

**CWP no.13194 of 2007
and other connected case**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. CWP no.13194 of 2007

Prem Dutt

....Petitioners

Versus

Haryana State Red Cross Society, Karnal and others

...Respondents

2. CWP no.16495 of 1992

The Secretary, St. John Ambulance Association Karnal

....Petitioners

Versus

Appellate Authority under Payment of Gratuity Act-cum-Joint Labour
Commissioner, Haryana and others

...Respondents

Date of Decision : 06.01.2015

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

- 1)Whether reporters of local newspapers may be allowed to see the judgment?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

Present : Mr.Naveen Daryal , Advocate for the petitioner
in CWP no. 13194 of 2007

Mr. Shireesh Gupta, Advocate for respondent
in CWP no. 13194 of 2007 and
for the petitioner in CWP no. 16495 of 1992

MAHESH GROVER, J.

This order will dispose of two writ petitions as they involve commonality of facts and law. The petitioner in CWP no. 13194 of 2007 was working as a Driver with respondent no.2 since 1980 and superannuated therefrom on 31.5.2007 after attaining the age of 60 years. The second writ petition bearing CWP no. 16495 of 1992 has been filed by the Secretary of St. John Ambulance Association impugning the order

(Annexure P-2) vide which its employees have been held entitled to gratuity on the parity of reasoning that the association is to be deemed a part and parcel of the Red Cross Society, Karnal as also the Health Department, Haryana.

It has been averred that the St. John Ambulance Association, Karnal is a voluntary welfare organization having on its roll only three employees. Its activities have been compared to those of the Rotary Club Scouts and Guides and its engagement is only to supplement the activities of Red Cross Society and aid the general public in certain charitable works such as providing of Ambulances and funeral vans etc.

The employees of the Association preferred a claim under the Payment of Gratuity Act seeking gratuity upon attaining the age of superannuation which was allowed by an order dated 9.7.1992 which is the subject matter of challenge in CWP no. 16495 of 1992 whereas in the other case i.e. CWP no. 13194 of 2007 a claim has been preferred that gratuity be granted to the petitioner.

The sole question that would arise for consideration of this Court is the entitlement of gratuity to the employees of Association which is engaged purely in charitable work having three employees on its roll. Section 1(3) of the Payment of Gratuity Act 1972 attracts its applicability to every factory, mine, oilfield, plantation, port and railway company as also every shop or establishment within the meaning of any law in the shops and establishments statute. It is also attracted to other establishments or class of establishments in which 10 or more employees are employed or were employed on any day preceding 12 months. For the purposes of reference, relevant portion of Section 1 is extracted herebelow:-

1. Short title, extent, application and commencement – (1)

This Act may be called the Payment of Gratuity Act, 1972

2. It extends to be 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, oilfield, 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.”

The Association has stated that there were only three employees working with them and thus provisions of Payment of Gratuity Act would not be attracted. This fact has not been controverted as no counter affidavit has been filed. Therefore, it has to be accepted to be correct. If that be so then the afore-extracted provisions would clearly exclude the applicability of the provisions of the Act to an association which has only three employees on its roll. That apart, the reasoning adopted by the authority under the Act that since the association is involved

in activities supplemental to the Red Cross Society it would be deemed to be a part of it is a reasoning seeped in deep fallacy. Such a relationship cannot be left to a deemed fiction but has to be established by relevant material on record which is manifestly absent. Therefore, the competent authority under the Act fell in grave error by extending concept of fiction to deduce a conclusion contrary to facts. Similarly the finding by the competent authority that an association is part of the Health Department has to be negated as a natural corollary to the aforesaid reasoning. Consequently on the aforesaid rationale it cannot be said that St. John Ambulance Association is amenable to the provisions of the Payment of Gratuity Act and if that be so then the claim of the petitioner in CWP no. 13194 of 2007 cannot be answered in his favour and the plea of the association has to be accepted and this would essentially mean negating the impugned order (Annexure P-2) in CWP no. 16495 of 1992. Ordered accordingly.

Consequently, CWP no. 16495 of 1992 is allowed whereas CWP no. 13194 of 2007 stands dismissed.

January 06, 2015
rekha

(MAHESH GROVER)
JUDGE