
(1985) 08 AHC CK 0013

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 9049 of 1985

Municipal Board Pilkhuwa

APPELLANT

Vs

Additional Labour Commissioner and Others

RESPONDENT

Date of Decision : 23-08-1985

Acts Referred:

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

Citation : (1985) AWC 947

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Advocate : N. Lal, for the Appellant;

Final Decision : Dismissed

Judgement

B.D. Agarwal, J.—Heard Learned Counsel.

2. The appeal filed by the Petitioner against the grant of gratuity to the Respondent No. 3 has been dismissed on account of the amount in question not being deposited, which is precondition imposed for the leave being granted. Contention of the Learned Counsel is that the Municipal Board is not an establishment within the meaning of the Payment of Gratuity Act, 1972, and hence the provisions thereof would not be said to be attracted. This is begging the question because whether there is or not liability of the Petitioner to pay gratuity could be adjudicated upon appeal and the appeal would not lie except on being accompanied with requisite certificate of deposit. From Section 1(3)(b) it will appear moreover that the Act applies, inter alia, to 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. Clause (c) of Sub-section (3) of Section 1 provides that the Act shall apply also to such other establishments or class of establishment, 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. There is no dispute that in the Municipal Board concerned ten or more persons were employed on the

relevant date. It is also stated that there is a notification of the Central Government as contemplated under this clause. The argument advanced, however, is that since the Municipal Board Is not an establishment the notification of the Central Government has no relevancy to this, It is difficult to agree. The Learned Counsel in support of the contention made reference to the definition given of the expression "employer" in Section 2(f) of the Act. It is contended that the Municipal Board cannot be the employer where the employee concerned is person claiming gratuity as in the instant case. Sub-clause (ii) of Clause (f) of Section 2 contemplates an employer in relation to an establishment belonging to, or under the control of, any local authority. In such a case the employer is the person appointed by the local authority for the supervision and control of employees, or where no such person is appointed the Chief Executive Officer of the local authority. On considering this provision it is difficult to exclude the local authority from the purview of establishment. Indeed Section 2(f)(ii) specifically includes the local authority in the category of "employer".

3. Learned Counsel argues that the Municipal Board cannot be placed at par with a shop or commercial establishment. This is of no consequence. In Section 1(3) (c) the words "such other" denote that establishment may be different from a commercial establishment which is referred to in the preceding Clause (b) and is defined, for instance, in the U.P. Dukan Aur Vanijya Adhithao Adhiniyam, 1962. For purposes of Clause (c) of Section 1(3) the establishment need not partake the characteristics of a shop or a commercial establishment. The material factor is that it is an organization comprising of a certain number of employees entrusted with the performance of statutory and other duties of the nature of public utility. This discharges the business assigned to its care under the U. P. Municipalities Act. In the absence of definition given in the Payment of Gratuity Act, we may look to the dictionary meaning in Black's Law Dictionary (5th Edn) p. 490, the word "establishment" is defined as "Place of business, Public institution, State of being established." "Business" herein is not used in a restrictive sense or as confined to profit oriented activity. It is instead denotive of that which ordinarily business or engages or occupies the time, labour and effort of persons constituting the local authority. Viewed from all relevant aspects, therefore, the Petitioner is establishment within the Act.

4. The petition is, accordingly, dismissed in limine.