(1978) 12 MAD CK 0008

In the Madras High Court

Neyveli Lignite Corporation Ltd. APPELLANT

Vs

J. Satagopan and Another RESPONDENT

Date of Decision : 15-12-1978

Acts Referred:

Factories Act, 1948 — Section 2
Payment of Gratuity Act, 1972 — Section 1, 2
PORTS ACT, 1908 — Section 15

Citation : (1979) 2 LLJ 163

Hon'ble Judges : Natarajan, J

Bench : Single Bench

Judgement

Natarajan, J.—This petition has been filed for the issue of a writ of certiorari or any other suitable writ, order or direction to quash the order

of the second respondent in Appeal No. 3 of 1974 dated March 31, 1975.

2. The first respondent was employed as junior statistical officer under the petitioner. He resigned his employment on November 29, 1972, in

terms of a voluntary retirement scheme then in force, after completing a continuous service of about fifteen years. It would appear the first

respondent tendered his resignation with a view to take up a more profitable assignment elsewhere. The first respondent claimed payment of

gratuity under the provisions of the Payment of Gratuity Act, 1972 (hereinafter referred to as the Gratuity Act), but the petitioner held that since he

was not employed in the factory or mine he will not be entitled to payment of gratuity, in accordance with the provisions of the Gratuity Act. The

first respondent was, therefore, paid gratuity as per the rules framed by the second respondent. On account of the different basis adopted for

payment of gratuity the first respondent could not have the fifteenth year of service treated as a completed year for the purpose of computation of

gratuity; secondly, the dearness allowance, variable dearness allowance and dust allowance were also not taken into consideration for computation

of gratuity. The net result was that, as against the claim of Rs. 4,957.50 made by the first respondent towards gratuity, he was paid only a sum of

Rs. 2,928.94. With reference to the disallowed sum of Rs. 2,028,56, the first respondent made a representation to the Controlling Authority, He

urged before the Controlling Authority that it would be discriminatory to deny payment of gratuity in accordance with the Gratuity Act to a section

of the employees just because they happened to work outside the factory premises or the mines area; that in any event, he was a junior statistical

officer and in the discharge of his duties, he had to regularly visit the sub-stores located in the thermal station as we as fertiliser and B & C plants

for collection of data and, as such, he must be held to be a factory worker; and de hors other things a conciliation settlement had been arrived at

between the management and the labour union and the management had agreed to pay gratuity in terms of the Gratuity Act to all employees other

than casual employees with effect from 1st November, 1974. The contentions of the first respondent were refuted by the petitioner before the

Controlling Authority. The first respondent''s claim was rejected by the Controlling Authority. Hence the first respondent filed an appeal to the

second respondent. In the appeal, the first respondent contended that the Controlling Authority should have held that he was an employee in the

mines belonging to the petitioner, that, in any event, he should have been held to be a person employed in an ''establishment'' within the meaning of

the law in relation to establishments in Tamil Nadu and, as such his claim for the balance of gratuity amount should have been allowed. The second

respondent held that the first respondent though working in the Material Controller''s office must be taken as a person engaged in works incidental

to or connected with the factories and mines of the Corporation. Secondly, he held that according to Section 2(a) of the Gratuity Act, the Central

Government is the appropriate Government in relation to the establishment of a factory or mine belonging to or under the control of the Central

Government ; that the Gratuity Act is applicable not only to factories and mines, but also to establishments related to such factories and mines; that, in view of the expression used in Section 2(a)(i) read with Section 1(3) of the Gratuity Act, he was of opinion that the Act will be applicable to

establishments in relation to a factory, mine, etc; that since the Material Controller''s office of the Corporation is an establishment in relation to

factories as well as mines of the Corporation, the employees working in the Material Controller''s office will also be covered by the provisions of

the Gratuity Act and hence the first respondent will be entitled to the full amount of gratuity claimed by him. In view of this finding, the second

respondent did not deem it necessary to go into the question whether the Material Controller''s office will constitute an establishment within the

meaning of the Tamil Nadu, Shops and Establishments Act, 1947 (hereinafter referred to as the Establishments Act). Accordingly the second

respondent allowed the first respondent''s appeal. It is to question the correctness and validity of the second respondent''s order, this petition has

been filed.

3. It is the contention of the petitioner in the affidavit filed in support of the petition that the first respondent cannot be considered an employee of

an establishment of a factory belonging to the Central Government and, likewise, he cannot also be considered an employee in a factory or mine

run by the petitioner, because the Material Controller''s office is an independent unit and has nothing to do with the factory or the mine.

4. Respondents 1 and 2 have not filed any counter-affidavit. However, they were represented by counsel at the hearing of the petition and Mr.

Sanjay Mohan, appearing for the first respondent, advanced arguments to sustain the impugned order of the second respondent.

5. In the course of his submission, Mr. S. Gopalaratnam, learned counsel for the petitioner, sought to assail the impugned order in a slightly

different manner than what has been stated in the affidavit of the petitioner. His arguments ran thus. The Gratuity Act is intended to cover the

following classes of persons, namely, (i) employees in factories, oilfields, plantations, ports, and railway companies; (ii) employees in shops and

establishments within the meaning of the Establishments Act so far as the State Tamil Nadu is concerned; and (iii) employees of such other

establishments as are specifically notified by the Central Government. In the instant case, the first respondent was not an employee in the factory or mine, nor was he an employee of an establishment within the meaning of the Establishments Act, because the Establishments Act had not been

extended to Neyveli by appropriate notification. Secondly, the Material Controller''s office, wherein the first respondent was working was not an

adjunct of the mine or the factory. As such, the first respondent is not entitled to claim payment of gratuity in terms of the Gratuity Act.

6. For a consideration of the contentions of Mr. Gopalaratnam, it is necessary to refer to some of the provisions of the Gratuity Act. The preamble

to the Act reads as follows: ""An Act to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields,

plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto."" Section 1(3) of the

Act deals with the application of the Act, Sub-clause (a) refers to factory, mine, oilfield, plantation, port and railway company; Sub-clause (b)

refers to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in State, in

which ten or more persons are employed, or were employed, on any day of the preceding twelve months; Sub-clause (c) deals with other

establishments or class of establishments, in which ten or more employees are employed, and which are notified by the Central Government.

Section 2 is the defining section and some of the clauses in it require extraction:

2. In this Act, unless the context otherwise requires,-

(a) ''appropriate Government'' means,-

(i) in relation to an establishment-

(a) belonging to, or under the control of, the Central Government,

(b) having branches in more than one State,

(c) of a factory belonging to, or under the control of, the Central Government,

(d) of a major port, mine, oilfield or railway company, the Central Government,

(ii) in any other case, the State Government;

* * *

(e) ''employee'' means any person (other than an apprentice) employed on wages, not exceeding one thousand 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 terms of such employment are express or implied,ï¿½

(f) ''employer'' means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop.

In Sub-clauses (g), (i), (j), (1), (m), (n) and (p), words such as ""factory"", ""major port"", ""mine"", ""oilfield"", ""plantation"", ""port"" and ""railway company

have been defined. In general, it may be stated that the meanings assigned to these words are to be in accordance with the relevant Acts for each

item like the Factories Act, the Indian Ports Act, etc., etc. The next section which requires mention is Section 15 which lays down that the

appropriate Government may, by notification, make rules for the purpose of carrying out the provisions of the Act.

7. In accordance with this section, the Payment of Gratuity (Central) Rules, 1972 (hereinafter referred to as the Gratuity Rules) have been framed.

Rule 3 provides that within thirty days of the rules becoming applicable to an establishment, a notice in Form A shall be submitted by the employer

to the Controlling Authority of the area. Rule 4 enjoins the employer to display a notice at or near the main entrance of the establishment specifying

the name of the officer authorised by him to receive notices on his behalf under the Act and the rules.

8. Inasmuch as Section 1(3)(b) refers to an establishment within the meaning of any law for the time being in force in relation to shops and

establishments in the State, it becomes necessary to notice the definition of ""establishment"" occurring in the Establishments Act. The definition is

contained in Section 2(6) of that Act and it is in the following terms:

2. (6) ''establishment'' means a shop, commercial establishment, restaurant, eating-house, residential hotel, theatre or any place of public

amusement or entertainment and includes such establishment as the State Government may by notification declare to be an establishment for the

purposes of this Act.

In the same Act, a ""commercial establishment"" which is included in the term ""establishment"", has been separately defined in Section 2(3) and that

definition is as follows:

''commercial establishment'' means an establishment which is not a shop, but which carries on the business of advertising, commission, forwarding

or commercial agency, or which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock

company, bank, broder''s office or exchange and includes such other establishment as the State Government may by notification declare to be a

commercial establishment for the purposes of this Act.

Bearing in mind these definitions let us now consider the submissions made by Mr. Gapalaratnam on behalf of the petitioner. His first argument was

that, having regard to Section 1(3) of the Gratuity Act, there can only be a factory, mine, oilfield, etc., and not an establishment of a factory, mine,

oilfield, etc. In support of this argument he relied on Sub-clause (c) and Sub-clause (f) of Section 2 of the Gratuity Act, and stated that the word

establishment"" has been disjunctively used in juxtaposition to the words, ""factory, mine, oilfield, etc."" Hence his argument was that the first

respondent, in order to claim gratuity as per the terms of the Gratuity Act, must prove that he was either employed in the factory or mine of the

petitioner or any establishment of the petitioner which would fall within the definition in the Establishments Act. Therefore, according to him the

second respondent was not justified in holding that the first respondent can be held to be an employee in the establishment of the mines belonging

to the petitioner. The second argument of Mr. Gopalaratnam was that, while the first respondent had stated before the Controlling Authority that he

was employed in the factory of the petitioner, he had shifted his stand before the second respondent and claimed to be an employee in the mines of

the petitioner. Lastly, the argument was that inasmuch as the first respondent was employed only in the Material Controller''s office, he would not

be governed by the provisions of the Gratuity Act and in this behalf the petitioner''s counsel relied on Executive Engineer (Construction), Southern

Railway, Erode v. K.J. Varghese (1979) 54 F.J.R. 80, where it was held that the railway administration will not constitute an ""establishment"" as

defined in the Madras Shops and Commercial Establishments Act, 1947. This decision is really of no assistance to the petitioner.

9. In reply to the arguments of Mr. Gopalaratnam, Mr. Sanjay Mohan, appearing for the first respondent, submitted that the Gratuity Act has

treated factories, mines, oilfields, etc., as establishments by themselves and, therefore, the second respondent had rightly held that the first

respondent was employed in relation to an establishment of a mine. To substantiate this plea, he invited my attention to the preamble to the Gratuity

Act, where the words ""other establishments"" have been used after the words ""factories, mines, oilfields, plantations etc."". He then laid emphasis

upon the word ""establishment"" occurring in Section 2(a)(i) of the Act and contended that the word would not only apply to Sub-clause (a) and (b)

but also to Sub-clause (c) which refers to a factory and Sub-clause (d) which refers to major port, mine, oilfield, or railway company. Similarly, he

pointed out that, in Rules 3 and 4 of the Gratuity Rules, the word ""establishment"" has been used in a general sense so as to include, not only

establishments falling within the definition in the Establishments Act, but also to factories, mines, oilfields, etc.

10. On consideration of the matter, I think there is force in the argument of Mr. Gopalaratnam that there can only be a factory, mine, oilfield,

plantation, etc. and there cannot be an establishment of a factory, major port, mine, oilfield, etc. In Section 1(3) as well as Section 2(e) and (f) the

word ""establishment"" has been used disjunctively in juxtaposition to the words ""factory, mine, oilfield, plantation, etc."" Merely because the

preamble contains the words ""or other establishments"" and Section 2(a) affords scope for the word ""establishment"" being prefixed to the words ""of

a factory"" occurring in Sub-clause (c) and ""of a major port, mine, oilfield, or railway company"" occurring in Sub-clause (d), it is not possible to

hold that the Legislature intended to enlarge the meaning of the words ""factory, major port, mine, oilfield, etc., etc., by tacking on the word

establishment"" to them. This inference is inescapable because, as already stated, Sub-clause (g), (i), (j), (l), (m), (n) and (p) restrict the meaning of

the appropriate word found in the sub-clauses to the meaning given to them in the parent Acts referred to therein. For example, in Sub-clause 2(g)

the word ""factory"" has been assigned the meaning given to it in Clause (m) of Section 2 of the Factories Act, 1948. Having given such a definition,

the Legislature would not have intended to enlarge the meaning of the word ""factory"" by describing it as ""establishment of a factory"". Section 2, the

wording of which has presumably led the second respondent to hold that there can be an establishment of a mine, is intended to cover (i) establishments belonging to or under the control of the Central Government and (ii) establishments having branches in more than one State, as well

as (iii) factories belonging to or under the control of the Central Government and (iv) major ports, mines, oilfields or railway companies. It is on

account of the composite nature of the sub-section, the word ""establishment"" has been used even with reference to factory, major port, mine, etc.

Therefore, the view of the second respondent that the Gratuity Act is applicable not only to factories and mines, but also to establishments related

to such factories and mines, is not correct.

11. Notwithstanding this conclusion, the order of the second respondent does not call for quashing, because the first respondent has to be treated,

on other grounds, as an employee within the meaning of the Gratuity Act. In the first place, the first respondent has stated that though he was

working as a junior statistical officer in the Material Controller''s office, his duties were not confined to the office alone, but that also extended to

visiting the factory as well as the mines for checking of stores and collection of data to compile statistics. It is no doubt true the first respondent

claimed before the Controlling Authority that he was an employee of the factory, but gave up that stand before the second respondent and set up

the contention that he was employed in the mines of the petitioner. This small variation cannot have any adverse effect on the first respondents''

claims because, admittedly, the petitioner has got a thermal station as well as fertiliser and B & C plants, which are all factories, besides mines. As

the first respondent was visiting the stores for verification of stock and collection of data of the factory as well as the mines he can be treated as an

employee of the factory as well as the mines.

12. Even if it be held that since the first respondent was working in the Material Controller''s office, he cannot be deemed to be employed in the

factory or mines of the petitioner, he will still be entitled to claim payment of gratuity in terms of the Gratuity Act. That is because the Material

Controller''s office will by itself constitute an establishment as envisaged in Section 1(3)(b) of the Gratuity Act. The Gratuity Act has been made

applicable, so far as Tamil Nadu is concerned, to every shop or establishment within the meaning of the Establishments Act, subject to the

fulfilment of the condition that ten or more persons are employed, or were employed, on any day of the preceding twelve months, when the

demand for payment is made by an employee. We have already referred to the definition of ""establishment"" as well as ""commercial establishment

occurring in the Establishments Act. The word ""commercial establishment"" includes, inter alia, in its ambit a clerical department of a factory or

industrial undertaking. The Material Controller''s office can well be construed as a clerical department of the factory of the petitioner. The only

ground on which the petitioner would say that Material Controller''s office will not constitute an establishment is that Neyveli is not a municipality or

a panchayat and as such, the provisions of the Establishments Act will not apply to its geographical area. There is no clinching material to show that

the Establishments Act will not apply to the town or village of Neyveli. But, even if it is so, the situation will not change in any manner. What

Section 1(3)(b) contemplates is only an establishment within the meaning of any law for the time being in force in relation to shops and

establishments in a State. The sub-clause does not say that the law should have been made applicable to the particular place or area where the

establishment is situated. Therefore, irrespective of the Establishments Act, having operative force or not in Neyveli where the office is situate, the

material controller''s office will still be an ""establishment"" so far as the Gratuity Act is concerned, because it would fall within the definition of

establishment"" as found in the Establishments Act which has force in the State of Tamil Nadu. In view of this conclusion, the petitioner cannot be

heard to say that the first respondent cannot ask for gratuity in accordance with the terms of the Gratuity Act.

13. For the aforesaid reasons, the order of the second respondent has to be sustained, though the reasoning adopted by him is not fully correct.

The petition, will, therefore, stand dismissed with costs and the rule nisi will stand discharged. Counsel''s fee is fixed at Rs. 150.