

(1984) 06 KAR CK 0028
In the Karnataka High Court
Case No : Writ Petition No. 11436 of 1983

Regional Provident Fund Commissioner	APPELLANT
Vs	
Regional Labour Commissioner and Others	RESPONDENT

Date of Decision : 29-06-1984

Acts Referred:

Payment of Gratuity Act, 1972 — Section 1 (3), 14, 7 (7)

Citation : (1985) ILR (Kar) 244 : (1985) 1 KarLJ 31 : (1985) 2 LLJ 63

Hon'ble Judges : M. Rama Jois, J

Bench : Single Bench

Judgement

1. This writ petition is by the Regional Provident Fund Commissioner, Bangalore, praying for quashing the order of the Assistant Labour Commissioner (Central) allowing the application of the third respondent for payment of gratuity under the payment of Gratuity Act ("the Act for short) which order has been confirmed by the appellate authority functioning under the Act.

2. The facts of the case, in brief, are as follows : The third respondent was working as an Upper Division Clerk on the establishment of the Regional Provident Fund Commissioner, Bangalore. After putting in about 9 years and 9 months of service commencing from 20th June, 1972, he resigned from service with effect from 3rd March, 1982. Thereafter on 14th June, 1982, he made an application before the Assistant Labour Commissioner (Central) under the provisions of the Act praying for the issue of a direction to the petitioner to pay gratuity calculated at the rates prescribed under the Act. That application was allowed by the second respondent by his order, copy of which is produced as Annexure-E. The petitioner preferred an appeal before the appellate authority functioning under the Act under S. 7(7) of the Act. The appeal was also dismissed. Aggrieved by the said order, the petitioner has presented this writ petition.

3. Sri M. S. Padmarajaiah, the learned counsel for the petitioner, contended that the provisions of the Act were not applicable to the petitioner and the view taken

to the contrary by the first and second respondent were untenable. Elaborating his contention, learned counsel submitted as follows : The Provident Fund Organisation was a trust constituted under the provisions of the Employees' Provident Fund (Staff and Conditions of Service) Regulations Act, 1962 by the Central Government. Therefore it is an instrumentality of the Central Government. It has got its own rules regulating the conditions of service of its employees. Any claim for gratuity or other terminal benefits would be made and paid only under the regulations regulating the conditions of service and therefore the provisions of the payment of Gratuity Act, 1972 are not applicable.

4. As can be seen from the orders of the first and second respondents, the said authorities, after considering the provisions of S. 1(3) read with S. 14 of the Gratuity Act, have come to the conclusion that the provident fund trust was an establishment to which the provisions of the Gratuity Act applied and further having regard to the over-riding effect given under S. 14 of the Gratuity Act, the 3rd respondent was entitled to gratuity under the Act. Learned counsel for the petitioner challenges the correctness of the said view by the two authorities.

5. In order to appreciate the contention, it is necessary to extract the relevant part of S. 1(3). It reads :

"1. (3) It shall apply to -

(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".

As can be seen from the above provision, the Act applies to every establishment within the meaning of any law for the time being in force in relation to such establishments in a State in which ten or more persons are employed. There is no dispute that more than ten persons are employed on the establishment of the Provident Fund. The only question for consideration is whether it is or it is not an establishment within the meaning of any law for the time being in force in this State in relation to shops and establishments. In this State, inter alia, the three relevant laws which are in force are (i) Karnataka Shops and Establishments Act, (ii) Payment of Wages Act, and (iii) Contract Labour Act. If the establishment of the petitioner falls under the definition of establishment under any one of these Acts, the provisions of the Act gets attracted. The term "establishment" is defined in the Contract Labour (Regulation and Abolition) Act, 1970. It reads :

"(i) Any office or department of the Government or a local authority, or;

(ii) Any place where any industry trade, business, manufacture or occupation is carried on."

According to the above definition all types of establishment including an office fall under the definition of the expression "establishment". Therefore, it is difficult to agree with the contention of the petitioner that the office of the petitioner does

not fall within the meaning of the word "establishment".

6. Therefore, if the provisions of the Act are attracted, even though there are regulations regulating the payment of gratuity which are applicable to the petitioner establishment, the provisions of the Act do not get excluded for, S. 14 of the Act gives over-riding effect to the provisions of the Act. (See : State of Punjab Vs. Labour Court Jullunder and Others, Therefore, even if under the regulations governing the petitioner-establishment, a person who has tendered resignation is not entitled to gratuity, if under the Act he is entitled to it, the same cannot be denied. It may be seen that under S. 4 of the Act, the criteria for entitlement for gratuity is five years or more of service and the fact that the termination has been brought about by resignation, does not matter.

7. In the result, I hold that the view taken by the two authorities is correct and there is not ground to interfere.

8. For the reasons aforesaid, I make the following order :

9. Writ Petition is dismissed. No Costs.