

(2012) 11 KAR CK 0058

In the Karnataka High Court

Case No : Writ Appeal No. 2049 of 2007 (L-PG)

Sri Shamaraja Udupa

APPELLANT

Vs

The Assistant Labour Commissioner Mangalore Controlling
Authority, The Deputy Labour Commissioner Hassan Division
and Always Education Foundation

RESPONDENT

Date of Decision : 08-11-2012

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 2(f)
Payment of Gratuity Act, 1972 — Section 1(3)c

Citation : (2013) 1 AKR 599 : (2013) 137 FLR 297 : (2013) 2 KCCR 967 :
(2013) LabIC 810

Hon'ble Judges : V. Suri Appa Rao, J;N. Kumar, J

Bench : Division Bench

Advocate : T.N. Raghupathy, for the Appellant; M.C. Akkamahadevi, AGA for R1
and R2 and Sri Arun Shyam M., Advocate for Dharmashree Associates, Advocates
for R3, for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—The question of law that arises for consideration in this appeal is whether the payment of Gratuity Act, 1972 is applicable to teachers in an educational institution. The petitioner was appointed by the third respondent-educational institution in one of the colleges run by it as a full time Lecturer on 09.11.1997. Thereafter, he served the institution in the capacity of Lecturer for 7 years and 20 days. On 30.11.2004 he resigned from service. On 10.08.2005 he made a claim against the third respondent for payment of gratuity in a sum of Rs. 1,11,784-00 with interest before the first respondent. By order dated 21.03.2006 as per Annexure-F the claim of the petitioner was dismissed on the ground that the petitioner does not fall within the definition of an employee as defined u/s 2(e) of the Payment of Gratuity Act, 1972, for short, hereinafter referred to as the "Act". Aggrieved by the said order, the petitioner preferred an appeal before the appellate authority u/s 7(7) of the Act. The appellate authority

concurred with the view taken by the first respondent and dismissed the appeal by order dated 30.03.2007. Aggrieved by the said order, the petitioner preferred a writ petition before this Court in W.P. No. 11362/07. The learned Single Judge following the judgment of the Apex Court in the case of Ahmedabad Pvt. Primary Teachers" Association Vs. Administrative Officer and Others, held that teachers are not employees as defined under the Act and therefore the application filed under the Act for claiming gratuity is not maintainable. He further held that the judgment in the case of Rajasthan Welfare Society Vs. State of Rajasthan, was referred in the context of the provisions of Rajasthan Non-Government Educational Institution Act, 1989 and therefore the said judgment has no application to the facts of this case. Accordingly, he dismissed the writ petition. Aggrieved by the said order, the present appeal is filed.

2. Sri. T.N. Raghupathy, learned Counsel appearing for the appellant, assailing the impugned order contended that the judgment of the Supreme Court was rendered in the context of the definition of an employee prior to the amendment. Section 2(e) is now substituted by Act 47 of 2009, which came into effect from 03.04.1997. As the petitioner was employed subsequent to 03.04.1997, it is the amended provision, which is applicable, that includes teachers. Therefore the learned Single Judge was in error in dismissing the writ petition and the authorities were not justified in not granting the relief sought for. He also pointed out that Regulations framed by the third respondent-institution expressly provided that all employees except retired and re-employed employees and medical officers shall be eligible for gratuity as per the provisions of the Payment of Gratuity Act, 1972. Therefore he submits that the impugned orders are required to be set aside and his application is to be allowed.

3. Per contra, the learned Counsel appearing for the respondent submitted that Regulations on which reliance is placed is not certified and therefore it had no force of law. Secondly, he contended that the Act is not applicable to an educational institution, much less, to a teacher as held by the Supreme Court and therefore no case for interference is made out.

4. In the light of the aforesaid facts and rival contentions, the point that arise for consideration in this appeal is:

Whether the provisions of the Payment of Gratuity Act, 1972 are applicable to the educational institutions, in particular to the teaching staff employed in such institution?

5. The Act was enacted to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oil fields, plantation, ports, railway companies, shops or other establishment and for matters connected therewith or incidental thereto.

6. Sub-section (3) of Section 1 sets out the establishment to which the Act is made applicable. It reads under:

(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.

Clause (e) of Section 2 defines the term "employee". It reads as under:

(e) "employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, 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.

Similarly, the term "employer" is also defined u/s 2(f), which reads as under:

- (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 a State 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 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 manner, managing director or by any other name, such person.

Section 4 is the provision which entitles the employee to claim gratuity if he satisfies the conditions prescribed therein. Section 4 reads as under:

4. Payment of Gratuity.- (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, -

- (a) on his superannuation, or
- (b) on his retirement or resignation, or
- (c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

7. The Act was made expressly applicable to factories, mines, oil fields, plantation, ports, railway companies, shops or other establishments. It was not made applicable to educational institutions. However, clause (c) of sub-section (3) of Section 1 empowers the Central Government to make applicable the Act to such establishment in which ten or more employees are employed by notification in this behalf. Therefore, though the Act was not applicable to educational institutions expressly by virtue of notification dated 3rd April 1997, the Central Government extended the application of the Act to educational institutions. The said notification reads as under:

New Delhi, the 3rd April, 1997

S.O. 1080.- 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 specified the educational institutions in which ten or more persons are employed or were employed on any day preceding 12 months as a class of establishments to which the said Act shall apply with effect from the date of publication of this notification:

Provided that nothing contained in this notification shall affect the operation of the notification of the Ministry of Labour S.O. 239 dated the 8th January, 1982.

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8. Therefore it is by virtue of this notification, the Act is applicable to educational institutions. Though the Act was made applicable to educational institutions from 3rd April 1997, the definition of employee came in the way of extending the benefit of the Act to the teaching staff. The said definition reads as under:

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 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.

9. Dealing with the question whether a teacher in an educational institution is entitled to payment of gratuity, the Apex Court in the case of Ahmedabad Pvt. Primary Teachers' Association Vs. Administrative Officer and Others, while interpreting the definition clause contained in Section 2(e), after referring to the notification issued on 3rd April 1997, held as under:

20. An educational institution, therefore, is an "establishment" notified u/s 1(3) (c) of the Payment of Gratuity Act, 1972. On behalf of the Municipal Corporation, it is contended that the only beneficial effect of the Notification issued u/s 1(3)(c) of the Act of 1972, is that such non-teaching staff of educational institutions as answer the description of any of the employments contained in the definition Clause 2(e), would be covered by the provisions of the Act. The teaching staff being not covered by the definition of "employee" can get no advantage merely because by notification "educational institutions" as establishments are covered by the provisions of the Act.

21. Having thus compared the various definition clauses of word "employee" in different enactments, with due regard to the different aims and objects of the various labour legislations, we are of the view that even on plain construction of the words and expression used in definition Clause 2(e) of the Act, "teachers" who are mainly employed for imparting education are not intended to be covered for extending gratuity benefits under the Act Teachers do not answer description of being employees who are "skilled," "semi-skilled" or "unskilled." These three words used in association with each other intend to convey that a person who is "unskilled" is one who is not "skilled" and a person who is "semiskilled " may be one who falls between two categories meaning he is neither fully skilled nor unskilled. The Black's Law Dictionary defines these three words as under:-

Semi-skilled work. Work that may require some alertness and close attention, such as inspecting items or machinery for irregularities, or guarding property or people against loss or injury.

Skilled work. Work requiring the worker to use judgment, deal with the public, analyze facts and figures, or work with abstract ideas at a high level of complexity.

Unskilled work. Work requiring little or no judgment, and involving simple tasks that can be learned quickly on the job.

22. In construing the above mentioned three words which are used in association with each other, the rule of construction *noscitur a sociis* may be applied. The meaning of each of these words is to be understood by the company it keeps. It is a legitimate rule of construction to construe words in an Act of Parliament with

reference to words found in immediate connection with them. The actual order of these three words in juxtaposition indicates that meaning of one takes colour from the other. The rule is explained differently: "that meaning of doubtful words may be ascertained by reference to the meaning of words associated with it". [See Principles of Statutory Interpretation by Justice G.P. Singh (8th Ed.), Syn.8 at pg.379].

23. The word "unskilled" is opposite of the word "skilled" and the word "semi-skilled" seems to describe a person who falls between the two categories i.e. he is not fully skilled and also is not completely unskilled but has some amount of skill for the work for which he is employed. The word "unskilled" cannot, therefore, be understood dissociated from the word "skilled" and "semiskilled" to read and construe it to include in it all categories of employees irrespective of the nature of employment. If the Legislature intended to cover all categories of employees for extending benefit of gratuity under the Act, specific mention of categories of employment in the definition clause was not necessary at all. Any construction of definition clause which renders it superfluous or otiose has to be avoided.

24. The contention advanced that teachers should be treated as included in expression "unskilled" or "skilled" cannot, therefore, be accepted. The teachers might have been imparted training for teaching or there may be cases where teachers who are employed in primary schools are untrained. A trained teacher is not described in industrial field or service jurisprudence as a "skilled employee". Such adjective generally is used for employee doing manual or technical work. Similarly, the words "semi-skilled" and "unskilled" are not understood in educational establishments as describing nature of job of untrained teachers. We do not attach much importance to the arguments advanced on the question as to whether "skilled", "semi-skilled" and "unskilled" qualify the words "manual", "supervisory", "technical" or "clerical" or the above words qualify the word "work". Even if all the words are read disjunctively or in any other manner, trained or untrained teachers do not plainly answer any of the descriptions of the nature of various employments given in the definition clause. Trained or untrained teachers are not "skilled", "semi-skilled", "unskilled", "manual", "supervisory", "technical" or "clerical" employees. They are also not employed in "managerial" or "administrative" capacity. Occasionally, even if they do some administrative work as part of their duty with teaching, since their main job is imparting education, they cannot be held employed in "managerial" or "administrative" capacity. The teachers are clearly not intended to be covered by the definition of "employee".

25. The Legislature was alive to various kinds of definitions of word "employee" contained in various previous labour enactments when the Act was passed in 1972. If it intended to cover in the definition of "employee" all kinds of employees, it could have as well used such wide language as is contained in Section 2(f) of the Employees' Provident Funds Act, 1952 which defines "employee" to mean "any person who is employed for wages in any kind of

work, manual or otherwise, in or in connection with the work of an establishment"....Non-use of such wide language in the definition of "employee" in Section 2(e) of the Act of 1972 reinforces our conclusion that teachers are clearly not covered in the definition.

26. Our conclusion should not be misunderstood that teachers although engaged in very noble profession of educating our young generation should not be given any gratuity benefit There are already in several States separate statutes, rules and regulations granting gratuity benefits to teachers in educational institutions which are more or less beneficial than the gratuity benefits provided under the Act. It is for the Legislature to take cognizance of situation of such teachers in various establishments where gratuity benefits are not available and think of a separate legislation for them in this regard. That is the subject matter solely of the Legislature to consider and decide.

10. Therefore, in view of the definition of "employee" prior to amendment, the Apex Court held that trained or untrained teachers are not "skilled", "semi-skilled", "unskilled", "manual", "supervisory", "technical" or "clerical" employees. They are also not employed in "managerial" or "administrative" capacity. Occasionally, even if they do some administrative work as part of their duty with teaching, since their main job is imparting education, they cannot be held employed in "managerial" or "administrative" capacity. The teachers are clearly not intended to be covered by the definition of "employee". The Legislature was alive to various kinds of definitions of word "employee" contained in various previous labour enactments when the Act was passed in 1972. If it intended to cover in the definition of "employee", all kinds of employees, it could have as well used such wide language as is contained in Section 2(f) of the Employees' Provident Funds Act, 1952 which defines "employee" to mean "any person who is employed for wages in any land of work, manual or otherwise, in or in connection with the work of an establishment. Non-use of such wide language in the definition of "employee" in Section 2(e) of the Act of 1972 reinforces their conclusion that teachers are clearly not covered in the definition.

11. After the said judgment, in view of the observation made by the Apex Court that it is for the legislature to take cognizance of the situation of teachers in various establishments where gratuity benefits are not available and think of a separate legislation for them in this regard, the Parliament proposed to widen the definition of employee in order to extend the benefit of gratuity to the teachers. Accordingly, the Payment of Gratuity (Amendment) Bill 2007 was introduced in Lok Sabha on 26th November 2007 and the same was referred to the Standing Committee on Labour, which made certain recommendations. After examining those recommendations, the Act was amended by substituting the amended Section giving effect to the amendment retrospectively with effect from 3rd April 1997, the date on which the provisions of the said Act were made applicable to the educational institutions. Accordingly, the old definition of "employee" was

substituted by the new definition which reads as under:

"employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind or work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment, to which this Act applies, 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 careful reading of the aforesaid definition makes it clear that consciously, the Parliament has used the word "any kind of work, manual or otherwise". Therefore the definition of "employee" as amended, includes the teaching staff of educational institutions. The said benefit is given from 3rd April 1997, the day on which the notification was issued by the Central Government by clause (c) of sub-section (3) of Section 1 of the Act, making the Act applicable to educational institutions. Therefore the aforesaid judgment rendered by the Apex Court in the context of definition of Section 2(e) prior to amendment has no application to the case arising after substitution of new definition of employee u/s 2(e) of the Act. Therefore, in view of express words used in the amended definition of "employee" u/s 2(e) of the Act, where the words "in any kind of work, manual or otherwise, in or in connection with the establishment to which the Act applies", are used, the teachers working in educational institutions are now entitled to the benefit of payment of gratuity under the Act. This amendment has been completely missed by the learned Single Judge. Therefore the impugned order passed by the learned Single Judge as well as by the two authorities are unsustainable. Accordingly it is hereby set aside. Hence, we pass the following order:

Appeal is allowed.

The order passed by the learned Single Judge as well as by the original authority and the appellate authority are set aside.

The application filed by the petitioner is restored to its original file and the first respondent shall decide the claim of the petitioner on merits and in accordance with law, after affording an opportunity to the education institution. The said exercise shall be done within a period of four months from the date of receipt of the copy of this order.