

(2014) 11 SHI CK 0131
In the High Court Of Himachal Pradesh
Case No : CWP No. 6807 of 2014

Jamila Khan

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 20-11-2014

Acts Referred:

Companies Act, 1956 — Section 617 — Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 1, 1(3)(a) — Himachal Pradesh Aided Colleges (Security of Service of Employees) Act, 1994 - Section 1(3), 13, 2(a), 2(e), 21 — Industrial Disputes Act, 1947 - Section 2(j) — Payment of Gratuity Act, 1972 - Section 1, 1(3), 1(3)(a), 1(3)(b), 1(3)(c) — Payment of Wages Act, 1936 - Section 2(g), 2(ii)(g)

Citation : (2014) 11 SHI CK 0131

Hon'ble Judges : Rajiv Sharma, J;Sureshwar Thakur, J.

Bench : Division Bench

Advocate : Anita Parmar, Advocate, for the Appellant; M.A. Khan, Addl. AG, P.M. Negi, Dy. AG and J.S. Guleria, Asstt. AG, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.?The reply filed by respondent No. 1 is taken on record.

2. The petitioner's husband was employed as Mali in respondent No. 2- Private College on 15.7.1976. He was placed in regular pay scale on 11.5.1990. He died on 3.1.2011. Respondent No. 2 informed the petitioner that she is entitled to leave encashment amount of Rs. 19,811/- and a sum of Rs. 6,12,909/- towards gratuity. The fact of the matter is that the petitioner has neither been paid leave encashment nor gratuity. The respondent No. 2 College was established in the year 1976. It is affiliated to H.P. University. It is receiving 95% grant-in-aid from the respondent-State.

3. The Legislative Assembly of Himachal Pradesh has enacted the Act to provide for the security of services to the employees of the aided Colleges in the State of Himachal Pradesh known as The Himachal Pradesh Aided Colleges (Security of Services of Employees) Act, 1994 (in short "the Act"). Section 2(a) of the Act

defines the "aided College" or "College" to mean College affiliated to and admitted to the privileges of a University and receiving financial assistance not less than fifty per centum of the salary component for both teaching and non-teaching staff from the State Government. Section 3 of the Act lays down the minimum qualifications for recruitment of various classes of the employees of a College. The method of recruitment is provided under Section 4 of the Act. Section 6 provides that the scales of pay and other allowances and privileges of the employees of a College shall be such as may, from time to time, as specified by the State Government. Section 13 lays down the procedure for payment of salaries. Section 21 empowers the State Government to frame rules by way of notification. The State Government has also notified on 16.3.2008, The Himachal Pradesh Non-Government College Grant-in-aid Rules, 2008. The object of the grant, as per Rule 3, is to financially assist non-Government Colleges teaching in Arts, Commerce and Science subjects at under Graduate levels, till they become self-reliant. According to Rule 4, grant-in-aid is admissible for meeting, a part of the salary expenses, in respect of approved staff (teaching & non-teaching). However, grant-in-aid to a College should not exceed 50% of the revenue gap (total expenditure on salary of approved teaching and non-teaching staff minus the total income from all sources). The actual amount of grant-in-aid is dependent upon the availability of resources and budgetary allocation with the Government for this purpose. Rule 5 lays down the eligibility criteria. Rule 7 provides for equitable distribution in case of insufficiency of funds. Rule 13 lays down that where the Government is of the opinion that it is necessary or expedient to do so, it may relax any of the provisions of these rules. By way of amendment notified on 6.10.2009, after first proviso, the following proviso was inserted in Rule 4:

"Provided further that colleges which were getting Grant-in-aid under the Himachal Pradesh Non-Government Affiliated Colleges Grant-in-aid Rules, 1994 shall be provided Grant-in-aid only for those teaching and non-teaching staff for whom Grant-in-aid was being provided prior to notification of Himachal Pradesh Grant-in-aid to non-Government Colleges Rules, 2008 and the amount of annual Grant-in-aid to these colleges shall be restricted up to the amount of annual Grant-in-aid provided against each of these teaching and non-teaching staff in these colleges prior to 31.3.2008. On accrual of any incremental and other benefits after 31.3.2008, no additional Grant-in-aid shall be provided to these colleges. Further, the Grant-in-aid shall be reduced as and when the staff gets retired.

Provided further that the Grant-in-aid shall be provided w.e.f. 1.4.2008".

4. The respondent No. 2 though is duly served, however, there is no representation on its behalf. The stand of the respondent-State as per the reply is that the petitioner's husband was not a government servant. His case was not covered under the CCS (Pension) Rules, 1972. The employees of 95% aided institutions would not fall within the category of the Government. It is also

averred in the reply that the role of the State is confined to release financial assistance in the form of GIA only towards part of salary component as provided in the GIA Rules. It is also averred that the gratuity and leave encashment applicable to the petitioner and other employees of non-Government affiliated colleges whether aided or non-aided is to be released as per the Ist Ordinance of 1973 Appendix-"A" Chapter XXXVIII para 38.5B(d).

5. Appendix "A" of Ist Ordinance, 1973 talks of teachers and not the non-teaching staff. The petitioner's husband has served respondent No. 2-College for almost 35 years as Mali. The petitioner has been informed of the entitlement towards leave encashment and gratuity. However, the fact of the matter is that till date, neither gratuity nor leave encashment has been released in favour of the husband of the petitioner. The Himachal Pradesh Aided Colleges (Security of Services of Employees) Act, 1994, only lays down as per Section 6 that the scales of pay and other allowances and privileges of the employees of a College shall be such as may from time to time, be specified by the State Government. It is not clear from the language employed in Section 6 of the Act that whether the gratuity was intended to be included herein or not.

6. Respondent No. 2-College is an establishment as per Section 1(3)(b) of the Payment of Gratuity Act, 1972. The petitioner's husband would fall within the ambit of Section 2(e) of the Act. The non-teaching employees of the establishment are entitled to gratuity as per Section 4 of the Act. The Gratuity is to be determined as per Section 7 of the Act.

7. Their lordships of the Hon"ble Supreme Court in the case of State of Punjab Vs. Labour Court Jullunder and Others, , have held that there is no warrant for limiting the expression "law.....in relation to shops and establishments" to a law which relates to both shops and establishments. 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 non-commercial establishments. Their lordships have held as under:

"3. 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. The Jammu and Kashmir High Court in the case of Principal, S.D. Kanya Vidhyala, Jammu versus Authority under the Payment of Gratuity Act and another, reported in 1983 Lab.I.C. 1263, held that the employees of private educational institution are entitled to the receipt of gratuity under the Payment of Gratuity Act, 1972 when the conditions for the applicability as enumerated in the Gratuity Act are satisfied. It has been held as under:

"[11] In view of this settled position of law, it is obvious that the definition of the "private educational institution" as contained in Private Educational Institutions (Regulations and Control) Act, 1967, cannot be imported into SRO-740 or to the J & K Shops and Establishments Act. That being the position, it is obvious that by virtue of SRO-740 of 1978 all Private Educational Institutions in the State have been declared as establishments under J & K Shops and Establishments Act, 1966 and in view of the provisions of S. 1(3)(b) of the Gratuity Act, 1972, the employees of "Private Educational Institutions" are entitled to the receipt of gratuity under the said Act, when the conditions for the applicability as enumerated in the Act are satisfied."

9. In the case of The Management of S.I.E.T. Women's College, Madras vrs. Mahamed Ibrahim and ors. reported in (1992) 1 LLJ 91, the Division Bench of the Madras High Court has held that the Women's College was also an "establishment" as defined in Section 2(C) of the Tamil Nadu Payment of subsistence Allowance Act and educational institution was an Industry within the meaning of Industrial Disputes Act. Thus, the College was an establishment falling within the purview of Section 1(3)(b) of the Payment of Gratuity Act, 1972. It has been held as under:

"5. The Employees "Provident Funds and Miscellaneous Provisions Act, 1958 is applicable to the petitioner as all educational institutions have been notified as "establishments" within the meaning of the said Act by the Central Government under Section 1(3)(b) of that Act, (Vide Notification S.O. 986 dated February 19, 1982). Hence, the petitioner is an "establishment" within the meaning of a law for the time being in force in relation to establishments in the State. One of the contentions urged by learned counsel for the petitioner is that the law referred to in Section 1(3)(b) of the Act should be a law already in force in the concerned State and not any law which comes into force subsequently. We do not agree with this contention. The question has to be decided only when it arises before the Court. If at the time when the question arises before the Court for consideration, there is a law in force in relation to shops or establishments in a State, then the Act will apply to all shops and establishments within the meaning of such law. There is no necessity for the relevant law to have been in force already when the Act was passed in 1972. However, that argument will not apply

to the Employee" Provident Funds and Miscellaneous Provision Act, 1952, as that came into force long prior to the passing of the Payment of Gratuity Act. Even assuming that the contention of learned counsel is acceptable, it cannot escape the applicability of the Act as the petitioner is an establishment within the meaning of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

6. The petitioner is also an "establishment" as defined by Section 2(c) of other Tamil Nadu Payment of Subsistence Allowance Act (43 of 1981). That Section reads as follows:- "establishment" means any place where any industry, trade, business, undertaking, manufacture, occupation or service is carried on, and with respect to which the executive power of the State extends, but does not include--

- (i) any office or department of the Central or the State Government; or
- (ii) a railway administration; or
- (iii) any mine or oil field; or
- (iv) any major port; or
- (v) any public sector undertaking of the Central Government.

Explanation:- For the purpose of this clause "any public sector undertaking of the Central Government" means an establishment owned, controlled or managed by-

- (1) the Central Government or a department of the Central Government.
- (2) a Government company as defined in Section 617 of the Companies Act, 1956 (Central Act I of 1956) and owned or controlled by the Central Government;
- (3) A Corporation established by or under a Central Act, which is owned, controlled or managed by the Central Government."

"Industry" is defined in Section 2(e) of that Act as "an industry as defined in Section 2(j) of the Industrial Disputes Act, 1947 (Central Act XIV of 1947)". An educational institution is an "industry" within the meaning of the Industrial Dispute Act, as elucidated by the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . Section 2(j) of the Industrial Disputes Act defines an "industry" as "any business, trade undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen." The amendment of the definition sought to be introduced by the Industrial Disputes (Amendment) Act, 1982 (46 of 1982) excluding educational institutions from the purview thereof, has not yet come into force.

7. A Division Bench of the Allahabad High Court has in U.P. Co-operative Union and Others Vs. Prabhu Dayal Srivastava and Others, held that the word "establishment" as used under Section 1(3)(b) and Section 1(3)(c) of the Act connotes an organised body of men and women employed where the relationship of employer and employee comes into existence. The Division Bench has taken

the view that the Act being a progressive, Social and beneficial legislation, the construction that promotes the purpose of legislation should be preferred to a literal construction. Relying upon the meaning of the word "establishment" as found in the dictionaries. The Bench held that the Act would apply to an apex-co-operative society registered under the U.P. Co-operative Societies Act, 1965.

8. The result of the above discussion leads to the conclusion that the petitioner is an "establishment" falling within the purview of Section 1(3)(b) of the Act and the contention to the contrary urged by learned counsel for the petitioner should be rejected."

10. In the case of Principal, Bharatiya Mahavidyalaya, Badnera Road and another vrs. Shri Ramkrishna, reported in 1994 Lab. I.C. 404, the learned Single Judge of the Bombay High Court has held that the educational institution is covered under the Payment of Gratuity Act, 1972. It has been held as under:

"[7] In order to appreciate the controversy, it will be better to go to the various provisions of law. Section 1 of Payment of Gratuity Act, 1972 runs as under:

"1. (1) This Act may be called the Payment of Gratuity Act, 1972.

(2) It extends to the whole of India:

Provided that in so far as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir.

(3) It shall apply to--

(a).....

(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 employee, or were employed, on any day of the preceding twelve months;

(c).....

(3-A).....

(4)..... "

The word establishment is not defined in the Payment of Gratuity Act. In short, the Payment of Gratuity Act would apply to all the establishments which are "establishments" as per any law in the State concerning the shops and establishments. There is no dispute and indeed there cannot be any that the Bombay Shops and Establishments Act, 1948 would be one of such laws which is in force in the State of Maharashtra and which pertains to the subject of shops and establishments. In order that an establishment is covered under section 1(3) (b) of the Gratuity Act, that establishment will have to be "within the meaning of" the Bombay Shops and Establishments Act or any other law which covers the subject of shops and establishments.

[8] Section 5 of the Gratuity Act provides that the appropriate Government may by notification and subject to such conditions as may be specified in the notification exempt any establishment from the operation of the Gratuity Act. It will be better to quote section 5(1) of the Payment of Gratuity Act, 1972 which is as under:--

"Section 5(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."

There is no dispute about the fact that the appropriate Government in the present case would be the State Government, i.e. the Government of Maharashtra. The State of Maharashtra, therefore, is empowered to specifically exempt any establishment provided it does so according to the modality provided by section 5(1) of the Gratuity Act. It is also an admitted position that the State of Maharashtra has not exempted any education institutions, muchless any institution or establishment like that of the petitioners from the operation of the Gratuity Act."

11. The learned Single Judge in the case of Ram Gopal Vyas versus Shri Mahesh Sikshan Sansthan and others, reported in 1996(73) FLR 1162, have held that the provisions of Payment of Gratuity Act, 1972 would be applicable to the aided schools. It has been held as under:

"[4] I have carefully considered the arguments advanced by both the learned counsel and also perused the orders passed by the Controlling Authority as well as by the appellate authority. Mr. Vyas learned counsel for the petitioner was very much right in submitting that the Controlling Authority in its judgment running into 24 typed pages has considered all the aspects of the case and rightly come to the conclusion that the State Government has exempted the respondent No. 1 Institution and, therefore, the Controlling Authority was very much right in treating that the respondent No. 1 was an establishment. Thus, therefore, provisions of Payment of Gratuity Act, 1972 would be applicable in this case and the original petitioner was entitled for the gratuity from the respondent No. 1 It must be stated that while allowing the appeal the appellate authority has passed a cryptic order, except reproducing the provisions he has not given any other finding except stating that:

"An educational institution may be an industry under the Industrial Disputes Act, 1947 in view of the law laid down by the Supreme Court of India in the Case of Bangalore Water Supply and Sewage Board v. Rajagpa or it may be an establishment but unless it is a Commercial establishment under the Rajasthan

Shops & Commercial Establishments, Act 1958, it will not come within the ambit of the Payment of Gratuity Act, 1972."

[5] The View taken by the appellate authority is wholly unsustainable. In my opinion the appellate authority was wrong in coming to the conclusion that the respondent No. 1 Institution may be an establishment, but unless it is held to be commercial establishment under the Raj. Shops and Commercial Establishments Act, 1958 it will not come within the ambit of Payment of Gratuity Act. 1972."

12. The Division Bench of Andhra Pradesh High Court in the case of Venkateshwara Rao V vrs. SMVM Polytechnic, Tanuku & others, reported in 1998-I LLJ 181, held that the polytechnic was an institution in which the activity of imparting knowledge or training was systematically carried on and was an "establishment" for the purpose of the Gratuity. It has been held as under:

"[7] Now, apart from the petitioner/polytechnic being an establishment by virtue of Section 1(3)(a) of the Gratuity Act being a factory etc., and an establishment etc., under several laws supra, there is also a positive material to bring it within the meaning of "establishment" under Section 1(3)(b) of the Act.

Section 1(3) of Employees Provident Funds and Misc. Provisions Act., 1952 reads:

"1. 3: Subject to the provisions contained in Section 16, it applies--

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and

(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf.

It is almost in pan materia with Section 1(3) of the Gratuity Act. The Central Government has issued a notification No. SO.986 dt.19-2-1982 under Section 1(3)(b) of the Act supra as follows:-

"In exercise of the powers conferred by Clause (b) of Sub-section (3) of Section 1 of the Employees' Provident Funds and Misc. Provisions Act, 1952, the Central Government hereby specifies the following classes of establishments in each of which twenty or more persons are employed, as establishments to which the said Act shall apply, namely--

(i) any University

(ii) any College, whether or not affiliated to a University

(iii) Any school, whether or not recognised or aided by the Central or a State Government

(iv) any scientific institution

(v) any institution in which research in respect of any matter is carried on

(vi) Any other institution in which the activity of imparting knowledge or training is systematically carried on."

The petitioner/polytechnic cannot but to accept that it is an institution in which the activity of imparting knowledge or training is systematically carried on to come within Clause (vi) of the notification. In other words, it comes within the applicability provision of Section 1(3)(a) of the Employees Provident Fund and Misc. Provisions Act to make the Act, 1952 applicable upon itself. Therefore, such an act in the State of A.P., making the petitioner/polytechnic an "establishment" under the said provision in force should necessarily come within the meaning of "establishment" for the purpose of Section 1(3)(b) of the Gratuity Act to operate such a law to the Polytechnic. Thus, both legally and logically the petitioner polytechnic is governed by the provisions of the Payment of Gratuity Act entitling the fifth respondent/appellant to get the Gratuity as claimed and as correctly conceded by the fourth respondent. The approach of the matter beyond such a legal reinforcement approved by the Supreme Court also and rightly followed by the Division Bench of the High Court of Madras by the learned single Judge cannot persuade us to hold to the contrary and sustain the impugned order in the appeal and we propose to set aside the same."

13. In the instant case also, more than 10 employees are engaged by respondent No. 2 College for imparting knowledge.

14. In the case of Laxmi D. vrs. A.P. Agricultural University and another, reported in 2002-I- LLJ 69, the Division Bench of the A.P. High Court held that "establishment" in Section 1(3)(b) of the Act was comprehensive to include "establishment" within the meaning of any law, not only law relating to shops and establishments, for the time being in force in a State. It has been held as under:

"[5] The learned single Judge while answering the first question relied upon the decision of a learned single Judge of this Court in Chairman, G.B.S.M.V.M.P. Technic, Tanuku v. Government of Andhra Pradesh and Ors., 1989(2) LLJ 95. It now appears that the subject-matter, as raised before us, earlier came up for consideration before a Division Bench of this Court in V. Venkateswara Rao v. S.M.V.M. Polytechnic, wherein the Division Bench following the decision of the Apex Court in State of Punjab v. Labour Court, reversed the view that the University is not an educational institution. The Apex Court in State of Punjab v. Labour Court (supra) while rejecting the contention that Section 1(3)(b) must be a law, which relates to both shops and establishments stated:

".....Section 1(3)(b) speaks of "any law for the time being in force in relation to shops and establishments in a State". It is difficult to accept such a 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 and commercial establishments and a law in relation to shops as well as separately, a law in relation to establishments or a law in

relation to non-commercial 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 noncommercial..... 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 "establishment" 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.....

[6] Although the aforesaid decision was rendered in the light of Section 2(g) of the Payment of Wages Act, defining "industrial establishment" in a State being the law in force, we are of the opinion, that the above decision would cover the instant case also. The Act refers to an establishment. It, therefore, embraces in its fold all types of establishments, including industrial establishments. Furthermore, as noticed hereinbefore, the Act applies to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments. The Central Government also issued notification dated 19-2-1982 extending its applicability to a University, College - whether affiliated or not to a University held that the Act is applicable. The Apex Court in *A. Sundarambal v Government of Goa, Daman and Diu*, held that though school is an industry, the teachers employed therein are not workmen."

15. In the case of *Habibia Girls Primary School*, (rep. by its Manager), *Ambur Vrs. Noorinisha (Ms.) and others*, reported in 2004-II-LLJ 398, the learned Single Judge has held that the "school" whether aided or otherwise, would come under the ambit of "establishment" under the Payment of Gratuity Act, 1972. It has been held as follows:

"[4] It is, of course, true that the original authority had decided the matter *ex parte*, as the petitioner had not appeared. Even before the appellate authority, no concrete materials had been adduced, in support of such an assertion and the appellate authority came to the conclusion that the school was being run from the year 1972. This being a factual conclusion, there is no scope for interfering with the conclusion arrived at by the appellate authority.

[15] Following the aforesaid decisions, I have no hesitation in observing that the provisions contained in Section 1(3) of the Payment of Gratuity Act are also applicable to unaided educational institutions. Once such a conclusion is arrived at, there is hardly any scope for interfering with the order passed by the appellate authority."

16. The Division Bench of the Rajasthan High Court in the case of *Shri Agarwal Shiksha Samiti and Another vrs. Moti Chand Jain and Others* reported in 2009-II-LLJ 616 (Raj), has held that non-governmental educational institutions were

bound to pay gratuity to its employees. It has been held as under:

"[2] All these appeals arise from a common order of learned Single judge whereby, the appellant Samiti was directed to make payment of gratuity to the respondents along with interest. The order does not call for interference in view of the ratio indicated in *Children Garden Play School Education Society v. Raj Nan Government Educational Institutions Tribunal and Ors.*, 2008 3 WLC (Raj) 147 wherein, the Division Bench of this Court held that non-government educational institutions are bound to pay gratuity to the employees worked with them since gratuity is a benefit arising from past service and meant for relief and assistance after retirement or cessation of employment."

17. The employees of respondent No. 2-College are also doing yeomen's service in educational field. The conditions for the service of teaching and non-teaching staff must be humane and the endeavour should be made by the State Government that the teachers and non-teaching staff of Government Aided Colleges/Schools are treated at par with teachers and non-teaching staff of Government Colleges/Schools. The teachers in private Aided Colleges are appointed as per the Ordinance framed by the University and they are also supposed to fulfill the minimum educational qualification criteria, as laid down under the UGC norms. The petitioner's husband was also entitled to leave encashment. The expression salary in the grant-in-aid clause would also cover leave encashment.

18. Accordingly, the Writ Petition is allowed. Respondent No. 2-College is directed to release the gratuity to the petitioner, strictly as per the provisions of the Payment of Gratuity Act, 1972 within ten weeks from today. The respondent No. 1 is also directed to pay a sum of Rs. 19,811/- to the petitioner towards leave encashment, if necessary by relaxing the Rules under Rule 13 of the Himachal Pradesh Non-Government College Grant-in-aid Rules, 2008 within six weeks. It is made clear that the amount paid towards the leave encashment can be adjusted by the respondent No. 1-State while releasing grant-in-aid to respondent No. 2-College. The respondent-State is also directed to consider making comprehensive rules/guidelines for the retiral benefits of the Government aided Colleges/Institutions.