

(2006) 11 BOM CK 0047

In the Bombay High Court

Case No : Writ Petition No. 1505 of 1995

Pune Cantonment Board

APPELLANT

Vs

Regional Labour Commissioner and Others

RESPONDENT

Date of Decision : 28-11-2006

Acts Referred:

Payment of Gratuity Act, 1972 — Section 1(3), 2, 4

Citation : (2007) 3 ALLMR 166 : (2007) 114 FLR 989 : (2007) 2 LLJ 609 :
(2007) 1 MhLj 458

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : V.G. Mujumdar, for the Appellant; S.M. Dharap, for respondent Nos. 3, 4 and 6 to 9, for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—The issue which arises in this writ petition is whether the Payment of Gratuity Act, 1972 is applicable to the Pune Cantonment Board and whether it is bound to pay gratuity under that Act. The petitioners contend that they are covered by the Central Civil Services Rules and, therefore, the Payment of Gratuity Act is not applicable to their establishment. According to the petitioners, the respondent employees have exercised their option to claim the retiral benefits under the Central Civil Services (Pension) Rules, 1972. Despite such an option having been exercised by the employees, they filed applications u/s 4 of the Payment of Gratuity Act claiming gratuity. The Controlling Authority under the Payment of Gratuity Act, allowed the applications. The appeals preferred by the Cantonment Board Pune have been dismissed. Hence the present writ petition.

2. In the case of Poona Cantonment Board v. S.K. Das and Ors. reported in 1993 (2) CLR 731, this Court has held that the Act is applicable to the Cantonment Board which is a local authority and, therefore, the gratuity will be payable to the employees under the Act. The qualifying test u/s 1(3)(b) of the Payment of

Gratuity Act being satisfied, it was held that the employees are entitled to gratuity payable under this Act.

3. In the case of *Municipal Corporation of Delhi v. Dharam Prakash Sharma and Anr.* reported in 1998 (2) CLR 574, the Supreme Court considered a case where the Municipal Corporation of Delhi had adopted the Central Civil Services (Pension) Rules, 1972. Gratuity was claimed by its employees under the Act. The Court held that the employees of the Corporation would be entitled to the payment of gratuity under the Act notwithstanding the fact that the Central Civil Services (Pension) Rules have been made applicable to them for the purposes of determining the pension. It was further held that the employees could not claim gratuity available under the Pension Rules.

4. The learned advocate appearing for the petitioners tried to distinguish these two judgments by pointing out that the employees in the present case have exercised their option available to them under the Central Civil Services (Pension) Rules and, therefore, they were not entitled to the gratuity. This submission cannot be accepted. Gratuity and pension are two different components of the retiral benefits available to the employees. In Writ Petition No. 518 of 1994 which was decided on 13-8-2002, a learned Single Judge of this Court (D. K. Deshmukh, J.) has relied on the aforesaid judgment of the Supreme Court and has taken the view that employees of Pune Cantonment Board would be entitled to the gratuity payable under the Act. It has been also held:

...while calculating the amount of gratuity payable under the Act, any payment of gratuity under the Central Civil Service (Pension) Rules can be taken into consideration. So far as the pension part of those Rules is concerned, that continues to apply to the employees and therefore that cannot be taken into consideration while calculating the amount of gratuity payable under the Act.

It is obvious that the distinction sought to be drawn by the learned advocate for the petitioner does not help to the petitioners in any manner.

5. The petitioners would, therefore, be liable to pay the gratuity as computed by the Controlling Authority. However, respondent No. 7 herein is a teacher employed in a school run by the Cantonment Board. In the case of *Ahmedabad (P) Primary Teachers' Association v. Administrative Officer* reported in 2004 (1) CLR 495, the Supreme Court has held that a teacher is not an employee u/s 2(e) of the Payment of Gratuity Act and hence the gratuity is not payable to a teacher under that Act.

6. The petitioner is, therefore, bound to pay the gratuity to all the other respondents, except respondent No. 7, as payable under the Payment of Gratuity Act and computed by the Controlling Authority.

7. With the aforesaid modifications in the impugned orders, petition dismissed.