

(2000) 12 CAL CK 0005
In the Calcutta High Court
Case No : Writ Petition No. 3047 of 2000

Seth Soorajmal Jalan Balika Vidyalaya (Secondary School)	APPELLANT
Vs	
The Controlling Authority	RESPONDENT

Date of Decision : 12-12-2000

Acts Referred:

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

Citation : (2001) 1 ILR (Cal) 156

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, J.—In this writ application the school authority has challenged the order dated February 25, 2000, passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as "the Act") directing payment of Rs. 35,611.00 along with interest at the rate of 10% towards gratuity payable to the private Respondent who was admittedly a teacher of the school.

2. Mr. Biswas, the learned Counsel appearing on behalf of the Petitioner has contended that a teacher of a school is not an employee within the meaning of Section 2(e) of the Act and as such the authority below exceeded its jurisdiction in passing the order impugned herein by conferring monetary benefit to the private Respondent which she is not authorized to get under law. Mr. Biswas in this connection relies upon the decision of the Apex Court in the case of Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others, . He also relies upon another decision of the Supreme Court in the case of Haryana Unrecognised Schools Association v. State of Haryana AIR 1966 S.C. 2108. Mr. Biswas finally places reliance upon the decision of a learned Single Judge of Patna High Court in the case of Ved Prakash Pathak Nirala v. State of Bihar and Ors. 1999 Lab. I.C. 365.

3. Mr. Chakraborty the learned Counsel appearing on behalf of the private Respondent has opposed this application with vehemence and has contended that the decisions of the Apex Court relied upon by Mr. Biswas are not applicable to a proceeding under the Act in view of the Notification dated April 3, 1997, by virtue of which Educational Institutions in which 10 or more persons are employed have been brought within the meaning of "establishment" appearing in Section 2(e) of the Act. In other words, Mr. Chakraborty contends that in view of "publication of such subsequent notification, the schools where 10 or more persons are employed should be held to be an establishment within the meaning of Section 2(e) of the said Act. Such being the position, Mr. Ghakraborty continues, the teacher of such a school must be held to be an employee within the meaning of Section 2(e) of the aforesaid Act.

4. Mr. Chakraborty further contends that there is a specific provision of appeal against the order impugned herein and the Petitioners not having availed of such remedy and such remedy having become barred by limitation, this Court should not entertain this writ application.

5. As regards the last contention of Mr. Chakraborty, I am not at all impressed by such submission. There is no dispute with the proposition of law that existence of an efficacious alternative remedy is one of the considerations to be taken into account while entertaining a writ application ; but existence of such a remedy is not an absolute bar, more so, when for the purpose of adjudicating such dispute, no investigation of fact is necessary and particularly in a case where the allegation is that the authority below acted in excess of jurisdiction in granting certain benefit to a person which he is not entitled to under law.

6. I, therefore, proceed to decide the question raised by the Petitioners in this writ application.

7. At the very outset, I agree with Mr. Chakraborty that in view of the notification dated April 3, 1997, the Educational Institution where the private Respondent was working must be held to be establishment to which the Act applies. But merely because the Act applies to this establishment, that fact alone will not give the private Respondent right to get gratuity unless she further satisfies that she is an employee within the meaning of Section 2(e) of the Act.

8. it will thus be profitable to refer to the definition of "employee" appearing in Section 2(e) of the Act which is as follows:

2(e). "employee" means any person (other than an apprentice) employed "on wages, in any establishment, factory; mine, oilfield, plantation, port, railway company or shop, to 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.

9. In the case of *A. Sundarambal (Miss) v. Govt. of Goa, Daman and Diu and Ors.* (Supra) the Apex Court was considering whether the dispute as regards termination of a teacher of a school could be referred to Industrial Tribunal u/s 10 of the Industrial Disputes Act. In that context the Apex Court held that the school was undoubtedly an industry, but the teacher was not a workman. In this connection the definition of workman appearing in Section 2(s) of the Industrial Disputes Act is relevant and is quoted hereunder:

2(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal discharge or retrenchment has led to that dispute, but does not include any such person.

10. In para. 10 of the said decision, the Supreme Court in unambiguous term ruled out the functions of a teacher cannot be said to be skilled or unskilled or manual work or supervisory work or technical work or clerical work and thus teachers are not workman within the meaning of the Industrial Disputes Act. I have already pointed out that the definition of an employee under the Act is also couched in almost same language.

11. In the case of *Haryana Unrecognised Schools Association v. State of Haryana* (Supra) relied upon by Mr. Biswas, the Apex Court was considering whether teachers of "Education Institution" could be brought within the definition of employee under Minimum Wages Act. In the said context, the Supreme Court held that since the teachers of an Educational institution are not employed to do any skilled or unskilled or manual or clerical work, they could not be held to be an employee within the meaning of Section 2(i) of the said Act.

12. In the Patna decision *Ved Prakash Pathak Nirala v. State of Bihar and Ors.* (Supra) the point involved therein was exactly similar to the present one and Ganguly, J. (as His Lordship then was) answered such question holding that a teacher is not an employee within the meaning of the Act.

13. Mr Chakraborty on the other hand relied upon a decision of Bombay High Court in the case of *Gurudeo Ayurved Mahavidyalaya v. Madhaban and Ors.*, wherein the private Respondent who was an employee of college was held to be entitled to gratuity under the Act. It does not appear from the said judgment whether the private Respondent therein was a teacher of the Institution. All that was held in the said decision was that a school was an establishment within the meaning of the Act and as an employee the private Respondent was entitled to gratuity. As mentioned earlier, in view of subsequent notification dated April 3, 1997, there is no scope of any argument that the school is not an establishment. Moreover, in the said decision the decisions of the Apex Court mentioned above

were not at all considered. I am therefore of the view that the said decision of Bombay High Court is of no avail to the private Respondent.

14. On consideration of the points raised by the parties, I am thus of the view that the authority below exceeded its jurisdiction in conferring benefit of the Act to a teacher although such teacher cannot be said to be an employee within the meaning of the Act. Imparting of education, as pointed out by the Apex Court in the case of A. Sundarambal (Miss) v. Govt. of Goa, Daman and Diu and Ors. (Supra) is in the nature of a mission or a noble vocation. A teacher educates children he moulds their character, builds up their personality and makes them fit to become responsible citizen. Thus, teachers cannot be termed as employee.

15. The writ application thus succeeds. The order impugned herein is set aside. it is held that the private Respondent, a teacher of the Petitioner No. 1, is not entitled to gratuity under the Act.

16. In the facts and circumstances, there will be no order as to costs.

17. All parties are to act on a signed Xerox copy of this dictated order on usual undertaking.