

(2004) 02 GUJ CK 0068

In the Gujarat High Court

Case No : Special Civil Application No's. 2714, 4784, 4786, 4787, 4788, 4789 and 4791 of 2001

Visnagar Nagarpalika

APPELLANT

Vs

Chinubhai Ratilal Parikh

RESPONDENT

Date of Decision : 26-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Payment of Gratuity Act, 1972 — Section 1(3), 2

Citation : (2005) 105 FLR 756 : (2005) 1 LLJ 908

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : Sejal Sutaria and Hemant Parmar, for V.H. Desai, for Petitioner Nos. 1-2 in Special Civil application No. 2714 of 2001, for the Appellant; K.H. Baxi and Harsha Devani Lad, AGP for Respondent No. 2 in Special Civil Application No. 2714 of 2001, for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhatt, J.—In this group of seven petitions, under Article 226 and 227 of the Constitution of India, a common question has arisen as to whether the teachers are governed and entitled to the amount of gratuity, under the Payment of Gratuity Act, 1972 [hereinafter referred to as the Act], therefore, they are heard together and being decided by this common judgment.

2. In one petition, being Special Civil Application No.2714 of 2001, Visnagar Nagar Palika is the petitioner, whereas in other six petitions, Mahuva Kelvani Samaj Mandal, is the petitioners. The respondents are the teachers, who are claiming benefit of gratuity under the said Act, whereas the petitioners have challenged their claim by filing these petitions interalia contending that the authorities under the said Act, namely, the Controlling Authority and the Appellate Authority have committed serious error of law in passing the judgment and orders for payment of gratuity in favour of the respondents-teachers, as teachers are not governed by the said Act.

3. In this group of petitions, common question of law as to whether teachers are governed by the said Act and whether they are employees as defined in Section 2[e] of said the Act, this question, came to be decided by the Full Bench of this Court in " Shantiben L.Christian Vs. Administrative Officer, Ahmedabad Municipal School Board", 2001 [2] GLR 1626, against the teachers by holding that teacher is not governed by the provisions of Payment of Gratuity Act, 1972 as teacher is not covered by the definition of "employee" as defined in Section 2[e] of the said Act. The decision rendered in Shantiben [supra] was challenged before the Hon"ble Apex Court and it has been upheld in "Ahmedabad Pvt. Primary Teachers" Association Vs. Administrative Officer and ors. 2004[1] Supreme 276". It is held by the Hon"ble Apex Court in that case that the teachers employed in schools do not fall within the definition of "employee" as contained u/s 2[e] of the Act and, therefore, cannot raise claim for gratuity under the said Act.

4. The attention of the Court is also invited to the Notification No.5-42013/1/95-SS II dated 3rd April, 1997 issued by the Central Government in exercise of the powers conferred by Clause [c] of sub-section [3] of Section 1 of the Payment of Gratuity Act, 1972 [39 of 1972] where under the Central Government has specified the educational institutions in which ten or more persons are employed or were employed on any day preceding 12 months as a class of establishments to which the said Act shall apply with effect from the date of publication of the said Notification with a proviso that the said Notification will not affect the operation of the Notification of the Ministry of Labour S.O. 239 dated 8th January 1982. The said Notification, upon examination and scrutiny does not refer or mention about the class of teacher. It pertains to the educational institutions in which ten or more persons are employed or were employed on any day preceding 12 months. In other words, it is evident that it is referable to the employees as defined in the Act of 1972 and not the class of teacher. Therefore, the said Notification will not attract in the present group of petitions as this Court is concerned for consideration of the class of teachers and not the employees as defined in Clause [e] of Section 2 of the Act of 1972.

5. Since the question, which is common, raised in these petitions is answered by the Full Bench of this Court and upheld by the Hon"ble Apex Court against the claim of the teachers for the benefit of gratuity under the said Act, the impugned orders and judgments in this group of petitions are required to be quashed and set aside by allowing the petitions.

6. As the proposition of law laid down by the Hon"ble Supreme Court in Shantiben [supra] upholding the view of the Full Bench of this Court in the facts of cases the said decision is attracted to all these petitions and the sole common issue involved in this group of petitions is covered by the said decision, all petitions are allowed by quashing and setting aside the impugned orders.

7. Since all these petitions are being disposed of only on the sole question of about the respondents-teachers being not an "employee" as defined u/s 2[e] of the Act, the Payment of Gratuity Act, 1972 as it is not attracted, the respondents

are not governed by the said Act. The question as to whether the teacher is entitled to the payment of gratuity under any other provision of the Act or regulation is not gone into as not raised, therefore, that question shall remain open. In the result, the petitions are allowed. The impugned orders and judgments of Controlling and Appellate Authorities under the Payment of Gratuity Act, 1972 shall stand quashed and set aside without any order as to costs. Rule is made absolute accordingly in each petition.