

(2008) 07 AP CK 0068

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13206 of 2008

Motor Car Beedi Factory

APPELLANT

Vs

Controlling Authority under Payment of Gratuity Act, 1972
and Assistant Commissioner of Labour and Rasheeda Khan

RESPONDENT

Date of Decision : 08-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 4(1)

Citation : (2009) 3 ALD 21 : (2009) 2 ALT 50 : (2009) 1 APLJ 227 : (2009) 121 FLR 449 : (2009) 1 LLJ 723

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Vedula Srinivas, for the Appellant; GP for Labour for Respondent No. 1 and T. Kumar Babu, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—In this batch of Writ Petitions, common question arises for consideration. Hence, the batch is disposed of by a common order.

2. The petitioner is a Beedi Factory, which was established about four decades ago. It was closed in the year 2005, after the permission from the concerned authorities was obtained. The licence obtained from the Central Excise Authorities was also surrendered. According to the petitioner, there were 32 employees on its rolls and at the time of closure, their claims were settled.

3. About 150 workers-claimants, who individually figured as respondent No. 2, in these writ petitions, have approached the Controlling Authority under the Payment of Gratuity Act, 1972 (for short "the Act") the first respondent, by filing applications u/s 4(1) of the Act. They pleaded that though they rendered service for decades together in the petitioner factory, till the date of closure, they have not been paid any gratuity and prayed for a direction to the petitioner, to pay the determined amount.

4. The petitioner filed a detailed counter-affidavit. It raised an objection as to the very maintainability of the claims under the Act. According to the petitioner, the claimants were not, at all, its employees, at any point of time, and as such, the question of payment of gratuity to them, does not arise. Reference was made to various documents, such as the wage register, the records maintained under the provisions of the Central Excise Act, and ultimately, it was pleaded that in none of the documents, the names of the claimants figured.

5. Oral and documentary evidence was adduced before the first respondent. Through separate, but similar orders, dated 24.04.2008, the first respondent allowed the claims and directed payment of gratuity, as provided for under the Act. The petitioner assails the individual orders, by filing this batch of writ petitions.

Sri Vedula Srinivas, learned Counsel for the petitioner, submits that the first respondent would assume jurisdiction, in the matter, only when there does not exist any dispute, as to the status of the claimants as employees of the petitioner, or where it is proved by leading evidence. He contends that when a serious dispute is raised as to the status of the claimants, the 1st respondent was under obligation to examine the same and record a finding, duly assigning reasons. Learned Counsel submits that none of these aspects were taken into account and except stating that he is determined, the first respondent did not furnish any reason, worth its name, to conclude that there exists relationship of employer and employee between the petitioner and the claimants.

6. Sri T. Kumar Babu, learned Counsel for the claimants, on the other hand, submits that the writ petitions are not maintainable, particularly when an alternative remedy of appeal is available to the petitioner. Placing reliance upon a judgment of the Supreme Court in *Surya Dev Rai Vs. Ram Chander Rai and Others*, , he contends that the disputed questions of fact cannot be adjudicated in a writ petition under Article 226 of the Constitution of India.

Before dealing with the matter, on merits, the objection raised by the learned Counsel for the claimants, as to maintainability, needs to be dealt with.

It hardly needs any mention that the High Court cannot act as an appellate authority, against an order passed under the Payment of Wages Act. Another aspect is that even where a writ petition is otherwise maintainable, the High Court would be slow to interfere, when alternative remedy of appeal exists. The Supreme Court reiterated these principles in the judgment referred to above.

7. The jurisdiction of the High Court under Article 226 of the Constitution of India to issue a writ of Certiorari cannot be doubted, where the order passed by a quasi-judicial authority, ex-facie, discloses lack of jurisdiction on the part of the concerned authority, an error apparent on the face of the record, or violation of principles of natural justice. Before a quasi-judicial authority entertains a claim under a statute, or a subordinate legislation, it must be satisfied that there exists, what is known in the administrative law, the "jurisdictional fact". It is only

the proof of the said fact, that would confer the jurisdiction upon the Authority.

8. A claim under the Act can be maintained, when there is no dispute as to the existence of relationship of employer and employee. Even where there exists dispute, on this aspect, a specific finding needs to be recorded on the basis of the evidence.

In the instant cases, the petitioner flatly denied the existence of such a relationship. Therefore, heavy burden rested upon the claimants to prove that they were the employees of the petitioner. Obligation to pay gratuity exists only towards an employee. Oral and documentary evidence was adduced. The first respondent was under obligation to record a finding, based on reasons. If a finding which accords with the procedure is recorded, this Court cannot interfere with the same, as an appellate authority. The law requires that a finding on the basis of evidence, as such, must exist.

The individual orders passed by the first respondent run into two typed pages. Almost 95% of the order is referred to the facts and the documents that are placed before it. The only discussion undertaken by the first respondent on the controversy reads as under:

On the above oral and documentary evidence, I am determined that the applicant is entitled for gratuity as claimed in the application for the period of service rendered with the respondent.

I hold that the respondent is liable to pay gratuity to the applicant.

An adjudication acquires its acceptability on account of the reasoning process, that involves in it. Howsoever correct and accurate the conclusion may be, bereft reasons, it tends to become whimsical if not, an ante thesis of the concept of adjudication.

It can safely be said that the first respondent reduced the entire adjudication almost to an empty formality. When serious dispute as to existence of jurisdictional fact was raised, a specific finding ought to have been recorded, duly assigning the reasons, in support of the conclusion.

9. Further, mere existence of relationship of employee and employer, does not by itself attract the liability under the Act. The period during which the employees had worked becomes significant. It is only on putting a minimum of five years of service that an employee gets the right to be paid gratuity. In a way proof of this fact was essential to confer jurisdiction upon the 1st respondent. The starting point of employment and the point of termination ought to have been ascertained from the evidence on record and only then the relief ought to have been granted.

Under these circumstances, it cannot be said that the writ petitions are not maintainable. Therefore, the objection raised by the learned Counsel for the claimants is overruled.

10. It has already been pointed out that the first respondent did not undertake any adjudication, worth its name. The only view expressed by him is that he is "determined that the claimants are entitled for gratuity". Failure to make any mention to the evidence on record, apart from amounting to a serious lapse in the adjudication process, would in a way constitute violation of principles of natural justice also. The reason is that mere service of a notice, cannot be treated as a compliance with the principles of natural justice and the actual compliance can be said to have taken place, only when the contents of the reply are taken into account. There was not even a remote reference to the objection raised by the petitioner, about the absence of relationship of employer and employee. When there is no adjudication in its real sense, an appeal against such orders, would hardly be of any use. An appellate authority would, in the ultimate analysis, reexamine the reasons assigned by the original authority. Therefore, the remedy of appeal in these cases would be futile. This Court is of the view that 1st respondent needs to be required to determine the issues referred to above, duly furnishing reasons in support of his conclusions.

11. For the foregoing reasons, the Writ Petitions are allowed and the orders challenged therein are set aside. The matters are remanded to the first respondent for fresh consideration and disposal in accordance with law. Having regard to the nature of claims, the first respondent shall conclude and dispose of the cases within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs.