
(1978) 09 MAD CK 0023
In the Madras High Court

The Executive Engineer, Construction, Southern Railway and Others APPELLANT

Vs

K.V. Verghese and Others RESPONDENT

Date of Decision : 20-09-1978

Acts Referred:

Factories Act, 1948 — Section 2
Railways Act, 1890 — Section 5(5)

Citation : (1979) 92 LW 99 : (1979) 1 MLJ 457

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—The first respondent herein was employed by the Southern Railway Administration under the Executive Engineer, (Construction), Erode, as a casual labourer from 16th September, 1961. He was retrenched from service on 20th July, 1974. At the time of retrenchment he was working as a lorry driver. On the ground that he had worked for more than 5 years continuously and was drawing a daily rate of Rs. 10.40 at the time of his retrenchment, he made an application claiming a sum of Rs. 2,028 as gratuity under the Payment of Gratuity Act, 1972 (hereinafter referred to as "the Act"). The second respondent who is the Controlling Authority under the Act dismissed the application holding that the first respondent was not eligible for any gratuity under the said Act as the said Act is not applicable to persona working under the railway administration and that in any event the first respondent who has been paid retrenchment compensation under the Industrial Disputes Act cannot claim gratuity.

2. Aggrieved against the order of the Controlling Authority the first respondent preferred an appeal to the third respondent contending that the railway administration will come under the definition of "Railway Company" as defined under the Act and that therefore, he is eligible for gratuity under the Act. He also contended that even retrenched employees who have received the retrenchment compensation under the Industrial Disputes Act are entitled to the payment of gratuity u/s 4 of the Act. On the other hand the contention of the railway

administration before the third respondent was that the railway administration owned and operated by the Union of India cannot be construed as a "Railway Company" for the purpose of the Act and that in any event the first respondent who was only a casual employee having been retrenched on payment of retrenchment compensation, such retrenchment will not amount to a termination of employment as contemplated by Section 4 of the Act. The appellate authority accepted the contention of the first respondent on both the points, and held that Section 3(4) and Section 3(5) of the Indian Railways Act indicate that the State-owned Railway Administration is also a Railway Company, that retrenchment under the Industrial Disputes Act will amount to termination of employment as contemplated by Section 4 of the Act and that therefore, the first respondent is eligible for payment of gratuity under the Act.

3. Aggrieved against the said order of the Appellate Authority, the railway administration has filed this writ petition. It is contended by the Railway Administration that the impugned order passed by the Appellate Authority is clearly erroneous in that the railway administration cannot be brought within the definition of a railway company which alone comes under the Payment of Gratuity Act, and that the retrenchment of an employee will not amount to termination of employment so as to attract section 4 of the Act.

4. Thus, the two questions that arise for consideration in this writ petition are these:

1. Whether the railway administration can be considered as a Railway Company as defined in Section 5(5) of the Indian Railways Act for the purpose of payment of gratuity; (2) Whether a retrenched employee is eligible for payment of gratuity u/s 4 of the Act.

5. With regard to the first contention, it has been urged by the Railway Administration that the railway company having; been defined in Section 2(p) of the Act, unless the Railway Administration comes within the definition of Railway Company, it cannot be taken to be covered by the Payment of Gratuity Act, as that Act applies only to a railway company and not to the Railway Administration. To appreciate this contention it is necessary to scan through the provisions of the Act.

Section 1(3) makes the Act applicable to every factory, mine, oilfield, plantation, port and railway company; every shop or an establishment within the meaning of any law for the time being in force in relation to shop and establishments in a State in which ten or more persons are employed and such other establishments or class of establishments, as the Central Government may, by notification specify.

Section 2(a) defines "appropriate Government" as meaning in relation to an establishment of a major port, mine, oilfield or railway company, the Central Government.

Section 2(e) defines an employee as a person employed 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.

Section 2(f) of the Act defines "employer" as meaning 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 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 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.

Section 2(p) of the Act defines railway company and it says that railway company will have the same meaning as in Clause (5) of Section 3 of the Indian Railways Act, 1890.

Section 4 of the Act provides for payment of gratuity 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.

6. It is in the light of these provisions the tenability of the first contention urged by the writ petitioner has to be considered. It is the case of the petitioner that the railway administration having been separately defined in Section 3(6) of the Indian Railways Act, it cannot be brought in within the definition of Railway company, in Section 3(5) of the same Act. The definition of Railway Company in Section 2(p) of the payment of Gratuity Act takes in only the definition contained in Section 3(5) and not the definition of Railway Administration contained in Section 3(6) of the Indian Railways Act. The Railway Company as defined in Section 3(5) of the Indian Railways Act is as follows-

"Railway company" includes any persons, whether incorporated or not, who are owners or lessees of a railway or parties to an agreement for working a railway.

Railway Administration has been separately defined in Section 3(6) as follows.-

"Railway Administration" or "administration" in the case of a railway administered by the Government means the manager of the railway and includes the Government, and, in the case of a railway administered by a Railway Company, means the Railway Company.

As per the definition the Railway Company denotes the owners or lessees of

railway or parties to an agreement for working a railway. The Railway Administration in the case of a railway administered by the Government, means the manager of the railway or the Central Government and in the case of a railway, administered by a Railway Company, the Railway Company itself.

7. It is contended by the first respondent-employee that the Central Government being the owner of the Southern Railway will come under the definition of a railway company and the definition of the railway company will therefore take in the railway administration as well. In this case, the question is how far the said submission of the employee could be accepted.

8. Railway administration and railway company have been separately defined under the Indian Railways Act, and the Payment of Gratuity Act is made applicable only to a railway company. Having regard to the said separate definitions, railway company should be taken to have been treated differently from a railway administration owned or administered by the Central Government, in the Indian Railways Act. It is true that the definition of railway administration will take in a railway company in the case of a railway administered by that company. The provisions in the Indian Railways Act also make a clear-cut distinction between a railway company and a railway administered by the Central Government, though the administrative machinery of both the railways is generally termed as railway administration. A close reading of Sections 3(5) and 3(6) of the Railways Act would indicate that while the definition of railway administration will take in a railway company the definition of railway company will not take in a railway administered by Central Government. Section 47 of the Indian Railways Act creates two separate rule making authorities in respect of a railway administered by the Central Government and a railway administered by a railway company. Section 49 contemplates a railway company entering into agreement with Central Government for the construction of rolling stock, plant or machinery used by the railways or for leasing or taking on lease any rolling stock, plant, machinery or equipments required. Section 50 of the Act contemplates a railway company entering into agreement with the sanction of the Central Government with any other railway administration. Section 51 contemplates a railway company carrying on certain activities with the sanction of the Central Government. Section 51(a) permits a railway company to frame schemes for providing motor transport or aircraft service for passengers, animals, goods, etc., with the sanction of the Central Government. Section 51(1) (a)(5) enables Central Government to withdraw the sanction given to a railway company under Sub-section (1) after giving six month's notice, Section 140 provides for service of notices, in the case of a railway administered by the Government, on its Manager or Chief Commercial Superintendent, and in the case of a railway administered by a railway company on its Agent in India. Section 145 also makes a distinction between a railway administered by the Central Government and a railway administered by a railway company. Having regard to these provisions it is clear that a railway administered by the Central Government is "treated differently from a railway administered by a railway

company. Though the definition of the "railway administration" contained in Section 3(6) of the Indian Railways Act, will take in a Railway company. When used in relation to the administration of that railway company, railway owned and administered by the Central Government cannot be taken to be covered by the definition of a "railway company". In the face of the definition of railway administration which refers to two categories of administration, one a railway owned and administered by the Central Government and the other administered by the railway company the definition of railway company cannot in any sense be taken to include a railway administered by the Central Government. In this case, the first respondent has claimed gratuity against the Southern Railway which is administered by the Central Government, and not administered by a railway company. Learned Counsel for the employee-first respondent would say that the Central Government owning the Southern Railway will also come under the definition of a railway company which according to him includes all persons owning railways. Perhaps, if there is no separate definition of railway administration, there may be scope for such an argument. But, when the definition of "railway administration" contemplates two railways, one administered by the Central Government and the other administered by the railway company, it cannot be said that railway company includes a railway administered by the Central Government. The definition of the "railway company" has necessarily to be understood in the light of the definition of railway administration contained in Section 3(5) of the Act. Therefore, we are not in position to construe the definition of "railway company" occurring in Section 3(5) of the Indian Railways Act as including all railways either owned or administered by the Central Government, or owned by others. That definition will have to be understood only as referring to the railways administered by persons other than the Central Government. In this view we cannot accept the view taken by the third respondent that the Southern Railway owned and administered by the Central Government has to be treated as a railway company for the purpose of payment of gratuity.

9. Learned Counsel for the first respondent would also submit that even if the Southern Railway does not fall within the definition of "railway company" as defined in Section 3(5) of the Indian Railways Act, it will come under the definition of an "establishment" or a "factory" belonging to or under the control of the Central Government, and such being the case, the Southern Railway will come under the definition of an employer under the Act. The question then is whether the Southern Railway will come under the definition of an "establishment or" a "factory".

10. Section 1(3) of the Payment of Gratuity Act says that the Act applies to every factory, mine, oilfield, plantation, port and railway Company and 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. Admittedly, the Madras Shops and Establishments Act, 1947, which applies to the entire State of Tamil Nadu will not cover Southern Railway. The definition of "establishment" in Madras

Shops and Establishments Act, 1947, refers only to a shop, commercial establishment, restaurant, eating house, residential hotel, theatre or any place of public amusement or entertainment and includes any such establishment as may be notified by the State Government. "Commercial establishment" means an establishment which is not a shop but which carries on the business of advertising, commission, forwarding or commercial agency, or which is a clerical department of a factory or industrial undertaking. The Southern Railway does not obviously fall within the definition of an establishment under the Act. It is not in dispute that the railway administration has not been notified as an establishment u/s 1(3)(e) of the Act. Therefore, the Southern Railway can be brought within, the Payment of Gratuity Act only if it comes within the definition of a factory. In this case, the first respondent has not come forward with a case that the Southern Railway is a factory, as defined in Sub-section (m) of Section 2 of the Factories Act, 1948. It is not therefore, possible to go into the question as to whether the first respondent works in a factory and can claim gratuity on that basis. That has to be considered by the authorities under the Payment of Gratuity Act as and when such a claim is put forward.

11. Learned Counsel for the petitioner then submits that having regard to the objects of the Payment of Gratuity Act which is to confer benefit on all the employees, the employees working under the railways administered by the Central Government cannot be taken to be excluded from the purview of the Act. It is true that the Act is a beneficial measure. Even then its applicability has to be considered with reference to the provisions of the Act and not with any assumed intention of the Legislature. The employees of the railways administered by the Central Government are entitled to get gratuity under the Service Rules applicable to them, and perhaps for that reason the provisions of the Gratuity Act have not been extended to them. Learned Counsel for the petitioner refers to the Rules called the Pensionable Inferior Railway Servants (Gratuity, Pension and Retirement) Rules, under which the gratuity is payable to the railway employees on discharge from the railway on account of reduction of its establishment or on retirement on the ground of permanent incapacity or on superannuation. In this view, we are not considering the tenability of the second contention.

12. In the light of the above discussion, we have to quash the impugned order of the third respondent holding that the first respondent is entitled to the gratuity under the Payment of Gratuity Act. Learned Counsel has referred to the following decisions in Chandra Mohan v. Union of India AIR 1953 Gua. 193; Kerala State Vs. General Manager, Southern Railway, Madras, ; Jetmull Bhojraj Vs. The Darjeeling Himalayan Railway Co. Ltd. and Others, , and N. Mohammed Kutty Vs. High Court of Kerala and Others, . However, on a perusal of the said decisions, we find that these decisions are not of any assistance in determining the scope of the provisions of the Payment of Gratuity Act and their applicability to the railway administered by the Central Government.

13. The writ petition is therefore allowed, and rule nisi is made absolute. But

there will be no order as to costs. In view of the decision in W.P. No. 1638 of 1976, the Writ Petitions Nos. 1639, 4498 and 4509 of 1976, are allowed. No costs.