

(2002) 03 MAD CK 0164

In the Madras High Court

Case No : Writ Petition No. 16422 of 1998

The Management Good Samaritan Rural Development
Project, Tirupattur Vellore District

APPELLANT

Vs

T.A. Ramaiah, Deputy Commissioner of Labour (Appeals),
(Appellate Authority under Payment of Gratuity Act, 1972)
and The Assistant Commissioner of Labour (Controlling
Authority under Payment of Gratuity Act, 1972), DMS
Complex, Teynampet, Chennai

RESPONDENT

Date of Decision : 12-03-2002

Acts Referred:

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

Tamil Nadu Shops and Establishments Act, 1947 — Section 2(6)

Citation : (2003) 96 FLR 257 : (2003) 1 LLJ 357

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

**Advocate : Vijayan, S.C. for King and Patridge, for the Appellant; K.M. Ramesh
and M. Mahalingam, Government Advocate, for the Respondent**

Final Decision : Dismissed

Judgement

V. Kanagaraj, J.—Petitioner has filed this writ petition praying to issue a Writ of Certiorari calling for the records in P.G.A. No.37 of 1997 on the file of the second respondent dated 10.3.1998 and quash the same.

2. In the affidavit filed in support of the writ petition, the petitioner would submit that the Payment of Gratuity Act, 1972 is not applicable to the petitioner management since it is not a commercial establishment; that the petitioner management was started in the year 1978 by an American Missionary and was registered under the Societies Registration Act, 1975; that the above project is a charitable organisation aimed to serve without any consideration of caste, creed or religion lending its medical aid for eye care, rural health, medical aid to tribal welfare, child care, evangelism, care of orphans, handicapped and also carrying out rehabilitation programme, relief nutrition and immunization programmes for

poor and needy in and around Tirupattur Town, Vellore District; that the petitioner project receives financial assistance from one Christoffel Blinden Mission, Germany and the nominal charges voluntarily paid by some of the patients are also made use of for running the project successfully; that there is no other source of income, nor received from any quarter, much less from the Central or State Government by the petitioner; that the intention of the funding agency is to see that the project gradually becomes self-supporting, and therefore, they are also planning to reduce the grant year after year; that in such background, the project is run without any profit, motive, but only on service to the needy public.

3. The petitioner would further submit that the petitioner organisation being charitable and non-profit making one, it falls outside the scope of the Payment of Gratuity Act, 1972; that the first respondent, who was working with the petitioner as an Ophthalmic Technician, resigned on 12.4.1994 and preferred a claim before the third respondent for the payment of gratuity of Rs.10,675/- stating that his last drawn wages was Rs.1,682/- for the service rendered by him from 1.4.1983 to 12.4.1994; that the third respondent ought to have rejected the claim made by the first respondent on the simple ground that it is barred by limitation since having approached the authorities after a delay of 636 days, besides on ground that the Payment of Gratuity Act is not applicable to the petitioner management; that an appeal preferred before the second respondent in P.G.A. No.37 of 1997 also having come to be rejected by the second respondent confirming the order passed by the third respondent as per its order dated 10.3.1998 which is impugned herein, the petitioner has come forward to seek the remedy extracted supra.

4. During arguments, the learned counsel appearing on behalf of the petitioner would submit that the main question that is to be answered in the writ petition is whether the Payment of Gratuity Act will be applicable to a hospital run by a society, based on donation especially when it is alleged that the hospital is not making any profit. To establish this fact, the learned counsel would cite the preamble Section 1(2) of the Payment of Gratuity Act, 1972 which reads as follows:

1. Short title, extent, application and commencement - (1) This Act may be called the Payment of Gratuity Act, 1972.

(2) it extends to the whole of India: provided that in so far as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir.

(3) It shall apply to-

(a) every factory, mine, oil field, 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.

At this juncture, the learned counsel would cite a judgment delivered in *W.M.Panjarapole Vs. B.D. Bhavasar* reported in 1995-I L.L.N. 105 wherein it is held that "the petitioner is a Panjarapole ... dealing mainly with taking care of disabled animals as set out in its constitution annexed to the petition. A question arose whether its employee is entitled to payment of gratuity under the Act. The authority under the Act had decided in favour of the employee and the matter was carried in appeal provided under the said act and there also, the petitioner lost and ultimately it was held by the High Court of Judicature, Gujarat that Panjarapole is not doing any business or trade or profession or any work in connection with or incidental or ancillary to it - Obviously, it will not be covered by definition of "commercial establishment" - Payment of Gratuity Act, 1972, is not applicable to employees of Panjarapole."

5. While such being the position of law, the learned counsel would continue to argue that the decision of the controlling authority and the appellate authority would only be perverse since no reasonable man would arrive at such a decision based on the materials placed before them; that the appellate authority simply relies on the salary of Rs.1,200/= p.m. alleged to have been obtained by the first respondent, which is incorrect. On such arguments, the learned counsel would end up saying that the order of the appellate authority becomes liable only to be set aside.

6. On the other hand, the learned counsel appearing on behalf of the respondent, besides laying emphasis to the preamble and definition contained in Section (1) to (3) of the Payment of Gratuity Act, 1972 would further submit that Section 2(6) of the Tamil Nadu Shops and Establishments Act, 1947 is relevant to the context of the case, which gives the definition for the term "establishment", wherein the State Government may by notification declare any establishment within the definition of "establishment" under the Shops and Establishments Act. Further more, even from the Payment of Gratuity Act, 1972, provision has been made to the effect that "such other establishments or class of establishments, in which ten or more employees are employed", and therefore, the import of the Section is, any establishment having ten or more employees employed would be liable under the Payment of Gratuity Act, 1972 and hence it cannot be argued that the Act does not apply to the management of the nature of the petitioner. On such arguments, the learned counsel would pray to dismiss the writ petition as devoid of merits, especially in view of the fact that no legal questions are involved so far as the impugned order passed by the appellate authority is concerned.

7. In consideration of the pleadings by parties, having regard to the materials

placed on record and upon hearing the learned counsel for both, what comes to be known is that the order impugned in the writ petition has been passed by the appellate authority under the Payment of Gratuity Act, 1972 in P.G.A. No.37 of 1997 on an appeal preferred by the petitioner herein under the relevant provisions, praying to set aside the order passed by the Controlling Authority in P.G. Case No. 315 of 1996 thereby not only holding that the eye hospital run by the petitioner is governed by the Payment of Gratuity Act, but also the first respondent is entitled to the gratuity amount of Rs.6,473/= on the basis of his basic pay of Rs.850/= and D.A. at Rs.170/= per month. It is only aggrieved against this order passed by the controlling authority, the petitioner management has preferred the appeal before the appellate authority, which has passed the order impugned herein.

8. A careful perusal of the order passed by the appellate authority would reveal that it had not only traced the facts and circumstances encircling the whole case, but also would go through each and every ground of appeal and based on such facts and the position of law, would analyze the controlling authorities order and decision and the manner in which it has been arrived at and would take up two points for its consideration, viz., (i) whether the Payment of Gratuity Act will not apply to the appellant hospital? and (ii) whether, in any event, the reasonable amount of gratuity would be Rs.6,473/= on the basis of basic pay of Rs.850/= and D.A. Rs.270/= per month? Taking up the issues one by one and applying the facts with the position of law as it is prescribed u/s 1(3)(b) of the Payment of Gratuity Act and remarking that the establishment is covered by the Minimum Wages Act, 1948 and since the hospital is an "establishment" within the meaning of Section 1(3)(b) of the Payment of Gratuity Act, 1972, and remarking that there is no distinction made between both these Acts, pertaining to the meaning of "establishment" and further there is no classification made under the law between an institution which is run on commercial basis and a minority institution which is run on the charitable basis so far as the applicability of the Act is concerned. Therefore, for the first point framed, the appellate authority would arrive at the conclusion holding that the eye hospital run by the management falls within the meaning of Section 1(3)(b) of the Payment of Gratuity Act, 1972.

9. Since the above legal question has been solved, easy conclusions have been arrived at not only going into the facts of the first respondent having been employed therein for such period, on such salary and the other emoluments so as to conclude agreeing with the quantum arrived at by the controlling authority, thereby dismissing the appeal, but also confirming the order passed by the controlling authority, in this regard.

10. Either pertaining to the decision arrived at by the appellate authority in agreeing with the controlling authority holding that the petitioner management is one to which the Payment of Gratuity Act, 1972 is applicable or even in arriving at the quantum of such decisions so as to pass the order impugned, the

appellate authority has been fair and reasonable. It is not only the decision arrived at in the manner aforementioned, but also the manner in which the decision has been arrived at by the appellate authority is beyond question since even on the part of the petitioner, there is no strong allegation made or established on any legal lapse such as opportunity, and therefore, the interference of this Court sought to be made into the order gs. V.KANAGARAJ,J. passed by the appellate authority which is impugned herein, is neither necessary nor warranted in the circumstances of the case resulting in only dismissing the writ petition being devoid of merits.

In result,

- (i) there is no merit in the writ petition and the same is dismissed as such;
- (ii) the order dated 10.3.1998 made in P.G.A. No.37 of 1997 passed by the Deputy Commissioner of Labour and the appellate authority under the Payment of Gratuity Act, 1972 is hereby confirmed.

However, in the circumstances of the case, there shall be no order as to costs.

11. Consequently, W.P.M.P. No.24815 of 1998 is also dismissed.