

(2016) 10 KL CK 0030

In the High Court Of Kerala

Case No : W.A. No. 1918 of 2013 in WP(C) 5212 of 2011 (Against the judgment in WP(C) 5212 of 2011 of High Court of Kerala dated 08-11-2013)

Seetha K.

APPELLANT

Vs

Managing Trustee, Thiruvangad Sreeramaswami Temple

RESPONDENT

Date of Decision : 21-10-2016

Acts Referred:

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

Citation : (2016) 4 ILRKerala 776 : (2016) 4 KLT 76 : (2017) LIC 644

Hon'ble Judges : Mr. Antony Dominic and Mrs. Shircy V., JJ.

Bench : Division Bench

Advocate : Sri. Paul Abraham Vakkanal, Government Pleader, for the Respondents; Sri. Cibi Thomas, Advocate, for the Appellant/Additional 4th Respondent

Final Decision : Disposed Off

Judgement

Mr. Antony Dominic, J. - The question raised in this appeal is regarding the applicability of the provisions of Payment of Gratuity Act, 1972 to an employee of a Trust administering a Temple.

2. The respondent appointed the deceased husband of the appellant as an Attender. He joined service on 1.12.1976 and after 27 years of service, attained the age of superannuation and retired from Thiruvangad Sreeramaswami Temple. Being unsatisfied with the amount of gratuity paid under the rules framed under the Madras Hindu Religious and Charitable Endowment Act, 1951, he claimed gratuity under the Payment of Gratuity Act, 1972 (hereinafter referred to as "the Act"). Overruling the objection that the Act was inapplicable to the temple, the controlling authority passed order directing that gratuity under the Act shall be paid and the said order was confirmed by the Appellate Authority under the Act. There orders were challenged in the writ petition filed by the first respondent.

3. Placing reliance on the judgments of this court in Thirumullapulli Devawom v. Commissioner for Workmen's Compensation [1979 (1) LLJ 398] and Narayanan

Namboodiri and Others v. Cochin Devaswom Board and Another [1979 (2) LLJ 446], and concluding that having regard to the provisions of Section 1(3)(b) of the Act, a temple is not a shop or establishment as defined in the Kerala Shops and Commercial Establishments Act, 1960 or any other enactment applicable in the State, and that therefore the claimant would not be covered under the Act, the writ petition was allowed. It is this judgment, which is questioned before us.

4. We heard Sri. Ashok B. Shenoy, learned Amicus Curie, the learned counsel for the appellant and the learned Government Pleader. Despite service of notice, there was no appearance on behalf of the first respondent.

5. While considering the applicability of the provisions of the Act to an employee like the deceased, at the outset itself, it needs to be clarified, that the Madras Hindu Religious and Charitable Endowments Act, 1951 (hereinafter referred to as Act, 1951) and the rules framed thereunder contain detailed provisions for the administration and management of temples such as Thiruvangad Sreeramaswami Temple. As per Act 1951, administration of the temple is vested in the Trustees and vacancies in the temple shall be filled up by the Trustee in cases where office or service is not hereditary. Rules framed under the Act further show that such employees are entitled to gratuity under the Rules and such gratuity is to be paid on the recommendation of the Trustee. Therefore, the Trust which appointed the deceased claimant is the employer, who is vested with the statutory duty to pay gratuity to eligible employees.

6. In this context, it is relevant to examine Section 1(3) of the Act, which explains the applicability of the Act. This Section reads thus:

"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."

7. A plain reading of this Section show that insofar as a Trust is concerned, clause (a) and in the absence of any notification as provided in clause (c), that provision also, is of no relevance. What is relevant is clause (b), a reading of which shows that the Act shall apply to 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. Therefore, a shop or establishment will be covered by the Act, if such a shop or establishment is covered by any law for the time being in force in relation to shops and

establishments in the State. The only further requirement is that there should be ten or more persons employed or were employed on any day of the preceding twelve months, which aspect of the matter is not disputed by the Trustee at any stage of these proceedings. Admittedly, a Trust administering a temple cannot be covered by the expression shop and attempt should be made to find out whether trust is an establishment within the meaning of Section 1 (3)(b) of the Act.

8. At this stage, reference should be made to two judgments of this court that were cited by both sides and were relied on in the judgments under appeal. The first one is Thirumullapulli Devawom v. Commissioner for Workmen's Compensation [1979 (1) LLJ 398]. That was a case where an order of dismissal passed by the Devaswom was challenged in an appeal filed under Section 18 of the Kerala Shops and Commercial Establishments Act, 1960. The Appellate Authority passed an order directing the Devaswom to reinstate the employee or in the alternative to pay compensation and back wages. This order was challenged and the question considered by this court was whether Devaswom was a commercial establishment within the meaning of the provisions of the Kerala Shops and Commercial Establishments Act, 1960. In the judgment, after referring to the judgment of this court in Sasidharan v. Peter and Karunakaran (1978) KLT 613, where a lawyers office was held to be outside the purview of the Shops and Commercial Establishments Act, the learned Single Judge held thus:

"if that is the position of a Lawyer-firm, for the purposes of the Shops Act, there are stronger reasons to hold, that a temple can never be considered as an "establishment", in which the persons employed are mainly engaged in office work."

9. The second judgment is Narayanan Namboodiri and Others v. Cochin Devaswom Board and Another [1979 (2) LLJ 446]. One of the questions considered in this judgment is whether the Devaswom employees are covered by the Payment of Gratuity Act. In the judgment, after referring to the provisions of Section 1 (3) of the Act, this court held "it has not been shown how it would be an establishment within the meaning of Shops and Establishments. Therefore, Section 1(3)(b) also does not apply." Thereafter, the learned Single Judge concluded thus:

"Under Section 2(8) of the Kerala Shops and Commercial Establishments Act, 1960 "establishment" has been defined as a "shop or a commercial establishment" and it has not been shown as to how the Devaswom is a shop or commercial establishment."

10. From the above judgments, it can be seen that in Thirumullapulli Devaswom (supra), the view taken by this court is that a Devaswom cannot be considered an "establishment" within the meaning of the said term occurring in the Shops and Commercial Establishments Act. Similarly, the view taken in the case of Narayanan Namboodiri (Supra) is that the Devaswom is not a Shop or Commercial Establishment as defined in the Kerala Shops and Commercial

Establishment Act. It is relying on these principles, the learned Single Judge also concluded in the judgment under appeal that a temple is not an establishment as defined in the Shops Act.

11. While in this context, we shall examine whether for the purposes of Section 1(3)(b) of the Act, it is necessary that an establishment should be a commercial establishment as understood in the Kerala Shops and Commercial Establishments Act and whether Section 1(3)(b) of the Act would apply to the establishments which are non-commercial also. This question is no more *res integra*, having regard to the principles laid down by the Apex Court in its judgment in *State of Punjab v. Labour Court, Jullundur and Others* [(1980) 1 SCC 4]. That was a case where claim for Gratuity was raised by the retrenched employees in a construction project of the Hydel Department of the Government of Punjab. On an application filed under Section 33-C(2) of the Industrial Disputes Act, 1947, the claim was upheld by the Labour Court and the order was confirmed by the High Court. In the appeal filed before the Supreme Court, one of the contentions raised was that the project in question is not an "establishment" within the meaning of the Payment of Gratuity Act. According to the State, the law referred to in Section 1(3)(b) of the Payment of Gratuity Act must be a law which relates to both Shops and Establishments, such as Shops and Commercial Establishments Act. This contention was repelled by the Apex Court and it was held that Section 1(3)(b) would apply to every establishment within the meaning of any law for the time being in force in a State, including establishments which are commercial and non commercial.

12. The principles laid down by the Apex Court reads thus:

"3. But, it is contended, the law referred to under Section 1(3)(b) must be a law which relates to both shops and establishments, such as the Punjab Shops and Commercial Establishments Act, 1958. It is difficult to accept that contention because there is no warrant for so limiting the meaning of the expression "law" in Section 1(3)(b). The expression is comprehensive in its scope, and can mean a law in relation to shops as well as, separately, a law in relation to establishments, or a law in relation to shops and commercial establishments and a law in relation to non-commercial establishments. Had Section 1(3)(b) intended to refer to a single enactment, surely the appellant would have been able to point to such a statute, that is to say, a statute relating to shops and establishments, both commercial and noncommercial. The Punjab Shops and Commercial Establishments Act does not relate to all kinds of establishments. Besides shops, it relates to commercial establishments alone. Had the intention of Parliament been, when enacting Section 1(3)(b), to refer to a law relating to commercial establishments, it would not have left the expression "establishments" unqualified. We have carefully examined the various provisions of the Payment of Gratuity Act, and we are unable to discern any reason for giving the limited meaning to Section 1(3)(b) urged before us on behalf of the appellant. Section 1(3)(b) applies to every establishment within the meaning of any law for the

time being in force in relation to establishments in a State. Such an establishment would include an industrial establishment within the meaning of Section 2(ii)(g) of the Payment of Wages Act. Accordingly, we are of opinion that the Payment of Gratuity Act applies to an establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on. The Hydel Upper Bari Doab Construction Project is such an establishment, and the Payment of Gratuity Act applies to it."

13. In the light of the above and on the facts noticed therein, the view taken in the case of Thirumullapulli Devaswom has to be upheld. But the view taken in Narayanan Namboodiri (*supra*) is contradictory to the principles laid down by the Apex Court and cannot be approved. The judgment in Narayanan Namboodiri (*supra*) is therefore overruled.

14. Now, the surviving question to be answered is whether the Trust, whose Trustee has appointed the deceased claimant, is an establishment within the meaning of Section 1(3)(b) of the Act. Section 1(3)(b), as we have already stated, states that the Act shall apply to every establishment within the meaning of any law for the time being in force in relation to establishments in a State, provided ten or more persons are employed or were employed on any day of the preceding twelve months. The term "establishment" is not defined in the Act. Going by its dictionary meaning, "establishment" means a public institution, school, factory, a house of business and a ecclesiastical system established by a law. But we cannot call in aid those meanings for the reason that as per Section 1(3)(b) of the Act to be covered under the Act, an establishment should be an establishment within the meaning of any law for the time being in force in relation to establishments in the State. Therefore, the meaning of the term establishment should be understood with reference to the meaning assigned to the term under any law that is prevailing in the State.

15. Answer to this question need not detain us any longer for we find that the term "establishment" has been defined in Section 2 (c) of the Kerala Payment of Subsistence Allowance Act, 1972, which reads thus:

"Section 2(c) - "establishment" means any place where any industry, trade, business, undertaking, manufacture, occupation or service is carried on, but does not include any office or department of any Government or any establishment of any railway, major port, mine or oilfield."

16. This definition is so wide and any place where any service is carried on would be an establishment for the purposes of Act 1972. It cannot be contended that Trust is not carrying on any service. If that be so, Trust is an establishment within the meaning of the Kerala Payment of Subsistence Allowance Act. Consequently, the Trust would also be an "establishment" within the meaning of

Section 1(3)(b) of the Act. As a result, the employees like the deceased claimant, whose legal representative is the appellant, is entitled to the benefit of the Payment of Gratuity Act.

17. The question regarding the applicability of the Payment of Gratuity Act in regard to the employees of temple itself has already been considered by the Orissa and Karnataka High Courts. In *Administrator, Shri Jagannath Temple, Puri v. Jagannath Padhi and Others* [1992 (2) LLJ 863], a Division Bench of the Orissa High Court considered a similar claim and upheld the same by holding thus:

"4. According to the Compact Edition of the Oxford English Dictionary, Vol.I, page 897 (Reprinted 1972), "establishment" means of public institution, a school; a factory; a house of business etc. In 1851, D.Wilson in *Prech Ann* (1863) II iv i 192 referred to "the religious establishment founded at Iona". "Establishment" also has been defined to be the ecclesiastical system established by law. As observed by the Allahabad High Court in 1986 (53) FLR 227; *Municipal Board v. Appellate Authority and Addl. L.C. to which reference was made by this Court in Executive Officer, Puri Municipality's case* (supra), the definition of establishment is very wide, and keeping in view the objective of the Act, it was held that the same is applicable to the retired persons of municipalities. Keeping in view that laudatory objects of the Act, and the same being a part of the social justice, this Court observed that the legislation was to be applied liberally and a wider meaning was to be given.

5. "Gratuity", as observed by the Supreme Court in its etymological sense, means a gift, especially for services rendered or return for favours received. See (1969-II-LLJ-755) *Delhi Cloth & General Mills Co. Ltd. v. Its Workmen*. The general principle underlying the gratuity scheme is that by their length of service, workmen are entitled to claim a certain amount as a retiral benefit. See (1959-II-LLJ-830), *Indian Hume Pipe Co. Ltd., v. Its Workmen* and another. Gratuity has to be considered to be an amount paid unconnected with any consideration and not resting upon it, and has to be considered something given freely or without recompense. It does not have foundation on any legal liability, but upon a bounty stemming from appreciation and graciousness. Long service carries with it expectation of an appreciation from the employer and a gracious financial assistance to tide over post-retiral difficulties. Judged in that background, we feel that it would be unconscionable to keep temple out of the purview of the Act, more particularly when opposite party No. 1, a low paid employee has served the temple for a very long span of time."

18. Similarly, the Karnataka High Court also had occasion to deal with the same claim in *Management of V.T. and S.H.M. Temple v. Deputy Labour Commissioner* [2008 (1) LLJ 122] where it has held thus:

"12. On these rival contentions and on a proper examination of the case law, it is clear that the word "establishment" in Section 1(3)(b) of the Payment of Gratuity Act, 1972 is not to be restricted as referring to "commercial establishments"

alone. The Act has been held to apply even to institutions which were exempted under the Shops and Establishments Act (See: *Principal, Bhartiya Mahavidyalaya, Amravati and Another v. Ramakrishna Wasudeo Lahudkar* 1994-II-LLJ-556 (Bom)). There is no doubt that a liberal construction has to be given to the expression and any institution or organisation where systematic activity is carried on, by employing ten or more persons, would fall within the ambit of the provision.

13. In a temple, the main activity of facilitating devotees to offer prayers, requires the employment of personnel who render service just as they would in any other establishment. The circumstance that the profit motive is absent, in the activity in which the institution is engaged, is not material. The petitioner-temples would hence fall within the purview of Section 1(3)(b) of the Act. The impugned orders cannot be said to be without jurisdiction."

19. We may in this context also refer to the Full Bench judgment of the Madras High Court in *E. Gopal v. Arulmigu Dhandayuthapaniswamy Temple, Palani and others* [2013 (2) LW 97]. In that judgment, the Full Bench held thus:

22. The contention raised by the learned Advocate General to the effect that the word "establishment" has to be construed to mean what has been referred to in the Tamil Nadu Shops and Establishments Act and not in any other Act which deal with the establishment, cannot be accepted in view of the wider meaning give by the Hon"ble Supreme Court in 1981 (1) LLJ 354. Moreover, keeping in view the observations made by the Hon"ble Supreme Court with regard to charitable institutions in *Bangalore Water Supply and Sewerage Board's* case, which are extracted above, we have no hesitation in arriving at a conclusion that the "religious institutions" will certainly fall within the meaning of "establishment" as defined under Section 1(3)(b) of the Payment of Gratuity Act. The decisions relied on by the respondents/Management will be of no help to them. However, on a close reading of the aforesaid conclusion of the Full Bench, though in principle we are fully agree with the same, we are unable to endorse the finding contained in para 22 above, that the religious institution will certainly fall within the meaning of establishment as defined under Section 1(3)(b) of the Payment of Gratuity Act, for the reason that Section 1(3)(b) of the Payment of Gratuity Act does not define establishment, as assumed by the Full Bench.

20. For the aforesaid reasons, we are unable to sustain the judgment under appeal. Accordingly, the judgment under appeal is set aside.

21. We place on record our appreciation and indebtedness to Sri. Ashok B. Shenoy, Amicus Curie for his thorough preparation and valuable assistance.