

(1997) 06 AP CK 0009
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 823 of 1988

V. Venkateswara Rao

APPELLANT

Vs

Chairman/Governing Body, S.M.V.M. Polytechnic and Others

RESPONDENT

Date of Decision : 24-06-1997

Acts Referred:

Andhra Pradesh Payment of Gratuity Rules, 1972 — Rule 7(5)
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3)
Payment of Gratuity Act, 1972 — Section 1(3)

Citation : (1997) 4 ALT 336 : (1997) 2 APLJ 422

Hon'ble Judges : Lingaraja Rath, J; B.K. Somasekhara, J

Bench : Division Bench

Advocate : V. Jogayya Sharma, for the Appellant; G.P. for Education for Respondent Nos. 2 to 5, for the Respondent

Final Decision : Allowed

Judgement

B.K. Somasekhara, J.—The appellant herein, Sri V. Venkateswara Rao, who is the fifth respondent in W.P.No. 10449/87 has challenged the order of a learned single Judge of this Court dated 14-4-1988. He was the Physical Director of S.M.V.M. Polytechnic, Tanuku of whose Chairman filed the writ petition challenging the impugned order dated 2-6-1987 made by the Respondent No. 4, the Controlling Authority under the Payment of Gratuity Act, 1972 in P.G. Application 2/1986 filed by the 5th respondent wherein he directed payment of gratuity to him. The first respondent is the Government of Andhra Pradesh, the second respondent is the Commissioner of Labour and the third respondent is the Director of Technical Education. Reference to them for the status in the writ proceedings is conveniently made in this Appeal.

2. The undisputed factual graphic is being stated. The 5th respondent although was a Physical Director, was a member of the teaching staff in the Polytechnic. He was superannuated and retired on 30-9-1984. His salary by then was Rs. 1,640/-. The Polytechnic is an aided institution. There was no gratuity scheme for

the employees of the Polytechnic. The petitioner (sic. R-5) did not lay any claim for gratuity till 15-3-1986 when he addressed a letter to the Polytechnic for payment of gratuity under the Payment of Gratuity Act, 1972 (in short, the Act). The claim was declined. He made an application to the fourth respondent seeking an order for payment of gratuity which came to be registered as P.G. Application No. 2/86. After notifying the 5th respondent and also the petitioner and hearing them, the fourth respondent passed the impugned order in favour of the fifth respondent. That came to be assailed in the Writ Petition which was allowed holding that the provisions of the Act had no application to the Polytechnic and consequently the impugned order of the fourth respondent was set aside by the learned single Judge.

3. Notwithstanding the approach of the matter relating to the claim of the fifth respondent for gratuity based on several factors considered by the fourth respondent and the learned single Judge to hold against the fifth respondent, the result of the case on such questions depends mainly on the legal effect of the provisions of the Act in regard to the Polytechnic and the fifth respondent. The learned single Judge held that the writ petitioner's Polytechnic is not an "establishment" within the meaning of Section 2(10) of the Shops and Establishments Act and therefore by virtue of Section 1(3)(b) of the Act, such an Act was not applicable to such an institution and also its employee, the fifth respondent. Reliance was placed on the two pronouncements of the Supreme Court in *V. Sasidharan Vs. Peter and Karunakar and Others*, and *Bangalore Water Supply and Sewerage Board v. Rajappa*, AIR 1978 SC 248 by the learned single Judge to examine whether the writ petitioner is an establishment or not to bring within Section 1(3) of the Act. *Sasidharan's* case (*supra*) dealt with the question whether the office of a lawyer or solicitor is a commercial establishment to decide the status of the clerks working in such an office and *Oriental Gas Ltd. and Others Vs. State of West Bengal*, dealt with the question whether a particular organisation is an industry. The *Water Supply Sewerage Board's* case is referred to in *Sasidharan's* case to distinguish that the considerations in the two cases were different. The learned single Judge has come to the conclusion that the question of a management being a commercial establishment like the office of a lawyer or solicitor has been rejected by the Supreme Court in *Sasidharan's* case. Furthermore, it is the view of the learned single Judge that an educational institution like the writ petitioner is not a commercial establishment within the meaning of Section 2(10) of the Shops and Establishments Act not covered by Section 1(3) of the Act and therefore the fifth respondent was not entitled to the benefit of gratuity. The fourth respondent totally took a contrary view as above to hold that the fifth respondent is entitled to gratuity.

4. We are not persuaded by the learned Advocate for the writ petitioner to accept the views of the learned single Judge and on the other hand we propose to fall in line with the contention of the learned Advocate for the fifth respondent/appellant. The real question is whether the petitioner is an "establishment" within the meaning of Section 1(3)(b) of the Act. A reading of the said provision

within its implication would be useful and to repeat:-

"2(10): "Establishment" means, a shop, restaurant, eating house, residential hotel, lodging house, theatre or any place of public amusement or entertainment and includes a commercial establishment and other establishment as the Government may, by notification; declare to be an establishment for the purposes of this Act."

The whole approach of the matter by the learned single Judge to examine whether the petitioner is an "establishment" for the purpose of the above provision of the Act appears to have been totally centripetal into a truncated meaning of an "establishment" u/s 2 (10) of the A.P. Shops and Establishments Act and by probing whether it is a commercial establishment or not. We respectfully centrifugate from that view. The adjectival analysis of Section 1(3) (a) - (c) of the Payment of Gratuity Act makes the Act applicable to,

(a) every

(i) factory,

(ii) mine,

(iii) oil field,

(iv) plantation,

(v) port, and

(vi) railway company.

(b) every] within the meaning of any law for the time (i) shop or] being in force in relation to shops and (ii) establishment] establishments in a State (c) such other establishments or class of establishments as the Central Government by notification specify in this behalf;

however, in such establishments under Sub-clauses (b) and (c) 10 or more employees are employed or were employed on any day of the preceding twelve months.

Therefore, to make the law under the Gratuity Act applicable, the condition is not merely to satisfy the requisites under a law relating to shops and establishments in a State as the whole provision of Section 1(3) has to be read together. The luxury of the reinforcement of the meaning that even where anything can be brought within the meaning of factory etc., as per the Sub-clause (a), there is no escape for the operation of the Act and that has been rightly examined and considered by the 4th respondent to take a particular view. Apart from satisfying the requirements of Sub-clause (a) of Section 1(3) of the Act, Sub-clauses (b) and (c) provide a real basis to decide the question. The primary limb of (b) and (c) of the provision is the itemised category of the institutions to which the Act is applicable and the second limb is the qualification as to the number of persons to be employed and the notification by the Central Government. Admittedly, Sub-

clause (c) of the provision may not be operated in view of no such notification under the provision is issued by the Central Government either by specific inclusion or by general classification of the respondent/polytechnic. The fourth respondent has pointed out that there is a workshop attached to the Polytechnic and that more than ten persons are employed under the Polytechnic. Factually, while we heard the matter that was not called in controversy by anybody. Obviously the writ petitioner polytechnic should be a factory within the meaning of Section 2(m)(i) of the Factories Act, 1948 and therefore an industrial or other establishment within the meaning of Section 2(b)(ii) and also an "establishment" within the meaning of Sub-clause (g) and (h) of Payment of Wages Act, 1936. It could also be an "establishment" within the meaning of Section 2(b) of the Factories Act, 1948 in view of (i) appended to the provision to include an industrial or other establishment as defined u/s 2 of the Payment of Wages Act and as per Sub-clause (ii) to include a factory as defined u/s 2 of the Factories Act. Therefore, to think of an "establishment" within the meaning of Section 1(3) of the Gratuity Act, only with reference to a State law dealing with Shops and Establishments Act would be too much a conservative and a petty narrow interpretation of the provision as against a legislative wider import therein as indicated. Undisputedly the Payment of Wages Act and Minimum Wages Act apply to the petitioner-Polytechnic. Therefore inevitably it should be an "establishment" within the meaning of Section 2(1)(b) of the Labour Laws (Exemption from Furnishing Returns & Maintaining Registers by Certain Establishments) Act, 1988. In that view of the matter, the petitioner-Polytechnic being not only a Factory within the meaning of Section 2(m) and an establishment u/s 2(b) of Labour Laws supra should embrace the meaning of "establishment" in Section 1(3) of the Payment of Gratuity Act.

5. In the nature of the controversy, the matter may also be examined in the context of Section 1(3)(b) of the Payment of Gratuity Act regarding a State Law relating to Shops and Establishments. Clause (b) concerns any law within whose meaning a shop or establishment is brought. The clause opens with the expressions "every shop or establishment" as distinctive entities and not conjunctive ones. Their meaning is sought to be imported as any law in a State relating to shops and establishments which is understood as a conjunctive attire. There is no reason to think that any law in any State concerns both shops and establishments for all purposes. There may be many laws concerning both shops and establishments, shops only and establishments only. Among such laws, A.P. Shops and Establishments Act is one. All shops may not be establishments or all establishments may not be shops. There may be shops in an establishment or establishments in a shop. There appears to be no law so far to say that both the shops and establishments should not exist together or should exist together. So, the word "and" in Clause (b) in the second limb of Section 1(3) should be read as "and"/" or" and not to take it as strictly a conjunction. In the context of the open words using "or" as disjunctive, the use of the word "and" later as conjunctive for the same purpose or subject matter should be a definite

articulate as "or" or to make it disjunctive. So, to understand Clause (b) correctly where any law in a State relating to Shops and Establishments means that it may be any law relating to Shop or Establishment and need not be confined to a particular Act, A.P. Shops and Establishments Act.

6. The laws relating to Shops and Establishments or Shops and Establishments in Andhra Pradesh are (1) A.P. Shops and Establishments Act, (2) The Factories Act, (3) Labour Laws (Exemption from furnishing returns and Maintaining Registers by certain Establishments Act, 1988, (4) Payment of Wages Act, (5) Minimum Wages Act. If any one of them bring the petitioner/Polytechnic within the meaning of "establishment" that is sufficient to attract Section 1(3)(b) of the Payment of Gratuity Act. This view is fully supported by the Supreme Court in State of Punjab Vs. Labour Court Jullunder and Others, which is relied upon by a Division Bench of Madras High Court in the Management of SIET Women's College v. Md. Ibrahim, (1992) 1 LLJ 91 to conclude that an educational institution like the petitioner-Polytechnic is an establishment governed by the Payment of Gratuity Act. The Supreme Court while ejecting the contention that Section 1(3)(b) must be a law which relates to both shops and establishments stated--

".....Section 1(3)(b) speaks of "any law for the time being in force in relation to shops and establishments in a State". It is difficult to accept such a contention because there is no warrant for so limiting the meaning of the expression "law" in Section 1(3)(b). The expression is comprehensive in its scope, and can mean a law in relation to shops as well as separately, a law in relation to establishments or a law in relation to shops and commercial establishments and a law in relation to non-commercial establishments.....Had Section 1(3)(b) intended to refer to a single enactment, surely the appellant would have been able to point to such a statute, that is to say, a statute relating to shops and establishments, both commercial and non-commercial.....Had the intention of Parliament been, when enacting Section 1(3)(b), to refer to a law relating to commercial establishments, it would not have left the expression "establishments" unqualified. We have carefully examined the various provisions of the Payment of Gratuity Act, and we are unable to discern any reason for giving the limited meaning to Section 1(3)(b) urged before us on behalf of the appellant. Section 1(3)(b) applies to every establishment within the meaning of any law for the time being in force in relation to establishments in a State....."

Such a law was declared in the light of Section 2(g) of the Payment of Wages Act defining the "industrial establishment" in a State being the law in force which is sufficient to attract Section 1(3)(b) of the Payment of Gratuity Act. Rightly the High Court of Madras in SIET Women's College case (4 supra) took the similar view.

7. Now, apart from the petitioner/polytechnic being an establishment by virtue of Section 1(3)(a) of the Gratuity Act being a factory etc., and an establishment etc., under several laws supra, there is also a positive material to bring it within

the meaning of "establishment" u/s 1(3)(b) of the Act.

Section 1(3) of Employees Provident Funds and Misc. Provisions Act., 1952 reads:

"1. 3: Subject to the provisions contained in Section 16, it applies--

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and

(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf.

It is almost in pan materia with Section 1(3) of the Gratuity Act. The Central Government has issued a notification No. SO.986 dt.19-2-1982 u/s 1(3)(b) of the Act supra as follows:-

"In exercise of the powers conferred by Clause (b) of Sub-section (3) of Section 1 of the Employees' Provident Funds and Misc. Provisions Act, 1952, the Central Government hereby specifies the following classes of establishments in each of which twenty or more persons are employed, as establishments to which the said Act shall apply, namely--

(i) any University

(ii) any College, whether or not affiliated to a University

(iii) Any school, whether or not recognised or aided by the Central or a State Government

(iv) any scientific institution

(v) any institution in which research in respect of any matter is carried on

(vi) Any other institution in which the activity of imparting knowledge or training is systematically carried on."

The petitioner/polytechnic cannot but to accept that it is an institution in which the activity of imparting knowledge or training is systematically carried on to come within Clause (vi) of the notification. In other words, it comes within the applicability provision of Section 1(3)(a) of the Employees Provident Fund and Misc. Provisions Act to make the Act, 1952 applicable upon itself. Therefore, such an act in the State of A.P., making the petitioner/polytechnic an "establishment" under the said provision in force should necessarily come within the meaning of "establishment" for the purpose of Section 1(3)(b) of the Gratuity Act to operate such a law to the Polytechnic. Thus, both legally and logically the petitioner polytechnic is governed by the provisions of the Payment of Gratuity Act entitling the fifth respondent/appellant to get the Gratuity as claimed and as correctly conceded by the fourth respondent. The approach of the matter beyond such a legal reinforcement approved by the Supreme Court also and rightly followed by the Division Bench of the High Court of Madras by the learned single Judge

cannot persuade us to hold to the contrary and sustain the impugned order in the appeal and we propose to set aside the same.

8. The 4th respondent has condoned the delay of 15 months and 5 days in filing the petition by invoking its discretion under Rule 7(5) of the A.P. Payment of Gratuity Rules, 1972 and under the circumstances of the doubt of the applicability of the Act to the employees like the fifth respondent/appellant, we find no reasons to interfere with such a discretion. The operative portion of the provision in Rule 7(5) that no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the period specified, means that such a delay in making the application should be ordinarily condoned unless for special reasons to be rejected.

9. The fifth respondent/appellant claimed Rs. 14,606-25 ps towards gratuity. On a proper calculation, the third respondent has found the correct amount to be paid at Rs. 16,853-40 ps. Whether the fifth respondent claimed a particular amount or not, it was certain that his claim was for the gratuity which was legitimately due to him as per rules and that is what the 4th respondent did. That warrants no interference by this Court.

10. Consequent upon the reasons afforded supra, the Appeal is allowed. The order of the learned Single Judge in the Writ Petition is set aside. The Writ Petition is dismissed and the order of the 4th respondent is restored. There shall be no order as to costs.