

(2022) 11 OHC CK 0077
In the Orissa High Court
Case No : Writ Appeal No. 22 Of 2019

Subash Chandra Mishra

APPELLANT

Vs

President, Sanjay Memorial Institute Of Technology And
Another

RESPONDENT

Date of Decision : 10-11-2022

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2(e), 4

Citation : (2022) 11 OHC CK 0077

Hon'ble Judges : S. Muralidhar, CJ; M.S. Raman, J

Bench : Division Bench

Advocate : Bijay Kumar Mohanty

Final Decision : Allowed

Judgement

Dr. S. Muralidhar, CJ.

1. Despite service of notice, none appears for the Respondents.
2. The present appeal is directed against an order dated 18th December, 2018 passed by the learned Single Judge allowing writ petition i.e. W.P.(C) No.12929 of 2018 filed by the Respondent-Sanjay Memorial Institute of Technology (SMIT) challenging an order dated 29th June, 2018 passed by the Appellate Authority under the Payment of Gratuity Act (PG Act) whereby the appeal filed by the Respondent-Institute had been dismissed and an order passed by the Controlling Authority under the PG Act-cum-Labour Commissioner, Berhampur on 23rd February, 2013 allowing the claim of the present Appellant and directing the Institute to pay his gratuity amount was affirmed. The net result is by the impugned judgment the learned Single Judge has upheld the claim of the Respondent that the present Appellant, who was employed as a Welder (Instructor), was a 'teacher' and, therefore, not covered under the definition of Section 2(e) read with Section 4 of the PG Act.
3. In arriving with the above conclusion, the learned Single Judge has placed

extensive reliance on the judgment of the Supreme Court in the case of Ahmedabad Pvt. Primary Teachers Association v. Administrative Officer (2004) 1 SCC 755.

4. It was perhaps not brought to the attention of the learned Single Judge that consequent upon the above judgment, the Parliament amended the PG Act on 31st December, 2009 with retrospective effect from 3rd April, 1997. By the said amendment the definition of 'employee' in Section 2(e) of the PG Act was amended expanding the scope of the expression 'employee' to include teachers in educational institutions. The amended definition of Section 2(e) of the PG Act 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."

5. The error in the earlier judgment in Ahmadabad Pvt. Primary Teachers Association (supra) was acknowledged by the Supreme Court in a subsequent judgment dated 7th March, 2019 in Birla Institute of Technology v. The State of Jharkhand (2019) 4 SCC 513, where it was categorically held as under:

"28. In the light of the amendment made in the definition of the word "employee" as defined in Section 2(e) of the Act by Amending Act No. 47 of 2009 with retrospective effect from 03.04.1997, the benefit of the Payment of Gratuity Act was also extended to the teachers from 03.04.1997.

29. In other words, the teachers were brought within the purview of "employee" as defined in Section 2(e) of the Payment of Gratuity Act by Amending Act No. 47 of 2009 with retrospective effect from 03.04.1997.

30. The effect of the amendment made in the Payment of Gratuity Act vide Amending Act No. 47 of 2009 on 31.12.2009 was twofold. First, the law laid down by this Court in the case of Ahmadabad Pvt. Primary Teachers Association (supra) was no longer applicable against the teachers, as if not rendered, and second, the teachers were held entitled to claim the amount of gratuity under the Payment of Gratuity Act from their employer with effect from 03.04.1997.

31. In our considered opinion, in the light of the amendment made in the Payment of Gratuity Act as detailed above, reliance placed by the learned counsel appearing for the appellant (employer) on the decision of Ahmadabad Pvt. Primary Teachers Association (supra) is wholly misplaced and does not help the appellant in any manner. It has lost its binding effect."

6. It is, therefore, now plain that in the light of the amendment to Section 2 (e) of the PG Act with retrospective from 3rd April, 1997 the claim of the Appellant

has to be allowed. Accordingly, the impugned order of the learned Single Judge is hereby set aside and the order dated 23rd February, 2013 passed by the Controlling Authority under the PG Act-cum-Assistant Labour Commissioner, Berhampur allowing the claim of the present Appellant is restored to file. The amount now be paid to the Appellant within a period of eight weeks, failing which it will be paid together with simple interest @ 6% per annum for the period of delay.

7. The appeal is allowed in the above terms. An urgent certified copy of this order be issued as per rules.

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