(2001) 10 P&H CK 0135

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 7722 of 2000

Thapar Polytechnic, Patiala — APPELLANT

Vs

State of Punjab — RESPONDENT

Date of Decision : 08-10-2001

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2001) 10 P&H CK 0135

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : V.K. Kataria, for the Appellant; R.L. Gupta and H.S. Sran, DAG, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—This writ petition under Articles 226/227 of the Constitution of India filed by Tha-par Polytechnic, Patiala (hereinafter referred to as ''the Management'') seeks issuance of a writ in the nature of certiorari for quashing the order dated 28.5.1997 (An-nexure P.3) passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as ''the Act'') and the order dated 11.4.2000 pased by the Appellate Authority under the Act.

2. Respondent No. 5-Prem Singh worked as a Peon in the Polytechnic run by the Management for a period of 37 years i.e. from 1957 to 31.3.1995. Upon retirement from service, he was not paid gravity by the Management. Therefore, he made an application before the Controlling Authority claiming a sum of Rs. 61384/-. It was pleaded by the Management before the Controlling Authority that the Contributory Provident Fund Scheme was available in the Management. Respondent No. 5 had been paid in accordance with this Scheme. It was further pleaded that the Institution is a Government aided Institution and receives 95% grant-in-aid. The State Government has not sanctioned the payment of gratuity to private institutions like the Management. The proposal sent by the Management is still pending before the Government. It is not disputed that 80

workers were employed in the Management at the relevant time. After considering the entire evidence, the Controlling Authority came to the conclusion that the "administration" has not produced any strong evidence from which it can be.dccided that the Act is not applicable to the Institution. In coining to the aforesaid conclusion, the Controlling Authority relied on a decision of this Court in Ajmer Singh v. State of Punjab and Ors., 1996(2) SLR 757 : 1996(2) SCT 399 (P&H) (DB). In the aforesaid judgment, the Division Bench has held as follows :-"The Supreme Court in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, had earlier dealt with the case and pronounced that under the relationship of master and servant, the management was primarily reasonable (responsible ?) to pay the salary and other benefits to the employees. The management could not say unless and until the State compensates, it would not make full payment to the staff.

The Payment of gratuity Act makes a provision for the payment of gratuity to the employees and does not conceive of any other authority to be liable or the intervening circumstances disentitling its payment to the employees. As the primary liability to make the payment is of the employer, the petitioners are within their rights to prefer the claim for the payment of the gratuity by their respective employers. The claims of the petitioner regarding payment of gratuity have not been disputed, the respondent employers were under a statutory obligation to make the payment which they have been avoiding on false pretext and technical pleas. After the judgment of this Court in Hindu College Governing''s case (supra) delivered on 30.7.1992, no doubt should have been left with the employers regarding their liability to make the payment on account of gratuity.

The prayer of the management for a direction to the State to compensate them for payment of gratuity was rightly negativated by this Court in the said case. All the petitioners are, therefore, entitled to the payment of gratuity after their retirement and in accordance with the provisions of Section 4 of the Payment of Gratuity Act, the Rules issued by the Government and ''the University Calender Rules applicable in the case."

3. The Controlling Authority accepted the application filed by the employee-respondent No. 5 and directed the Management to pay a sum of Rs. 59769.25 to him.

4. Dissatisfied with the decision of the Controlling Authority, the petitioner filed the appeal before the Appellate Authority under the Act. The case pleaded before the Appellate Authority was identical to the case pleaded before the Controlling Authority. After considering the entire matter, the Appellate Authority has also dismissed the appeal. The Appellate Authority has also relied on the judgments which have been relied on by the Division Bench in Ajmer Singh''s case (supra) and came to the conclusion that the responsibility for payment of gratuity was that of the Management.

5. Mr. Kataria, learned counsel appearing for the petitioner submitted that the gratuity cannot be paid to respondent No. 5 unless the grant is received from the State Government otherwise the petitioner is ready and willing to make the payment of gratuity as required under the Act.

6. Mr. Sran, learned counsel appearing on behalf of the State relies on the averments made in the written statement filed by respondent Nos. 1 and 2 and has stated that the State Government has not so far allowed the benefit of gratuity and leave encashment to the employees for Government aided privately managed technical Institutions in the State and, therefore, it is for the petitioner to make the payment.

7. I have considered the entire matter. In view of the judgment of the Division Bench, there is no room for any further arguments with regard to responsibility of the management to pay the gratuity and leave encashment benefits to the retiring employees. It is of no consequence as to whether or not the management is being reimbursed by the Government by way of grant-in-aid. The Division Bench has also made it clear that no direction can be given to the State to''compensate the Management for payment of gratuity.

8. In view of the above, the petition is hereby dismissed. No costs.

9. Petition dismissed.