
(2004) 02 MP CK 0055

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 6126 and 6147 of 2001 and 202 and 4807 of 2003

Sushil Jain (Ms.) and Others

APPELLANT

Vs

BHEL Shiksha Mandal

RESPONDENT

Date of Decision : 13-02-2004

Acts Referred:

Payment of Gratuity Act, 1972 — Section 1(3), 2

Citation : (2004) 3 LLJ 1092 : (2004) 3 MPLJ 532

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : P.S. Nair, R.K. Gupta and Rajendra Babbar, for the Appellant;
Pushpendra Singh, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

In these writ petitions teachers and BHEL Shiksha Sangh have prayed for the relief of quashment of order (P-1) dated November 9, 2000 passed by H.E. Education Society by which circular dated January 7, 1998 has been modified. In view of the order passed by this Court in H.E. Education Society, Barkheda, Bhopal Vs. The Appellate Authority and another, (MP) decided on July 20, 2000 by Brother S. K. Kulshrestha J., in which it was held that teachers are not covered within the definition of "employee" u/s 2(e) of Payment of Gratuity Act, 1972.

In W. P. No. 202/2003 the relief prayed is to quash the above order (P-I) dated November 9, 2000 and declaration is sought that teachers are covered under the definition of employee under the Payment of Gratuity Act, 1972 and they are entitled to the benefit of payment of gratuity. In the alternate teachers of respondent society be declared to be at par with teachers of Central Schools in relation to payment of gratuity, and they be declared entitled for payment of gratuity.

In W. P. No. 6126/2001, W. P. No. 6147/2001 and W. P. No. 4870/2003, similar relief has been prayed.

The main plank of the petitioners is that, as per the dictionary meaning of skill, the work rendered by the teachers has to be treated to be within the purview of the definition of "employee" as defined u/s 2(e) of Payment of Gratuity Act. Teaching is highly - skilled job. Teacher has to acquire knowledge," obtain technical knowledge, understanding and impart his knowledge to the students of high quality. It is submitted that teachers should not be deprived of provisions of Payment of- Gratuity Act, which is the beneficial legislation" and aims to achieve constitutional goal of socialism and social justice. Taking another view would be against the directive principles which are fundamental in governance.

The alternative submission of the petitioners is that petitioners have to be treated in the matter of Payment of Gratuity at par with the teachers of Central School, they are entitled to the similar treatment. Reliance has also been placed on circular (P-67) dated July 19, 1985, which provides scale of pay and allowances in H. E. Education Society on the pattern of Kendriya Vidyalaya Sangathan for teaching and non teaching staff. It has also been submitted that H. E. Education Society has taken a decision to make payment of gratuity as mentioned in Circular (P-65) dated January 7, 1998, in view of the notification issued by the Government of India dated April 3, 1997. In compliance of the notification of Government of India, it was clarified that Payment of Gratuity Act is applicable to the staff of H. E. Education Society. This circular (P-65) has been withdrawn in view of the decision of this Court in H. E. Education Society v. Appellate Authority (supra) decided on July 20, 2000. It is submitted that withdrawal is illegal and once Payment of Gratuity Act has been adopted, benefit of the same could not have been withdrawn.

Per contra respondents have denied the liability to pay the gratuity under the Payment of Gratuity Act in view of the decision of this Court in H, E. Education Society v. Appellate Authority (supra) and it is contended that teachers do not fall within the definition of employee u/s 2(e) of Payment of Gratuity Act. Language of Section 2(e) is clear. There is no discrimination.

Shri P. S. Nair, senior counsel and Shri Rajendra Babbar, learned counsel appearing for the petitioners have submitted that once the benefit under the Payment of Gratuity Act was extended to the teachers, same ought not to have been withdrawn. Shri Rajendra Babbar has additionally submitted that teachers of H.E. Education Society have to be treated at par with in the Payment of Gratuity with the teachers of Kendriya Vidyalaya Organisation.

Shri Pushpendra Singh, learned counsel appearing for the respondents has submitted that the notification issued by the Central Government was the basis of the circular issued by the H. E. Education Society and in view of the decision of this Court in H. E. Education Society v. Appellate Authority under the Payment of Gratuity Act (supra), circular has been rightly withdrawn. Teachers cannot claim

to be employee covered under the Payment of Gratuity Act, 1972. He has further submitted that circular (P-67) is in the matter of same scales of pay and allowances on the pattern of Kendriya Vidyalaya Sangathan not with respect to the gratuity. Meaning of circular (P-67) cannot be extended to gratuity and there is no discrimination. Circular (P-65), was based on misconception of law, it has been rightly withdrawn in view of the position of law laid down by this Court.

The matter is no more res integra, now we have the benefit of view of the Apex Court decision in Ahmedabad Pvt. Primary Teachers' Association Vs. Administrative Officer and Others, , wherein the Apex Court has taken similar view, which has been taken by this Court in H.E. Educations- Society and Murarilal v. D. N Jain Higher Secondary School and Anr.. The Apex Court in Ahmedabad Private Primary Teachers Association's case has considered the notification issued by the Central Government on April 3, 1997, which is quoted below:

"19. It is not disputed that by Notification dated April 3, 1997, issued in exercise of powers u/s 1(3)(c) of the Payment of Gratuity Act, 1972, the Gratuity Act is extended to educational institutions in which ten or more persons are employed or were employed on any day preceding 12 months. The relevant part of the Notification reads as under:

Applicability of the Payment of Gratuity Act, 1972 in Educational Institutions
Notification No. 5-42013/1/95-SSII. dated April 3, 1997

In exercise of the powers conferred by Clause (c) of Sub-clause (3) of Section 1 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies 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 January 8, 1982."

The Apex Court has laid down that "teaching staff being not covered by definition of "employee" can get no advantage merely because by notification "educational institution" as establishment are covered by provisions of the Act. The Apex Court has held thus:

"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 Section 2(e), would be covered by the provisions of the Act. The teaching staff being not covered by the definition of "employees" can get no advantage merely because by Notification "educational institution" as establishments are covered

by the provisions of the Act.

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 Section 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," "semiskilled" 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 "semi-skilled" 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, analyse 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."

The Apex Court has laid down that teachers cannot be treated in the expression skilled. The Apex Court has laid down thus:

"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 "skilled20 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 25 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 mainjob is imparting education, they cannot 45 be held employed in "managerial" or "administrative" capacity. The teachers are clearly not intended

to be covered by the definition of "employee".

In *H. E. Education Society v. Appellate Authority* (supra), considered the question thus:

" 10. The key words to be examined to find out similarity between the definition of "workman" appearing in the above cases are that in the definition of "workman" under the I.D. Act, a workman means a person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, the word "employee" under the Minimum Wages Act means a person who is employed for hire or reward to do any work skilled or unskilled, manual or clerical while an employee within the meaning of Section 2(e) of the Payment of Gratuity Act, means any person employed on wages to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work. Their Lordship in *A. Sundarambal* (supra) have clearly held that imparting of education which is the main function of a teacher, cannot be considered as skilled or unskilled, manual work or supervisory work or technical work or clerical work. In *Haryana Unrecognized Schools' Association v. State of Haryana* (supra), while interpreting the expression "employee", as contained in Section 2(i) of the Minimum Wages Act, it has been reiterated that since the teachers of an education institution are not employed to do any skilled or unskilled or manual or clerical work, they should not be held to be employee u/s 2(i) of the Act. The meaning assigned to the word "employee", insofar as the nature of work is concerned, is in no way different from the meaning assigned to the work done by a workman or an employee under the foregoing enactments as under the Payment of Gratuity Act also, reference is to skilled, semi- skilled or unskilled, manual, supervisory, technical, or clerical work. It has already been held in *Haryana Unrecognized School's Association* (supra) that the work performed by teacher is not skilled or unskilled, manual work or supervisory work or clerical work as imparting of education is in the nature of a mission or a noble vocation and a teacher educates children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. The clerical work done, if any, is only incidental to their principal work of teaching. In view of above clear interpretation with regard to the nature of the work performed by teachers and there being no material distinction between the definition of "employee" in Section 2(e) of the Payment of Gratuity Act and the definition of "workman" in Section 2(s) of the Industrial Disputes Act and "employee" in Section 2(i) of the Minimum Wages Act, with great respect the view expressed by Hon"ble Bombay High Court in *P.D. Raodev.* (supra) does not appear to be correct. Even in view of the observations in the said case that such educational institutions are establishments covered by the provisions of Bombay Shops and Establishments Act, 1948 when read apposite Section 1(3)(d) of the Payment of Gratuity Act, the teachers not being "employee" within the meaning assigned by Section 2(e) of the Act, would not become entitled to claim gratuity under the provisions of the Act. It has also to be noted that such educational institutions have also employees who are not teachers and exclusions of the

applicability of the Act in case of teachers being manifest, there is no occasion to consider the position of the teachers qua such establishments. The question, if at all, may arise only in relation to the claims of the employees of such institutions other than teachers.

Learned counsel for the petitioner has also brought to my notice the judgment of a learned single Judge of the Patna High Court in *Ved Prakash Pathak Nirala v. State of Bihar* 1999 II LU 1420 (Pat), in which the learned Judge has, after referring to the decisions in *A. Sundarambal and Haryana Unrecognized Schools' Association* (supra) held that teachers cannot come within the purview of an "employee" u/s 2(e) of the Act."

The decision of this Court in *Secretary, Board of Secondary Education and Teachers' Training and Others Vs. Sunil Kumar Lal and Others*, (MP), which has been relied on by petitioners, has been considered and distinguished by me in *W.P. No. 3011/2003, Murari Lal Tiwari v. D.N. Jain Higher Secondary School and Anr.* decided on January 23, 2004. This Court has considered thus:

"3. Yet another Bench of this Court in *Secretary, Board of Secondary Education and Teachers Training and Anr. v. Sunil Kumar Lai and six Ors.* 2000 (2) MPJR 100 has laid down that an education institution registered under the Act of 1973 is also an establishment and the provisions of Payment of Gratuity Act are applicable to such institution. But, question whether the teacher is an "employee" within the meaning of Section 2(e) of the Payment of Gratuity Act has not been considered in *Secretary, Board of Secondary Education and Teachers Training and Anr.* (supra). It is also not clear from reading of the decision that whether the decision has been rendered with respect to teachers or non-teaching staff of the educational institution. Thus, the decision cannot be termed to be an authority to make a room for submission that the teachers have to be treated as "employee" within the meaning of Section 2(e) of the Payment of Gratuity Act, 1972. I am in agreement with the reasoning and the decision which have been employed by esteemed brother S.K. Kulshrestha, J. in which question has been considered whether teacher is an employee u/s 2(e) of the Act of 1972. The decision in *H.E. Educational Society* (supra) is attracted to the instant case and in my opinion, petitioner being a teacher cannot be treated to be an employee u/s 2(e) of the Payment Of Gratuity Act, hence, is not entitled for gratuity under the Payment of Gratuity Act, 1972."

The circular (P-65), which has been relied upon by the petitioner has been issued in pursuance of the notification issued by the Government of India dated April 3, 1997 cannot bring teachers in the ambit of employee under Payment of Gratuity Act. Circular (P-65) is quoted below:

Heavy Electricals Education Society (Patronised by BHEL)

Berkhera: BHEL: Bhopal

No. HES/F and A/59/98/21

Dt. January 7, 1998

Sub: Payment of Gratuity to H. E. Education Society Employees effective from April 19, 1997.

In pursuance of the Notification issued by Government of India, dated April 3, 1997 and the Gazette of India Notification dated April 19, 1997 covering Education: Institutions also under the ambit of Payment of Gratuity Act, 1972, the management of H. E. Education Society has been pleased to extend Payment of Gratuity Act to H. E., education Society, employees with effect" from April 19, 1997.

The nomination form "F" enclosed from all the employees those who have completed one year or more service as on April 19, 1997 except daily wagers may be got filled in duplicate and forward the same to this office for further action. One copy of the Nomination form will be returned to the employee after scrutiny and verification by this office.

The service details of the employees who are leaving office and eligible for payment of gratuity under this Act along with their; application may be sent to this office immediately after leaving office, for arranging payment.

The extract of the Payment of Gratuity Act, 1972 is sent herewith for circulation among the staff members and display on the Notice Board.

Encl: (i) Nomination Forms,

(ii) Extract of Gratuity Act, 1972

Sd/- (V.K. Pandey) Vice President

To,

All Heads of Institutions for necessary action.

VHSS/RHS/RKS/PRS/ZMS/TMS/BMS/LBS

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A bare reading of the above circular, makes it clear that submission raised by the petitioner that there is independent adoption of the scheme of gratuity is not correct, under mis-conception of law the Payment of Gratuity Act was made applicable. As per the pronouncement of the Apex Court in Ahmedabad Private Primary Teachers Association (supra) and decision of this Court in the matter or same Society, position of law has been made clear, thereafter, impugned modified circular (P-I) has been issued. Circular (P-I) is quoted below:

Heavy Electricals Education Society (Patronised by BHEL)

Berkhera: BHEL: Bhopal

No. HES/P and A/163/1029 Dt: November 9, 2000

Sub: Payment of Gratuity - Entitlement

The payment of gratuity to the teachers of Heavy Electricals Education Society came up for consideration before the Hon"ble High Court, Jabalpur in different cases H. E. Education Society v. Appellate Authority and Anr. decided on July 20, 2000.

In pursuance of the abovesaid order, it has been decided that "Teachers" of H. E. Education Society are not entitled to gratuity as per the "Payment of Gratuity Act, 1972."

Accordingly, Circular No. HES/F and A/59/98/21 dated January 7, 1998 stands modified to the above extent.

Sd/- (V.K. Onkar) SECRETARY

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Thus first submission raised by the petitioners that teachers are employees under Payment of Gratuity Act and there is adoption of the scheme independent of Act, is not tenable.

Coming to the second submission raised by Shri Rajendra Babbar that teachers of H. E. Education Society, are entitled for the similar service conditions as that of Kendriya Vidyalaya Sangathan. To buttress his submission, he has placed reliance on a circular (P-67) dated July 19, 1985. Circular (P- 67) is quoted below:

H.E. Education Society Piplani: Bhopal

REF: HE/EDN/85/1064 Dt.: July 19, 1985

CIRCULAR

Sub; Scales of pay for Company"s subsidized schools

H.E.Education Society is pleased to announce that the scales of Pay and allowances on the pattern of Kendriya Vidyalaya Sangathan will be adopted by the Society in respect of the teaching and non-teaching staff subject to the Kendriya Vidyaaiaya Sangathan standards of recruitment. This will be effective from April 1, 1985.

The staff will be scrutinized by a Board to be appointed for the purpose and extension of the Kendriya Vidyalaya Sangathan Scales of Pay etc., will be allowed on their basis of the standards laid down by the said Board. The details will be notified separately.

Sd/- (N.K. Saxena) President

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In addition learned counsel for the petitioners has also placed reliance on various decisions; In Haryana State Adhyapak Sangh and Others Vs. State of Haryana and Others, , the Apex Court has laid down that the teachers of recognised organisations are entitled to parity in pay with teachers of government schools. Reliance has also been placed on K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another, , in which question of right to claim pay scale at par with the Government employee, has been dealt with.

From the reading of the above circular (P-67), it is clear that it does not deal with the Payment of Gratuity at all. In the circular, there is mention of only scales of pay and allowances not with respect to gratuity. The decisions of Apex Court in Haryana State Adhyapak Sangh and Ors. v. State of Haryana and Ors. (supra) and K. Krishnamacharyulu and Ors. v. Sri Venkateswara Hindu College of Engineering and Anr. (supra) question of parity in the matter of payment of gratuity has not been dealt with. The ratio of the above decisions cannot be extended to claim parity in payment of gratuity neither the circular can be read so as to give right to the Education Society teachers to claim gratuity at par with the Kendriya Vidyalaya Sangathan teachers. The Apex Court in Ahmedabad Private Primary Teacher's Association's case (supra) has observed that though the teachers are not covered under the Payment of Gratuity Act, but it is for the Legislature to take cognizance of situation of such teachers in various establishments where gratuity benefit is not available. The Apex Court has observed thus:

"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."

In view of the above discussion, these writ petitions being devoid of merit are hereby dismissed. Parties to bear their own costs as incurred.