act No. 34 of 1994 w.e.f. 24-5-1994, were not entitled to gratuity under the provisions of the Act and the petitioners in W.P. Nos. 2938/99, 3492/99, 3497/99 and 3495/99, having retired prior to the amendment made by Act No. 34/94 and having been in receipt of wages above the maximum limit laid down, were even otherwise not entitled to seek any relief under the provisions of the Act. The entitlement of these retired teachers has also been assailed on the ground of "limitation."

While the learned counsel has made, his submissions on the aforesaid grounds to challenge the jurisdiction of the authorities under the Act as also the entitlement of these retired teachers to make any claim for gratuity, Shri Rajendra Babbar, learned counsel for the respondents retired teachers in the above cases, has controverted the legal and factual position on the ground that the definition of "workman" in Section 2(s) of the Industrial Disputes Act and the "employees" u/s 2(i) of the Minimum Wages Act is not relevant for construing the meaning of the word "employee" occurring in Section 2(i) of the Act in view of the overriding effect given to the Act notwithstanding anything inconsistent contained in any enactment other than the Gratuity Act. Learned counsel has also pointed out that where a particular educational institution was even otherwise an establishment within the meaning of any law in force in relation to Shops and Establishments Act in a State as contemplated by clause (b) of sub-section (3) of Section 1 of the Act, the notification Annexure P-3 issued by the Central Government under clause (c) of sub-section (3) of Section 1 applying the provisions of the Act, was of no consequence as the institutions covered by clause (b) were already subject to the provisions of the Act and it was not necessary to consider whether the said notification also enabled the employees who retired prior thereto, to make claim

under the provisions of the Act. Learned counsel has also pointed out that it was the obligation of the employer to make payment of gratuity to the retired employees without any initiation in this behalf by the employees concerned and, therefore, even if there was some delay in their making applications before the Controlling Authority, as alleged by the petitioner, their legitimate claim which the petitioner-society was under an obligation to discharge, cannot be defeated on that ground. It has also been argued by the learned counsel for the respondent-retired teachers that ceiling limit of wages was only for the purposes of computation of the amount of gratuity, which under the explanation to Section 2(e) of the Act, as it stood then, was to be made in cases of the employees drawing higher wages on the basis of the amount of wages specified. Learned counsel has also prayed that the return filed in W.P. No. 3502 of 1999 and 3507 of 1999 be read in all the cases.

In view of the rival submissions made as noted above, the first question that arises for consideration is whether the retired teachers of a school are covered within the meaning assigned to the word "employee" by Section 2(i) of the Act as in case they are held to be not, it would not be necessary to consider whether the school run by the petitioner society was establishment to which the provisions of the Act applied even before the notification Annexure P-3 was issued under the provisions of clause (c) of sub-section (3) of Section 1, whether they were otherwise entitled to make a claim despite being in receipt of wages exceeding the ceiling limits prescribed till removal of the limits by Act No. 34 of 1994 w.e.f. 24-5-1994 and whether they had divested themselves of the benefit by not approaching the authority within the time prescribed under the Payment of Gratuity (M.P.) Rules, 1973. 5. There is no dispute that u/s 4 of the Act, gratuity is payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on happening of one of the contingencies prescribed in clauses (a) to (c) of Section 4 and even without completion of five years service in cases covered by the proviso thereto. The main contest between the parties is that while the learned counsel for the petitioner contends that in view of the definition of "employee" contained in Section 2(e) of the Act, a teacher is not "employee", the learned counsel for the respondents retired teachers has contended that in view of the fact that the Act is a benevolent legislation, the definition of "employee" is to be construed liberally and on its own language without any reference to definition of workman in Section 2(s) of the I.D. Act and "employees" in Section 2(i) of the Minimum Wages Act claimed by the petitioner to be in *pari materia*. In relation to the definition of workman contained in Section 2 (s) of the I.D. Act and whether teachers could be said to be workmen, the matter came up for consideration before the Supreme Court in *Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others*,]. In the said case the petitioner who was a teacher in a school had challenged the order of termination of service by the respondent in an Industrial Dispute before the Conciliation Officer under the Industrial Disputes Act in which on failure of the conciliation being reported to the

Government, the Government declined to make reference on the ground that the petitioner was not workman as defined in the Act. After referring to the definition of workman in Section 2(s) of the I.D. Act, it was observed that in order to be "workman" a person should be person employed in any Industry for hire or reward, engaged in skilled or unskilled manual, supervisory, technical or clerical work and he should not be a person falling under the four categories specifically excluded. It was held that the teachers employed by the education institutions whether the said institutions are imparting primary, secondary, graduate or post-graduate education cannot be called as "workman" within the meaning of Section 2(s) of the I.D. Act as imparting of education which is the main function of the teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work as the same is in the nature of a mission or a noble vocation. The relevant extract in Paragraph 10 of the report reads as under:--

"10.....

The question for consideration is whether even after the inclusion of the above two classes of employees in the definition of the expression "workman" in the Act a teacher in a school can be called a workman. We are of the view that the teachers employed by educational institutions whether the said institutions are imparting education cannot be called as "workmen" within the meaning of Section 2(s) of the Act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of mission or a noble vocation. A teacher educates children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers. The clerical work, if any they may do, is only incidental to their principal work of teaching. We agree with the reasons given by the High Court for taking the view that teachers cannot be treated as "workmen" as defined under the Act. It is not possible to accept the suggestion that having regard to the object of the Act, all employees in an industry except those falling under the four exceptions (i) to (iv) in Section 2(s) of the Act should be treated as workmen. The acceptance of this argument will render the words "to do any skilled or unskilled manual, supervisory, technical or clerical work" meaningless. A liberal construction as suggested would have been possible only in the absence of these words. The decision in *May and Baker (India) Ltd. Vs. Workmen*, precludes us from taking such a view. We, therefore, hold that the High Court was right in holding that the appellant was not a "workman" though the school was an industry in view of the definition of "workman" as it now stands."

The question once again came up before the Supreme Court with reference to the definition of "employee" u/s 2(i) of the Minimum Wages Act, 1948, in *Haryana Unrecognised Schools Association Vs. State of Haryana*,] in relation to the inclusion of the employment in private coaching classes, schools including

secondary schools, and technical institutions in Part I of the Schedule appended to the Minimum Wages Act by the Government of Haryana in exercise of the power conferred u/s 27 of the Minimum Wages Act. It was observed that a combined reading of Sections 3, 2(i) and 27 of the Minimum Wages Act, 1948 and the Statement of Objects and Reasons of the legislation makes it explicitly clear that the State Government can add to either part of the Schedule any employment where persons are employed for hire or reward to do any work skilled or unskilled, manual or clerical. If the persons employed do not do the work of any skilled or unskilled or of a manual or clerical nature then it would not be possible for the State Government to include such an employment in the Schedule in exercise of power u/s 27 of the Act. It was observed that since the teachers of an educational institution are not employed to do any skilled or unskilled or manual or clerical work, they could not be held to be as "employee" u/s 2(i) of the Minimum Wages Act and, therefore, it was beyond the competence of the State Government to bring them under the purview of the Act by adding the employment in educational institutions in the Schedule. Reference was also made to the decision in *A Sundarambal* (supra). The observations contained in Paragraph 10 of the report read thus :

"10. A combined reading of the aforesaid provisions as well as the object of the legislation as indicated earlier makes it explicitly clear that the State Government can add to either part of the Schedule any employment where persons are employed for hire or reward to do any work skilled or unskilled, manual or clerical. If the persons employed do not do the work of any skilled or unskilled or of a manual or clerical nature then it would not be possible for the State Government to include such an employment in the Schedule in exercise of power u/s 27 of the Act. Since the teachers of an educational institution are not employed to do any skilled or unskilled or manual or clerical work and therefore could not be held to be an employee u/s 2(i) of the Act, it is beyond the competence of the State Government to bring them under the purview of the Act by adding the employment in educational institution in the Scheduled in exercise of power u/s 27 of the Act. This Court while examining the question whether the teachers employed in a school are workmen under the Industrial Disputes Act had observed in *A. Sundarambal Vs. Govt. of Goa, Daman and Diu* (SCC p. 48, para 10).

"We are of the view that the teachers employed by education institutions whether the said institutions are imparting primary, secondary, graduate or postgraduate education cannot be called as "workmen" within the meaning of Section 2(s) of the Act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates, children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers. The clerical work, if any they may do, is only incidental to their principal work of teaching."

Learned counsel for the respondents has, however, placed heavy reliance on a Division Bench decision of Hon''ble Bombay High Court in P.D. Raodeo Vs. Principal S. T. Phelomine's Convent High School [1997 (1) L.L.N. 608 and contended that the meaning of "employee" contained in Section 2(e) of the Act having already been construed to include teachers within the expression on the plain language of the definition contained in Section 2(e), the decision relied on by the learned counsel for the petitioner-society with regard to the definition of "workman" under the I.D. Act and of "employee" under the Minimum Wages Act could not be of any help to the petitioner. The case before the Bombay High Court primarily hinged on the dispute whether the school, respondent in that case, was an establishment to which the Act was applicable and after referring to Section 1(3)(b) of the Act, it was observed that the definition of "employee" was wide enough to include a teacher indulging in teaching activities in an educational institution which was clearly covered within the definition of establishment under the Bombay Shops and Establishments Act, 1948. It was observed that the decision in A. Sundarambal (supra) did not deal with the position of a teacher qua educational establishment. The observations contained in Paragraph 11 read as under :--

"11. Shri Bukhari next submitted that the definition of "employee" would not include a teacher of an educational institute. It was his submission that the types of activities covered by the said definition of "employee" were identical to such activities covered within the definition of "workman" given in Section 2(s) of the Industrial Disputes Act. He relied on several decisions. He relied on the decision of a Division Bench of this Court (Goa Bench) in the matter of A. Sundarambal Vs. Government of Goa, Daman and Diu and others, reported in 1983 (2) LLN 759, wherein it was inter alia held that a teacher was not a "workman" as defined in Section 2(s) of the Industrial Disputes Act as a person employed in an industry must be employed in one or the other of the four capacities mentioned in the definition, to be covered by the definition of "workman" given in Section 2(s) of the Industrial Disputes Act and that the work of a teacher did not fall under any of those four capacities. The said decision was confirmed by the Supreme Court in 1988 (2) LLN 608. From the perusal of the above decisions, it is apparent that none of these decisions deal with the position of a teacher qua an educational establishment. The decisions cited by Shri Bukhari are in respect of a "workman" in relation to an industry."

Reference has also been made to the decision of Hon''ble Rajasthan High Court in Ramgopal Vs. Mehesh Shikshan Sansthan [1996 (2) LLN 678] in support of contention that teachers are employees entitled to gratuity under the Act. In the said case, the claim of retired teacher had been negated on the ground that although the school was an establishment, since it was not an establishment under the Rajasthan Shops and Establishments Act, 1958, the provisions of the Payment of Gratuity Act were not applicable. The question whether teachers were employees within the meaning of Section 2(e) of the Act, was not before the Court for consideration and the decision thus does not deal with that

question.

Before considering whether the decisions on the definition of "workman" in the Industrial Disputes Act and "employee" in the Minimum Wages Act have any bearing on construction of the word "employee" within the meaning of Section 2(e) of the Act, it is necessary to refer to the definition of "workman" and "employee" in each of these Acts. Section 2(s) of the Industrial Disputes Act defines "workman" as under :--

"2 (s) "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceedings under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a person; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

The interpretation of the word "employee" in Section 2(i) of the Minimum Wages Act is as under:--

"2 (i) "employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the Union."

Payment of Gratuity Act defines "employee" u/s 2(e) as follows:--

"2 (e) "employee" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, railway company

or shop, to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person, who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity."

The key words to be examined to find out similarity between the definition of "workman" appearing in the above cases are that in the definition of "workman" under the I.D. Act, a workman means a person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, the word "employee" under the Minimum Wages Act means a person who is employed for hire or reward to do any work skilled or unskilled, manual or clerical while an employee within the meaning of Section 2(e) of the Payment of Gratuity Act means any person employed on wages to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work. Their Lordship in *A. Sundarambal (supra)* have clearly held that imparting of education which is the main function of a teacher, cannot be considered as skilled or unskilled, manual work or supervisory work or technical work or clerical work. In *Haryana Unrecognised Schools' Association Vs. State of Haryana (supra)*, while interpreting the expression "employee", as contained in Section 2(i) of the Minimum Wages Act, it has been reiterated that since the teachers of an education institution are not employed to do any skilled or unskilled or manual or clerical work, they should not be held to be employee u/s 2(i) of the Act. The meaning assigned to the word "employee", insofar as the nature of work is concerned, is in no way different from the meaning assigned to the work done by a workman or an employee under the foregoing enactments as under the Payment of Gratuity Act also, reference is to skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work. It has already been held in *Haryana Unrecognised Schools' Association (supra)* that the work performed by teacher is not skilled or unskilled, manual work or supervisory work or clerical work as imparting of education is in the nature of a mission or a noble vocation and a teacher educates children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. The clerical work done, if any, is only incidental to their principal work of teaching. In view of above clear interpretation with regard to the nature of the work performed by teachers and there being no material distinction between the definition of "employee" in Section 2(e) of the Payment of Gratuity Act and the definition of "workman" in Section 2(s) of the Industrial Disputes Act and "employee" in Section 2(i) of the Minimum Wages Act, with great respect, the view expressed by Hon'ble Bombay High Court in *P.D. Raodev (supra)* does not appear to be correct. Even in view of the observations in the said case that such educational institutions are establishments covered by the provisions of Bombay Shops and Establishments Act, 1948 when read apposite Section 1(3)(b) of the Payment of Gratuity Act, the teachers not being "employee" within the meaning assigned by

Section 2(e) of the Act, would not become entitled to claim gratuity under the provisions of the Act. It has also to be noted that such educational institutions have also employees who are not teachers and exclusion of the applicability of the Act in case of teachers being manifest, there is no occasion to consider the position of the teachers qua such establishments. The question, if at all, may arise only in relation to the claims of the employees of such institutions other than teachers.

Learned counsel for the petitioner has also brought to my notice the judgment of a learned Single Judge of the Patna High Court in *Ved Prakash Pathak Nirala Vs. State of Bihar and Others*, in which the learned Judge has, after referring to the decisions in *A. Sundarambal and Haryana Unrecognised Schools' Association* (supra) held that teachers cannot come within the purview of an "employee" u/s 2(e) of the Act.

At this stage, another argument of the learned counsel for the respondent retired teachers also deserves to be considered. Learned counsel has pointed out that while issuing notification Annexure P-3 under the provisions of Section 1(3)(c) of the Payment of Gratuity Act and making the Act applicable to the educational institutions, no corresponding change has been introduced in the definition of "employee" contained in Section 2(e) of the Act which shows that teachers were always understood to have been covered by the provisions of the Act. As observed above, educational institutions also employ persons other than teacher. Section 4 of the Act requires payment of gratuity to an "employee" and unless a person is "employee" as per the definition contained in Section 2(e), he can have no claim for gratuity under the provisions of Section 4 of the Act. The teacher not being such an employee, the respondent retired teachers were not entitled to claim gratuity under the provisions of the Act. In this view of the matter, it is not necessary to consider the other contentions raised by the learned counsel that the notification in any case would not apply retrospectively and being in receipt of wages above the ceiling limit, they were not even otherwise entitled to claim any gratuity under the Act.

In the result, all these petitions are allowed. The orders passed by the Controlling Authority directing payment of gratuity to the respondent retired teachers as also the order passed in appeal by the Appellate Authority are quashed. However, since the respondent-teachers are old retired persons and may have already utilised the amounts received by them, to obviate hardship to them, it is directed that the petitioner shall not be entitled to recover the amounts paid to them in pursuance of the impugned orders. There shall be no order as to costs.

Writ Petitions allowed.