

(2007) 06 MP CK 0028
In the Madhya Pradesh High Court

Management, Mission Middle School and Another	APPELLANT
Vs	
State of M.P. and Others	RESPONDENT

Date of Decision : 19-06-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(s)
Minimum Wages Act, 1948 — Section 2(i)
Payment of Gratuity Act, 1972 — Section 1, 2(e), 4

Citation : (2008) 1 LLJ 388 : (2007) 4 MPLJ 400

Hon'ble Judges : R.K. Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.K. Gupta, J.

They are heard.

The present petition is filed by the Educational Institution challenging the order passed by the Controlling Authority, which is Annexure P-5 to the petition. The petitioners have also challenged the order in review, which is Annexure P-7 to the petition.

The respondent was a Teacher and after his retirement he filed a case claiming gratuity. The Controlling Authority held that the respondent was an employee and the Educational Institution is an establishment within the meaning of the Payment of Gratuity Act, 1972. Thereafter, the Controlling Authority directed the petitioner to pay gratuity to the respondent-employee by an order dated November 28, 1992 within a period of 30 days. The issue before the Controlling Authority was also raised that whether the respondent was an employee within the meaning of Section 2(e) of Act? The said issue was decided against the petitioner whereby it was held that the petitioner-institution has to pay the gratuity to the respondent in accordance with the provisions of the Payment against the said order, a review application was preferred by the petitioners,

which was also rejected.

Learned Counsel for the petitioners contended that the respondent-employee being a Teacher was not an employee within the definition of an "Employee" as defined u/s 2(e) of the Payment of Gratuity Act, 1972.

The question with regard to a Teacher whether he is an employee or not, has directly been dealt with in *H. E. Education Society, Barkheda, Bhopal v. Appellate Authority and Anr.* 2001 MPLJ 26. In the said case, the Court held that the definition of word "employee" as defined in Section 2(s) of the Industrial Disputes Act, 1947 is *apari materia* with the definition of the word "employee" as defined in Section 2(e) of the Payment of Gratuity Act, 1972. The question has been dealt with by this Court from para-4 onwards of its judgment. In para-9, this Court considered the definition of the word "employee" as defined in Section 2(s) of the Industrial Disputes Act, 1947 and the definition of the word "employee" as defined in Section 2(e) of the Payment of Gratuity Act, 1972. The Court has also taken into account the definition of the word "employee" as defined in Section 2(i) of the Minimum Wages Act, 1948. This Court after having considered the judgments ultimately came to conclusion that the provisions of the Payment of Gratuity Act, 1972 shall apply to the educational institutions but the Teacher is not an employee, therefore, the provisions of the Payment of Gratuity Act, 1972 are not applicable. The conclusion has been arrived at in para-12 of the judgment, which is reproduced as under:

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 the 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.

The Apex Court in *Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others*, also considered the question with regard to a Teacher whether he is an employee within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 or not? The Apex Court ultimately came to the conclusion that the "Teacher" is not a "Workman" within the meaning of Section 2(s) of the Industrial

Disputes Act, 1947. The definition of the word "employee" as defined under the Industrial Disputes Act, 1947 and under the Payment of Gratuity Act, 1972 have already been considered to be apart materia.

Under the circumstances, it has to be held that the respondent being a Teacher is not an employee within the meaning of Payment of Gratuity Act, 1972 though the Act applies to the educational institutions run by the petitioner No. 1.

1 In view of the aforesaid discussions, the order dated November 28, 1992 (Annexure P-5) passed by the Controlling Authority and so also the order dated April 20, 1993 (Annexure P-7) passed in review are quashed. Accordingly, the present petition stands allowed. However, in case, any amount of gratuity has been recovered and paid to the respondent, the same shall not be recovered from the respondent.