
(1988) 02 AHC CK 0084

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2914 of 1985

Nagar Palika

APPELLANT

Vs

Appellate Authority and Additional Labour Commissioner,
(Appointed as Appellate Authority under the Payment of
Gratuity Act, 1972) and Others

RESPONDENT

Date of Decision : 25-02-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 1(3), 2, 9

Citation : (1988) 1 AWC 562

Hon'ble Judges : Palok Basu, J

Bench : Single Bench

Advocate : Prem Chandra, for the Appellant; M. Islam and U.N. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Palok Basu, J.—One Sri Majid Ali Kban was an employee in the Nagar Palika, Moradabad, who died on 7th January, 1976. Smt. Salma Khatoon claiming herself to be the widow of the said employee laid a claim for gratuity amount before the Nagar Palika. For some reason or other there was no satisfactory action on the said application. Consequently Smt. Salma Khatoon made an application u/s 9 of the Payment of Gratuity Act, hereinafter referred to as the Act, before the Controlling Authority. The Nagar Palika contested the claim whereupon ultimately the controlling Authority by an order dated 9th July, 1982, directed that a total sum of Rs. 10264.80 shall be paid to Smt. Salma Khatoon.

2. Aggrieved by the said order the Nagar Palika, Moradabad, has filed the present writ petition under Article 226 of the Constitution.

3. I have heard Sri Prem Chandra Srivastava on behalf of the Nagar Palika and Sri Uraesh Narain Sharma representing Smt. Salma Khatoon. Sri Srivastava has argued the following two points in support of his writ petition:

(1) The provisions of the Act are not applicable in case of employee of Nagar Palika.

(2) There was no proof of the fact that Smt. Salma Khatoon was the widow of the ex-employee, on the basis of which it has been canvassed that the impugned order is illegal and liable to be quashed.

4. On the other band Sri Sharma contended that the definition of the word "employee" is wide enough to include ah employee of Nagar Palika also and benefits under the said Act must ensure to the nominees or heirs of the concerned employee. He has mainly relied upon the provisions of the Act.

5. After hearing the learned Counsel for the parties I am of opinion that so far as the first point is concerned it has to be rejected. It is in the fitness of things that a beneficial provision should be broadly - interpreted. In a welfare State like ours such laws have been enacted only to extend more social security to those who retire or those who suddenly lose their bread-earner.

6. It may be relevant to quote the definition here which is to be found in Section 2(ii)(e):

"Employee" means any person (other than an apprentice) employed on wages, not exceeding one thousand and six hundred rupees per mensem, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi skilled, or unskilled, manual, supervisory, technical or clerical work, whether the term's of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by rules providing for payment of gratuity

7. It may be relevant again to make a reference to the definition of "employer" to be found in Clause (f) of Section 2(ii) of the Act as under:

"Employer" means in relation to any establishment

(i) belonging to, or under the control of, the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned".

(ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the Chief Executive Officer of the local authority.

8. Sub-section (3) of Section 1 lays down that the provisions of the Act are to apply to every establishment in which 10 or more persons are employed

9. The argument sought to be advanced by the learned Counsel for the Petitioner

is that the Municipal Board cannot be described as an "establishment" because the word "establishment" connotes some business transaction or at least it may include a public institution. Such a definition of the word "establishment" is to be found in Black's Legal Dictionary.

10. I am afraid the argument is not sustainable. The activities which are carried on by the Municipal Board do go to make it a public institution undoubtedly. In fact Municipal Board, or for that matter, such local bodies do exist to cater to the needs of the general public and, therefore, many statutory duties have been conferred upon such bodies. To say that inspite of those functions which have to be carried out by those institutions in accordance with the mandate of law, those do not become public institutions is too bold an argument to be accepted.

11. Therefore, the Controlling Authority rightly entertained the application of the contesting Respondent and was fully competent to decide the matter thus raised before it.

12. As regards the second point, the learned Counsel for the Petitioner has relied upon the view of Hon'ble Mr. Justice N.D. Ojha (as His Lordship then was) reported in Smt. Asha Devi Jauhari Vs. Smt. Sharda Devi and Others, . On the strength of this decision it was argued that since the Municipal Board wanted proof of the fact that the answering Respondent is legal heir of the deceased-employee and no proof was forthcoming, therefore, the Competent Authority was not justified in awarding the gratuity amount to her. At the outset it may be stated that the facts of the present case are entirely different from the one cited at the Bar. In Asha Devi's case there was a dispute between two sets of persons as being heirs of the deceased. In that view of the matter it was held that such a dispute should have been settled by the civil court. Apparently, therefore, the said ruling is not an authority for the proposition being canvassed in the instant case by the learned Counsel for the Petitioner. Moreover, it has not been stated that there was any opposition to the grant of gratuity to the contesting Respondent by any other claimant. Under the circumstances there was no question of settling any dispute between heirs. The learned Counsel for the Petitioner, however, contends that in the event of dismissal of this writ petition some such steps should be taken by the answering Respondent as to satisfy the Municipal Board that she is really the heir of the deceased. On the given facts of the present case I think there may not be any difficulty for the contesting opposite party to obtain a succession certificate from the local civil court or the Administrator-General of U.P. It may be stated at once that the law, as it stands, does not require any such claimant to first obtain a succession certificate and then apply for the payment of gratuity amount. It will always depend upon the facts of the case as to whether such certificate would be necessary or not.

13. In the result, the writ petition is devoid of merits and is accordingly dismissed. However, I make no order as to costs.