

(2001) 08 MAD CK 0074

In the Madras High Court

Case No : Writ Petition No. 18346 of 1994

S. Arunachalam

APPELLANT

Vs

The Managing Director, Southern Structurals, Pattabiram,
Madras-72 and 2 ors

RESPONDENT

Date of Decision : 24-08-2001

Acts Referred:

Apprentices Act, 1961 — Section 2

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

Citation : (2001) 91 FLR 689 : (2001) 2 LLJ 1457 : (2001) 3 MLJ 382

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : S. Ramaswamy, for the Appellant; S. Raghavan, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner was employed as Assistant (Trainee) in the 1st respondent company on 2.6.84 for a period of two years. Since he was a Post

Graduate Degree holder at the time of joining, he was posted as Assistant in the personnel department against the permanent vacancy. During the

period of two years, the petitioner was treated as a full member of the department and was allotted duties equivalent to other staff of personnel

department. He was paid a consolidated stipend of Rs. 650 till his probation was declared on 8.6.86. The petitioner resigned his services with

effect from the closing of 12.8.91. On his resignation, the petitioner was paid all statutory dues to which the petitioner was entitled to, except the

gratuity for the period from 2.6.84 to 7.6.86. The total amount of gratuity due for the period from 2.6.84 to 7.6.86 works out to Rs. 1,889.80.

2. The petitioner made a claim before the Assistant Commissioner of Labour, the Controlling Authority under the Payment of Gratuity Act, 1972,

the 2nd respondent. The 2nd respondent, however, dismissed the application on 30.11.92 on the ground that the petitioner being a trainee is not entitled to the gratuity for the period between 2.6.84 and 7.6.86 as per Section 2(3) of the Payment of Gratuity Act, 1972 (hereinafter referred to as "the Act"). Aggrieved by the said order, the petitioner preferred an appeal before the Deputy Commissioner of Labour (Appeal), the Appellate Authority under "the Act", the 3rd respondent. The appeal was also dismissed on 30.6.93. Aggrieved by the above orders, the present writ petition has been filed.

3. Learned counsel for the petitioner submitted that the definition of Section 2(e) of "the Act" only excludes an apprentice from the application of the payment of gratuity. The petitioner being a trainee is not excluded under the said definition from the application of the provisions of "the Act".

The learned counsel submitted that to determine the question as to whether a person is an employee, mere nomenclature of the post is not of much

consequence but the nature of duties performed by the person concerned will alone be decisive. According to the petitioner, when he was

appointed as an apprentice on 2.6.84, he was treated as a full member of the department and was allotted duties equivalent to other staff of

personnel department. The duties of the petitioner would go to show that he is not an apprentice. The learned counsel submitted that the word

apprentice" in respect of a person means, "a person learning a trade from a skilled employer". The petitioner was not posted to learn as a skilled

employee but he was assigned specific duties and therefore, he cannot be considered as an apprentice. The learned counsel submitted that both the

Controlling Authority and the Appellate Authority have not properly appreciated the nature of work that was performed by the petitioner for

arriving at the conclusion as to whether the petitioner would be considered as an employee within the definition of Section 2(e) of "the Act". The

learned counsel would also submit that the 1st respondent in its office order in reference No. L-3/610/A3/530/87 dated 14.10.87 while in fact

extending the benefit of bonus and ex-gratia to the Trainee Officers has distinctly allowed the company apprentices to be eligible only for payment

of a fixed sum as Deepavali Gift. Therefore, the learned counsel submitted that since the 1st respondent itself has treated the Trainee Officers and

the Apprentices differently, it cannot now contend that the trainees are also apprentices. Hence, the learned counsel seeks to assail both the impugned orders.

4. Per contra, learned counsel for the respondents would contend that the definition as contained in Apprentices Act in so far as the apprentice and trainee are not applicable to the Payment of Gratuity Act. In the absence of any specific definition for the word "apprentice" under "the Act", the dictionary meaning alone shall be taken into consideration. As per Concise Oxford Dictionary, "training" means, "the act or process of teaching or learning a skill, discipline etc. and the word "apprentice" means, "a person who is learning a trade by being employed in it for an agreed period at low wages, a beginner, a novice. A mere reading of the above would indicate that both the words "training" and "apprentice" have the same meaning. Therefore, the learned counsel submitted that the exemption granted for apprentice in Section 2(e) of "the Act" would also include a trainee. Hence, the learned counsel sought to justify the impugned orders.

5. The facts which are not in dispute on either side are as follows: The petitioner was appointed as Assistant (Trainee) on 2.6.84 for a period of two years. He completed his probation on 7.6.86. He resigned the job on 12.8.91. After his resignation, the petitioner was given all statutory dues to which he was entitled to, except the gratuity for a period from 2.6.84 to 7.6.86.

6. The controversy arose when the petitioner demanded the payment of gratuity even for the period from 2.6.84 to 7.6.86, the period when the petitioner was appointed as trainee. The question to be resolved is whether the petitioner could be considered as an employee u/s 2(e) of "the Act" for the purpose of payment of gratuity for the period from 2.6.84 to 7.6.86. Section 2(e) of "the Act" reads as under.

Employee" means any person (other than an apprentice) employed on wages in any establishment, factory, mine, oilfield, plantation, port, railways, 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, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State

Government and is governed by any other Act or by any rules providing for payment of gratuity.

A plain reading of the said Act shows that it excludes an apprentice from the application of the provisions of "the Act". In order to find out whether

the word "apprentice" includes the trainee also, and in the absence of any definition of an apprentice under "the Act", this Court has to consider the

same with reference to the dictionary meaning as well as the interpretation of the said Section with reference to the object of "the Act" coupled with

the definition of apprentice or training in any other statute. In the Concise Oxford Dictionary the word "apprentice" means, "a person learning a

trade from a skilled employer". In Black's Law Dictionary the word "apprentice" means, "a person bound by an indenture to work for an employer

for a specific period to learn a craft, trade or profession and a learner in any field of employment or business." As per P. Ramanatha Aiyar's Law

of Lexicons the word "apprentice" means, "a learner is one who is taken to learn a trade, a person under a contract of apprenticeship, to a master

to learn from him his trade or business and to serve him during his time of the apprenticeship".

Correspondingly, as per Concise Oxford Dictionary the word "trainee" means, "a person undergoing training for a particular job or profession". As

per P. Ramanatha Aiyar's Law of Lexicons, the word "training" means "systematic instruction". From the above expression from various

dictionaries, it is seen that both the words "apprentice" and "trainee" are not either similar, identical or same as both the words have been distinctly

defined with reference to the nature of job. As referred to in Black's Law Dictionary, "apprentice" means, "a person must be either a learner in any

field of employment or business or a person was bound by indenture to work for an employer for specific period to learn a craft, trade or

profession". With the above definitions on the background, it is to be now considered as to the nature of the duties that were performed by the

petitioner. According to the petitioner, the petitioner was treated as a full member of the department and he was allotted duties equivalent to other

staff of personnel department and he was also asked to do the following works:

(i) Correspondence, follow up and submission for orders in the matters relating to training, absorption and confirmation of employees.

(ii) Tamil notices.

(iii) Reimbursement of conveyance expenses to officers/fuel allowance [o workmen.

(iv) Provision of furniture.

(v) Issuance of transfer orders.

(vi) National and festival holidays.

(vii) Salary advance/court matters and insurance claims.

(viii) Any other work that may be assigned by A.M. (A&P) then and there.

In the course of cross-examination of the management witness, he has clearly stated as follows.

In fact, the Bombay High Court in the judgment reported in Khanderan P. Rajopadhye v. United Western Bank Ltd., and others, 1984 LAB

I.C.1910 has also considered that mere nomenclature of post is not of much consequence and what is to be seen is the nature of the duties

performed by the employee concerned so as to arrive at a conclusion as to whether he is an employee within the meaning of Section 2(e) of "the

Act". On the above facts, it is seen that the petitioner was appointed not for learning a trade from a skilled employer, was appointed as a trainee

not to learn any designated trade alone and therefore cannot be considered as apprentice.

7. Further, while the provisions of any Act is interpreted, the Court has to read the provisions literally in its ordinary, natural and grammatical

meaning as used by the legislature. The Supreme Court in the judgment reported in Jugalkishore Saraf v. M/s. Raw Cotton Co. Ltd., 1955 SC

376 has held that when any of the provisions of Statute is interpreted, the provision has to be read in its ordinary, natural and grammatical meaning.

I had an occasion to consider the said judgment of the Supreme Court as to the interpretation of the Statute in W.P.No. 17927 of 1994 dated

14.8.2001. After considering the said judgment, I had also taken the view that while interpreting a statute, the object of the Act also has to be kept

in mind. The object of Payment of Gratuity Act is to provide a scheme for payment of gratuity to the employees engaged in factory, mine, oilfield,

port, railway company or shop, or other establishments. The Act is mainly intended to the provisions for payment of gratuity. As per the definition

of Section 2(e) of "the Act", all employees are entitled to the payment of gratuity except an apprentice which would necessarily mean that the Legislature intended to exclude the applicability of the provisions of the Act only in case of apprentice. They have done it so in clear terms by excluding only an apprentice from the applicability of the provisions of the said Act. As laid down by the Supreme Court in the judgment referred to supra, if the literal meaning of apprenticeship is considered along with the meanings given in the various dictionaries, it would be clear that the petitioner who has been appointed for a definite period and who has been assigned various duties and not only to a particular designated trade cannot be called as apprentice. In support of the above conclusion, the judgment of the Orissa High Court reported in Orissa Mining Corporation Ltd. rep. by Chairman-cum-Managing Director v. Controlling Authority under Payment of Gratuity Act -cum -Assistant Labour Commissioner and others, 1994 (2) LLN 1130 may be also referred to wherein the Orissa High Court while considering the applicability of the provisions of Payment of Gratuity Act, 1972, held that a trainee employee under a contract of employment is not an apprentice under the Apprentices Act unless he is undergoing apprentice training in designated trade in pursuance to a contract of apprentice. The Orissa High Court had in fact considered the definition of "apprentice" under the provisions of Apprentices Act, 1961 wherein the apprentice has been defined in Section 2(a) of the Apprentices Act, 1961 as follows:

Apprentice" means a person who is undergoing apprenticeship training in a designated trade in pursuance of a contract of apprenticeship.

8. For all the above reasons, I find that the orders of the Controlling Authority and the Appellate Authority holding that the word "apprentice" as mentioned in the definition of Section 2(e) of "the Act" includes a trainee also, are liable to be set aside as the said findings are not in conformity with the purport of the definition of Section 2(e) of "the Act". Accordingly, both the orders of the Controlling Authority and Appellate Authority are set aside and the writ petition is allowed. No costs.