

(2003) 07 MP CK 0053
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1817 of 2002

S.N. Verma

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 25-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 243, 243G
Madhya Pradesh General Clauses Act, 1957 — Section 2(2)
Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 8
Payment of Gratuity Act, 1972 — Section 2, 4, 4(1), 4(5)

Citation : (2004) 1 LLJ 560 : (2003) 3 MPHT 514 : (2003) 4 MPLJ 373

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : Sharad Verma, for the Appellant; S.M. Lal, Panel Lawyer, K.C. Ghildiyal, for the Respondent

Final Decision : Allowed

Judgement

S.P. Khare, J.

This is a writ petition under Articles 226 and 227 of the Constitution of India for quashing order dated 25-1-2002 (Annexure A-9) by which the application of the petitioner for payment of gratuity has been rejected and for a direction to the respondents to pay gratuity to him.

2 It is not in dispute that the petitioner retired from the services of Janpad Panchayat, Cherlanji, District Balaghat on attaining age of superannuation of 58 years on 30-6-1996. The petitioner claimed gratuity but it has been rejected. He made several representations and even then it was not paid to him. In the judgment dated 27-6-1997 in Writ Petition No. 1743 of 1997 of this Court there are certain observations that a Janpad employee is entitled to gratuity but not the pension as per Madhya Pradesh Janpad Panchayat Employees (Qualifications, Recruitment and Conditions of Service) Rules, 1976. This judgment is Janpad Panchayat Tatha Zila Panchayat Karamchari Sangh and Ors. v. State of M.P. and

Ors., reported in 1998 (1) J.L.J. 336. The petitioner has not been paid the gratuity on the ground that he had retired before the date of this judgment. That is also the stand taken by the respondents in their return.

The learned Counsel for both the sides have been heard. The Payment of Gratuity Act, 1972 (hereinafter to be referred to as "the Act") would apply to the case of the petitioner and other Panchayat employees. The definitions of "employee" and "employer" are given in Section 2 (e) and (f) of the Act, which are as under :--.

"(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 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."

"(f) "employer" means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway, company or shop,--

(i) belonging to, or under the control of, the Central Government or appropriate Government, a person, or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,

(ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the Chief Executive Officer of the local authority.

(iii) in any other case, the person, who, or the authority which has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway, company or shop, and where the said affairs are entrusted to any other person, whether called a Manager, Managing Director or by any other name, such person."

Notification No. G.S.R. 239, dated 8-1-1982 of the Government of India published in the Gazette on 23-1-1982 is as under :--

"In exercise of the powers conferred by Clause (c) of Sub-section (3) of Section 1 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies "local bodies" in which ten or more persons are employed, or were employed, on any day of the preceding twelve months, as a class of establishments to which the said Act shall apply with effect from the date of publication of this notification in the Official Gazette."

The definition of "employer" as given above shows that it includes "local

authority". Further as per notification mentioned above, the Payment of Gratuity Act, 1972 has been made applicable to the employees of the local bodies. According to Article 243 of the Constitution of India a "Panchayat" means an institution (by whatever name called) of self-Government constituted under Article 243B, for the rural areas. Article 243B mandates : "There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part." The State has enacted the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 as per Article 243G of the Constitution to endow these Panchayats with powers and authority to enable them to function as institutions of self-Government. The Gram Panchayat, Janpad Panchayat and Zila Panchayat constituted u/s 8 of this Act are included within the definition of "local body" or "local authority". Section 2(2) of the M.P. General Clauses Act, 1957 defines "local authority" as including Janpad Sabha and Village Panchayat.

Thus, the Panchayat is indisputably a "local body" and if it is employing more than ten persons it would be an "establishment" within the meaning of the notification given above. An employee of a Panchayat is entitled to the payment of gratuity as per provisions of Payment of Gratuity Act, 1972 unless under any other rule of the Panchayat or the State Government he has a right to receive "better terms of gratuity" as per Section 4(5) of the Act. Though there is an observation in the judgment dated 27-6-1997 in W.P. No. 1743 of 1997 that the gratuity is payable to the Panchayat employees as per Madhya Pradesh Janpad Panchayat Employees (Qualifications, Recruitment and Conditions of Service) Rules, 1976, but on a perusal of these rules it is conceded that there is no provision in these rules for payment of gratuity. In such a situation an employee of the Panchayat would be entitled to gratuity as per Payment of Gratuity Act, 1972. The Supreme Court has held in Bakshish Singh Vs. M/s. Darshan Engineering Works and others, , that the provisions for payment of gratuity contained in Section 4(1)(b) of the Act are one of the minimal service conditions which must be made available to the employees notwithstanding the financial capacity of the employer to bear its burden. It is settled law that the establishments which have no capacity to give to their workmen the minimum conditions of service prescribed by the statute have no right to exist. The respondent Janpad Panchayat is admittedly employing more than ten persons and therefore the petitioner who was its employee is entitled to gratuity under the Payment of Gratuity Act, 1972.

In the result this petition is allowed. The impugned order dated 25-1-2002 (Annexure A-9) is quashed. The respondents are directed to make payment of gratuity to the petitioner as per provisions of Payment of Gratuity Act, 1972.