
(1996) 03 RAJ CK 0018
In the Rajasthan High Court
Case No : C.W.P. No. 2779 of 1992

Ramgopal

APPELLANT

Vs

Mahesh Shikshan Sansthan and Others

RESPONDENT

Date of Decision : 14-03-1996

Acts Referred:

Payment of Gratuity Act, 1972 — Section 3

Citation : (1997) 1 LLJ 26

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : M.M. Vyas, for the Appellant; D.K. Parihar, for the Respondent

Judgement

B.J. Shethna, J.—The original petitioner Shri Ram Gopal Vyas has filed this petition challenging the order of Appellate Authority under the payment of Gratuity Act, 1972 passed on March 5, 1992 whereby, the appellate authority allowed the appeal filed by the respondents No. 1 institution Shri Mahesh Shikshan Sansthan and set aside the order dated January 31, 1991 passed by the Controlling authority, Jodhpur in favour of the petitioner.

2. Unfortunately, during the pendency and final disposal of the writ petition the original petitioner Shri Ram Gopal Vyas expired and in his place his legal representatives have come on record and prosecuted this writ petition.

3. Learned counsel Shri Vyas for the petitioner vehemently submitted that the Controlling Authority rightly passed an order in favour of the petitioner directing the respondent No. 1 Institution to pay gratuity of Rs. 40,061.54 paisa and also to pay interest on that amount at 10% from July 30, 1988 till the payment is made. He submitted that the appellate authority has committed an error in allowing the appeal of the respondent No 1. Institution holding that the payment of Gratuity Act 1972 is not applicable to an Educational Institution like the respondent No. 1. He further submitted that the respondent No. 1 Institution is an establishment u/s 1(3) of the Payment of Gratuity Act, 1972 (for short the

Act). He further submitted that the appellate authority has committed an error in relying upon the definition of commercial establishment as defined u/s 2(3) of the Rajasthan Shops and Commercial Establishments Act, 1958 for coming to the conclusion that the respondent No. 1 Institution was an Educational Institution and not a shop or Commercial Establishment under the Rajasthan shops and Commercial Establishments Act, 1958 and therefore it will not come within the ambit of Payment of Gratuity Act, 1972. He further submitted that the Controlling Authority has not only considered the definition of Commercial establishment as defined u/s 2(3) of the Raj. Shops and Commercial Establishments Act, 1958 but also considered the fact of granting exemption from Section 11(1) and 12(1) of the said Act by the Government which fact was missed by the appellate authority. As against this, Learned counsel Shri Parihar vehemently submitted that the appellate authority has not committed any error and though the order passed by the appellate authority is a brief one, the appellate authority has rightly considered the provisions of Section 2(3) of the Act of 1958 and held in favour of the respondent No. 1 Institution.

4. I have carefully considered the arguments advanced by both the learned counsel and also perused the orders passed by the Controlling Authority as well as by the appellate authority. Mr. Vyas learned counsel for the petitioner was very much right in submitting that the Controlling Authority in its judgment running into 24 typed pages has considered all the aspects of the case and rightly come to the conclusion that the State Government has exempted the respondent No. 1 Institution and, therefore, the Controlling Authority was very much right in treating that the respondent No. 1 was an establishment. Thus, therefore, provisions of Payment of Gratuity Act, 1972 would be applicable in this case and the original petitioner was entitled for the gratuity from the respondent No. 1 It must be stated that while allowing the appeal the appellate authority has passed a cryptic order, except reproducing the provisions he has not given any other finding except stating that:

"An educational institution may be an industry under the Industrial Disputes Act, 1947 in view of the law laid down by the Supreme Court of India in the Case of Bangalore Water Supply and Sewage Board v. Rajagpa or it may be an establishment but unless it is a Commercial establishment under the Rajasthan Shops & Commercial Establishments, Act 1958, it will not come within the ambit of the Payment of Gratuity Act, 1972."

5. The View taken by the appellate authority is wholly unsustainable. In my opinion the appellate authority was wrong in coming to the conclusion that the respondent No. 1 Institution may be an establishment, but unless it is held to be commercial establishment under the Raj. Shops and Commercial Establishments Act, 1958 it will not come within the ambit of Payment of Gratuity Act, 1972.

6. In view of the above discussion the order passed by the appellate authority under the Payment of Gratuity Act, 1972 dated March 5, 1992 is set aside and the order passed by the Controlling Authority, Jodhpur under the Payment of

Gratuity Act, 1972 dated January 31, 1991 at Annex 3 is restored. Accordingly, this petition is allowed with no costs.