
(2014) 12 DEL CK 0146
In the Delhi High Court
Case No : WP (C) No. 150/2002

New Green Field Public School

APPELLANT

Vs

The Controlling Authority

RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Delhi School Education Act, 1973 — Section 10
Payment of Gratuity Act, 1972 — Section 2(e)

Citation : (2015) 2 AD 539 : (2015) 216 DLT 602 : (2015) 144 FLR 502 :
(2015) 1 LLJ 617

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Ashish Garg and Sanjay Gupta, Advocate for the Appellant

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the order dated 18th July, 2001, of the Controlling Authority under the Payment of Gratuity Act, 1972 (Gratuity Act) in proceeding No.G 2/1/2000/Sough Region/5675 initiated by the respondent No. 3 Mrs. P. Satyavani, rejecting the preliminary objection raised by the petitioner of the said respondent No. 3 employed as a Trained Graduate Teacher (TGT) with the petitioner School being not an employee within the meaning of Section 2(e) of the Gratuity Act and resultantly, holding the proceeding initiated by the respondent No. 3 Mrs. P. Satyavani to be maintainable and listing it for evidence.

2. The petitioner preferred an appeal to the Appellate Authority under the Gratuity Act against the aforesaid order. The Appellate Authority vide order dated 1st October, 2001 held the appeal to be not maintainable since the final order had not been passed till then. The petition impugns the said order of the Appellate Authority as well.

3. It is inter alia the contention in the petition that the respondent No. 3 Mrs. P. Satyavani admittedly employed as a TGT with the petitioner School was not entitled to gratuity as she was not covered under the Gratuity Act, as she was not an employee within the meaning of Section 2(e) of the said Act.

4. Notice of the petition was issued and vide ad-interim order dated 9th January, 2002 further proceedings before the Controlling Authority under the Gratuity Act, stayed. Counter affidavit was filed by the respondent No. 3 Mrs. P. Satyavani and to which a rejoinder was filed by the petitioner. On 14th August, 2003 Rule was issued in the petition and the earlier ad-interim order made absolute till the decision of the petition.

5. The respondent No. 3 Mrs. P. Satyavani in or about the year 2004 filed an application for early hearing stating that she was suffering from cancer and in dire need of funds for her treatment. However, the said application was dismissed.

6. The respondent No. 3 Mrs. P. Satyavani in 2006 filed yet another application for early hearing on the same grounds. Though the said application was vide order dated 16th April, 2007 allowed but thereafter from time to time when the petition was listed for hearing viz. on 16th July, 2007, 3rd January, 2008, 14th February, 2008, 10th April, 2008, 15th January, 2009, 5th July, 2012, 10th October, 2012, 11th December 2013, 13th December, 2013, 15th January, 2014, 20th January, 2014 and 23rd January, 2014, none appeared for the contesting respondent No. 3 Mrs. P. Satyavani. Today also none has appeared for the respondent No. 3 Mrs. P. Satyavani. I fear she may have succumbed to her illness.

7. Mr. Ashish Garg, Advocate for the petitioner has been heard. He has pegged his case on Ahmedabad Pvt. Primary Teachers" Association Vs. Administrative Officer and Others, and has invited attention to paragraph 21 of the said judgment where it was held that on a plain construction of the definition of an "employee" in Section 2(e) of the Gratuity Act, "teachers" who are mainly employed for imparting education are not intended to be covered for extending gratuity benefits under the Gratuity Act. Mr. Ashish Garg, Advocate upon being asked, has also drawn attention to the letter dated 31st March, 1991 of the petitioner School, of appointment of the respondent No. 3 Mrs. P. Satyavani. The same inter alia provides that she was to be covered by the terms and conditions of service and the scale of pay, allowance, medical facilities and other benefits in accordance with the provisions of the Delhi School Education Act, 1973 and the Rules framed thereunder.

8. I have drawn the attention of Mr. Ashish Garg, Advocate to Section 10 of the Delhi School Education Act which provides that the scale of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognized private school shall not be less than those of the employees of the corresponding status in schools run by the appropriate authority. It has been enquired from the counsel for the petitioner whether the employees of the schools of the appropriate authority i.e. Delhi Administration or MCD are entitled to gratuity.

9. Mr. Ashish Garg, Advocate seeks adjournment to verify and revert.

10. However need is not felt to adjourn this matter which has already remained pending for the last nearly 12 years, as in my opinion, the matter is no longer res integra. Gratuity Act applies to every factory, mine, oilfield, plantation, port and railway company and to every shop or establishment in which ten or more persons are employed or to such other establishments in which ten or more employees are employed, as the Central Government may by notification specify in that behalf. A Division Bench of this Court (of which the undersigned was a member) in judgment dated 2nd December, 2011 in W.P.(C) No. 6168/2010 titled "Independent Schools" Federation of India (Regd.) Vs. Union of India dealt with the said issue and recorded/found/ held that:

(a) Section 2(e) of the Gratuity Act, (prior to its amendment in 2009) defined "employee" as meaning any person employed on wages in a managerial or administrative capacity 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.

(b) The Ministry of Labour and Employment, Government of India issued Notification dated 3rd April, 1997 whereby Gratuity Act was extended to educational institutions as well, in which 10 or more persons were employed.

(c) The issue cropped up in a writ petition filed by a teacher before the Gujarat High Court as to whether the teachers working in educational institutions are covered by the definition of employee in Section 2(e) supra of the Gratuity Act.

(d) The Full Bench of the Gujarat High Court answered the issue in negative, holding that teachers are not covered by the definition of "employee".

(e) The said judgment of the Full Bench of the Gujarat High Court came up for consideration before the Supreme Court in Ahmedabad Pvt. Primary Teachers' Association (supra) which upheld the judgment of the Full Bench of the Gujarat High Court.

(f) The Union of India, in view of the law aforesaid laid down by the Supreme Court, proposed to widen the definition of "employee" in order to extend the benefit of gratuity to teachers, introduced the Payment of Gratuity (Amendment) Bill, 2007 in Lok Sabha; however, the said Bill was subsequently withdrawn.

(g) A new Bill viz. the Payment of Gratuity (Amendment) Bill, 2009 was introduced in the Lok Sabha on 24th February, 2009; this Bill proposed retrospective effect to be given to the amendments, with effect from 3rd April, 1997, being the date on which the provisions of the Gratuity Act were made applicable to educational institutions vide Notification dated 3rd April, 1997.

(h) The Payment of Gratuity (Amendment) Act, 2009 was notified in the Gazette on 31st December, 2009.

(i) Vide amendment aforesaid the definition of "employee" in Section 2(e) extended to teachers as well, making teachers in schools covered by the Gratuity

Act.

(j) Resultantly, the schools were / are under statutory obligation to pay gratuity to the teachers employed by the schools.

(k) The challenge in the writ petition filed by Independent Schools" Federation of India (Regd.) was to the retrospectivity of the said amendment; it was contended that though the amendment was only on 31st December, 2009, it was made applicable and enforced with effect from 3rd April, 1997 and which was not permissible.

(l) The said contention of the schools was negated and the writ petition dismissed.

11. I need say no more, as the judgment aforesaid of the Division Bench clearly covers the subject matter. It is not in dispute that the respondent No. 3 Mrs. P. Satyavani had ceased to be an employee of the petitioner school on 10th November, 1997. The amendment of the definition of "employee" in Section 2(e) of the Gratuity Act is with effect from prior thereto i.e. 3rd April, 1997. The petitioner is thus clearly liable for payment of gratuity to the respondent No. 3 Mrs. P. Satyavani.

12. The petition is thus liable to be dismissed.

13. Before parting, I cannot help but express my sadness. Though the entitlement of the respondent No. 3 Mrs. P. Satyavani to gratuity, even if held to be doubtful in the year 2002 when the petition was filed, stood crystallized on 31st December, 2009, notwithstanding the same, this petition remained pending for nearly four years thereafter. Not only so, owing to the interim order in this petition, the proceedings before the Controlling Authority under the Gratuity Act also remain stayed. It has come on record as aforesaid that the respondent No. 3 Mrs. P. Satyavani at least since 2004 was suffering from cancer. We do not even know whether she is alive. The counsel for the petitioner also has no instructions in this regard.

14. Accordingly, while dismissing this petition, the Controlling Authority under the Gratuity Act is now directed to, after serving the notice of the proceedings on the respondent No. 3 Mrs. P. Satyavani and in case she is no more, on her legal heirs, decide the matter expeditiously.

The petitioner is also burdened with costs of Rs.15,000/- of this petition, payable to the respondent No. 3 Mrs. P. Satyavani.