
(2008) 08 BOM CK 0013
In the Bombay High Court
Case No : Writ Petition No. 783 of 1997

Principal, Krishi Vidyalaya

APPELLANT

Vs

Dwarkabai Haribhau Hingane

RESPONDENT

Date of Decision : 26-08-2008

Acts Referred:

Bombay Shops and Establishments Act, 1948 — Section 2(8)
Payment of Gratuity Act, 1972 — Section 1(3), 5

Citation : (2008) 119 FLR 608 : (2009) 1 LLJ 488 : (2008) 6 MhLj 576

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : Neeta Karnik, for the Appellant; Nobody, for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—The question involved in this petition is whether an educational institution, such as the petitioner, is covered by the Payment of Gratuity Act. The respondent who was employed with the petitioner had claimed gratuity under the Payment of Gratuity Act, 1972 (for short, "the Act"). The application was allowed by the Controlling Authority under the Act. An appeal was preferred by the petitioner which was rejected and the order of the Controlling Authority was confirmed.

2. The main contention raised on behalf of the petitioner is that the petitioner being a college of agriculture, the Payment of Gratuity Act, 1972 is not applicable. It is submitted that the Payment of Gratuity Act, 1972 has no application to an educational institution in view of the provisions of Section 1 Sub-section (3) of the Payment of Gratuity Act. The Counsel for the petitioner submits that the provisions of this Section are applicable to only those establishments which are covered by the Section and, therefore, the authorities have erred in granting the gratuity to the respondent.

3. It would be advantageous to set out the provisions of Section 1(3) of the

Payment of Gratuity Act, 1972. Section 1(3) reads as under:

Section 1(3). It shall apply to-

- (a) every factory, mine, oilfield, plantation, port and railway company;
- (b) 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, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;
- (c) such other establishments or class of establishments, 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.

4. The provisions of Section 1(3)(b) are applicable to all establishments within the meaning of any law for the time being in force in which ten or more persons are employed on any day of the preceding twelve months. The learned Counsel for the petitioner submits that to consider whether the institution is an "establishment", one would have to refer to the definition of an "establishment" as provided in Section 2(8) of the Bombay Shops and Establishments Act. It is submitted that the petitioner is neither a shop, nor a commercial establishment, residential hotel, restaurant, eating house, theatre, or other place of public amusement or entertainment and, therefore, does not fall within the ambit of Section 2(8) of the Bombay Shops and Establishments Act. Consequently the institution is not an "establishment" contemplated u/s 1(3)(b) of the Payment of Gratuity Act, submits the learned advocate.

5. This issue has already been decided by a learned Single Judge of this Court in the case of Principal, Bhartiya Mahavidyalaya, Amravati and Anr. v. Ramkrishna Wasudeo Lahudkar reported in 1993 M.L.J. 1272. In that case, it has been held by the learned Single Judge that-

10. The argument fails to impress. In fact, what is contemplated by Section 1(3)(b) of the Gratuity Act is an establishment "within the meaning of any law for the time being in force in relation to shops and establishments in a State." Giving the ordinary meaning to these words would mean and include any establishment so defined to be an establishment in such law in relation to shops and establishments in a State. Now it is an admitted position that the Bombay Shops and Establishments would be such a law. Therefore, if an establishment is so defined to be an establishment in the Bombay Shops and Establishments Act, it would complete the test provided by Section 1(3)(b) of the Gratuity Act. What is suggested by the words "within the meaning of any law" is only for the identification of such establishments. If those institutions can be called to be the establishments within the meaning of the State law, then Section 1(3)(b) of the Gratuity Act must apply to them, even if such establishments ultimately are exempted from the operation of the Act. Now one thing is certain that in order that certain establishments can be exempted from the operation of the Bombay

Shops and Establishments Act, it has to be an establishment within the meaning of the Bombay Shops and Establishments Act first, because otherwise there would be no power to exempt any such institution. It is only when that particular institution partakes a colour of establishment as defined in the Bombay Shops and Establishments Act that the State Government would get the power to exempt the same. Otherwise, there would be no question of the application of the Bombay Shops and Establishments Act to such an institution. It is, therefore, certain that the petitioners are an establishment within the meaning of the Bombay Shops and Establishments Act. The further question whether the provisions of the Bombay Shops and Establishments Act are applicable to it or not, is entirely a different question and not germane to the controversy at all. Once the identity of the establishment, as is the need of the language of Section 1(3)(b) of the Gratuity Act, is established, the further fact whether the said Act is applicable to that establishment or not loses all its significance at least for the purposes of the Gratuity Act. This position is obtained more forcefully because of the specific provision in Section 5 of the Payment of Gratuity Act itself which gives the power to the appropriate Government to exempt any establishment from its operation and admittedly, the establishments such as the establishment of the petitioner has not been exempted by the appropriate Government. The words used are only for the purpose of establishing the identity of such establishments and if this meaning is given, then the petitioners must be considered to be the establishment within the meaning of the Bombay Shops and Establishments Act.

11. If the interpretation as put by Shri Pradhan is to be accepted, then the language of the Legislature in Section 1(3)(b) of the Gratuity Act would have been different. In that case, the language would have been to the effect that provisions of the Act shall apply to every establishment to which the law in relation to shops and establishments in a State is applicable. If the interpretation of Shri Pradhan is to be accepted, then it will have to be held that by making the law inapplicable to such establishment, the establishment is taken away from the mischief of Section 1(3)(b) of the Gratuity Act. Now if the language of a provision is clear and admits of no ambiguity, then in order to see the true meaning thereof it is not permissible to add the words or to substitute them. The provision will have to be interpreted specifically on the basis of its plain meaning, if such plain meaning is unambiguous or admits of no doubt and indeed, in the present case the meaning of the words "within the meaning of any law" admits of no doubt, the language cannot be allowed to be altered. The import of the words clearly brings out the only meaning that such establishment should be an establishment either defined by or recognised in that particular Act as an establishment.

6. A similar view has been taken by another learned Single Judge of this Court in the case of Head Mistress (Mrs. P. D'Souza) Fatimadevi English High School and 2 Ors. v. Nymphia Pareira (Smt. and 2 Ors.) reported in 2002(III) C.L.R. 561.

7. Thus, this issue is no longer res integra and has been settled by the aforesaid judgments.

8. Reliance is placed by the learned Counsel for the petitioner on the judgment in the case of *Ruth Soren v. Managing Committee, East I.S.S.D.A. and Ors.* reported in 2001(I) C.L.R. 462. In my view, this judgment has no application since the Supreme Court was considering the concept of an "industry" as has been defined under the Industrial Disputes Act and that of an establishment defined under the Bihar Shops and Establishments Act, 1953. In the facts and circumstances of that case, it has held that the activities although included in the business of the establishment, it was not an industry. This judgment does not relate to the issue in the present petition.

9. In view of the ratio laid down in the case of *Principal, Bhartiya Mahavidyalaya, Amravati and Anr. v. Ramkrishna Wasudeo Lahudkar (supra)* and *Head Mistress (Mrs. P. D'Souza) Fatimadevi English High School and 2 Ors. v. Nymphia Pareira (Smt. and 2 Ors.) (supra)*, with which I respectfully agree, the petition is dismissed.

10. Rule discharged. No order as to costs.