

(2001) 07 P&H CK 0163
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 9914 of 2000

Managing Committee, MASD Public School, Panipat	APPELLANT
Vs	
The Appellate Authority under Payment of Gratuity Act, Haryana	RESPONDENT

Date of Decision : 09-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Payment of Gratuity Act, 1972 — Section 2, 3

Citation : (2001) 07 P&H CK 0163

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : Mr. Sumeet Goel, for the Appellant; Mr. R.K. Malik, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—This petition under Articles 226/227 of the Constitution of India seeks issuance of appropriate writ, order or direction quashing the order dated 29.6.2000 passed by the learned Appellate Authority under the Payment of Gratuity Act, 1972.

2. Petitioner, the Management Committee of M.A.S.D. Public School, Panipat is a registered Institution under the Societies Registration Act. The main function of the petitioner School is to impart education to its students. For the fulfilment of this purpose, the School employs teachers. Respondent No. 3 was working as a teacher with the petitioner's school since March, 1983. She sought pre-mature retirement with effect from 30.9.1997. Her request was accepted. However, she was not paid any gratuity under the Payment of Gratuity Act, 1972. Consequently, she filed a petition before the Controlling Authority on 3.11.1998. Petition came up for hearing before respondent No. 2 on 19.11.1998 and a registered notice was issued to the petitioner on 19.12.1998. In spite of service, none appeared on behalf of the petitioner. Consequently, the School was

proceeded against ex-parte. Application of respondent No. 3 was allowed. She was granted Rs. 40,000/- by way of gratuity and Rs. 1000/- as expenses. The petitioner was directed to pay the amount within a period of 30 days. However, instead of making the payment, the petitioner filed an application for setting aside the ex-parte decree. This application was dismissed by the Controlling Authority by passing a speaking order. Thereafter, the petitioner-School filed appeal before the Appellate Authority under the Payment of Gratuity Act, 1972 and Joint Labour Commissioner Haryana. The Appellate Authority passed a detailed order. The arguments raised by the petitioner had been rejected. It has been categorically held that since the School is affiliated to CBSE Delhi in accordance with the definition of norms, respondent No. 3 would fall under the definition of "employee" as given in the Payment of Gratuity Act. For affiliation of the School with CBSE certain norms have been laid down. Norm 10 is as follows :-

"10. Staff and Service conditions -

(4) The school should have contributory Provident Fund and Gratuity or Pension gratuity and general provident fund as retirement benefits. These schemes should be as per Government rules of the State/Centre. In addition it will also consider providing other welfare measures like free children education, leave travel concession, medical benefits, leave encashment etc."

3. Relying on the aforesaid norm, the appellate authority has rightly held that the petitioner was entitled to gratuity. It is also sought to be argued that the petitioner does not fall within the definition of workman as given under the Industrial Disputes Act. This, however, is wholly irrelevant for the purpose of deciding as to whether or not respondent No. 3 was entitled to gratuity. That claim has to be decided under the Payment of Gratuity Act, 1972. Under the relevant provisions of this Act, the petitioner School would fall under the definition of establishment as given in Section 3(b). Respondent No. 3 would fall under the definition of employee given in Section 2(e). When these provisions are read in juxtaposition with norm No. 10 reproduced above, it becomes clear that the petitioner was entitled to gratuity.

Having considered the arguments put forward by the counsel for the parties at length, I am of the considered opinion that the petitioner has failed to make out a case for setting aside the ex-parte decree. I am also satisfied that there is no infirmity in the order passed by the Appellate Authority. Dismissed. No order as to costs.

4. Petition dismissed.