
(2010) 06 SHI CK 0016
In the High Court Of Himachal Pradesh
Case No : L.P.A. No. 33 of 2009

Union of India (UOI) and Another

APPELLANT

Vs

Bhagat Ram

RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2, 7(4)

Citation : (2010) 127 FLR 685 : (2010) 4 LLJ 703

Hon'ble Judges : Kurian Joseph, C.J.;Kuldip Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kurian Joseph, C.J.

C.M.P. (M) No. 252/2009

Heard. The application is allowed and the delay in filing the appeal is condoned.

L.P.A. No. 33/2009

1. This is an appeal filed by the Union of India aggrieved by the judgment dated October 17, 2008 passed in C.W.P. No. 1350/2005. The Union of India challenged the order passed by the Controlling Authority and the Appellate Authority under the Payment of Gratuity Act, 1972 wherein it has been found that the Respondent-employee was entitled to gratuity under the Act. The learned single Judge on facts found that the Respondent had been engaged as a Chowkidar w.e.f May 2, 1984 initially and that spell continued upto August, 1985. Thereafter, he was re-engaged as such on October 10, 1985 until his superannuation on October 25, 2002. The learned single Judge has taken note of the fact that there was no dispute as to the engagement of the employee, as above. Since the employee was not paid any gratuity at the time of his superannuation, he filed an application u/s 7(4) of the Payment of Gratuity Act, 1972 claiming an amount of Rs. 23764/-.

2. The application was allowed on March 9, 2004. The appeal filed by the Union of India was dismissed on October 26, 2005 and thus the writ petition. It was contended before the learned single Judge that the Respondent-workman was only a part time employee and he had been paid out of the contingency fund and thus he was not entitled to the payment of gratuity. The learned single Judge found that the contention could not be appreciated, in view of the factual finding entered into by the Controlling Authority as confirmed by the Appellate Authority under the Payment of Gratuity Act, 1972 that the Respondent-employee had been employed on daily wage basis and he had been drawing a sum of Rs. 1594/- as salary and Rs. 829/- as DA. The Appellants were not prepared to treat the employee for the purpose of gratuity under the Central Civil Services (Pension) Rules, 1972 and in that view of the matter, the writ petition was dismissed and hence the appeal.

3. Mr. Sandeep Sharma, learned Assistant Solicitor General of India submits that the Respondent-employee having been engaged only as a part time Chowkidar, he will not be covered by the Payment of Gratuity Act, 1972. It is further contended that having been paid his part time wages from contingency fund, he cannot be treated under the Central Civil Services (Pension) Rules either.

4. Under the Payment of Gratuity Act, 1972, employee has been defined u/s 2(e), which reads as follows:

"(e) "employee" means any person (other than an apprentice) employed on wages, 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, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, 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. No doubt, as rightly contended by the learned Assistant Solicitor General, in case an employee holds a post under the Central Government or the State Government and is governed by any statute providing for payment of gratuity, such employee will not be covered by the provisions of the Payment of Gratuity Act. But the Appellants are not prepared to treat the employee under the provisions of the Central Civil Services (Pension) Rules. Then the question is whether the employee is entitled to the gratuity under the Payment of Gratuity Act. The employer has been defined under the Act at 2(f), which reads as follows:

"(f) "employer" means, 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 for the supervision and control of employees, 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, the 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, such person."

6. As has been rightly held by the learned single Judge that the Post Office, where the Respondent-employee has been engaged is certainly an establishment coming under the provisions of the Payment of Gratuity Act. Since the employee working in that establishment is not covered or governed by the Central Civil Services (Pension) Rules, 1972, he is entitled to gratuity under the Payment of Gratuity Act, 1972. After all that employee who worked in a Post Office as Chowkidar for over 18 years, the gratuity paid is only an amount of Rs. 23764/-. In that view of the matter also, we do not find any legal infirmity in the judgment under appeal. The appeal stands dismissed.