

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18254 of 2016

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State Bank Of India Supervising Staff Co-operative Credit Society Limited situated at Judges Court Road, P.S. Gandhi Maidan, District- Patna through its Honorary Secretary, Ghanshyam Prasad Srivastava son of Late Nagendra Prasad

.... Petitioner

Versus

1. The State of Bihar through the Secretary Labour and Resources Department, New Secretariat, Patna.
2. The Labour Commissioner cum Appellate Authority under Payment of Gratuity Act, 1972 New Secretariat, Bihar, Patna.
3. The Deputy Labour Commissioner cum Controlling Authority under Payment of Gratuity Act, 1972, New Secretariat, Bihar, Patna.
4. Sri Ravindra Kumar Sinha son of Late Yogeshwar Charan Sinha, resident of 203, Dev Sharan Palaces, Rukunpura, Bailey Road, P.S. Rupaspur, District- Patna- 800014.

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Naresh Malhotra, Sr. Advocate Mr. Binod Kumar Sinha, Advocate
For the State	:	Mr. Raghwendra Kumar-SC22 Mr. S. Prakash, AC to SC-22
For respondent no. 4	:	Mr. Alok Kumar Sinha, Advocate Mr. Indrajeet Bhushan, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 10-05-2017

Heard Mr. Naresh Malhotra, learned Senior Counsel
for the petitioner, Mr. Alok Kumar Sinha, learned counsel for
respondent no. 4 and Mr. Raghwendra Kumar, learned Standing
Counsel-22 for the State.

2. The petitioner is aggrieved by the order dated
29.09.2016 passed by the Labour Commissioner-cum-Appellate
Authority in Appeal No. 1 of 2015 whereby the appellate authority



has confirmed the order dated 14.11.2014 passed by the Deputy Labour Commissioner-cum-Controlling Authority in G.A. No. 06 of 2011 whereby the petitioner has been directed to pay gratuity to respondent no. 4.

3. The petitioner State Bank of India Supervising Staff Co-operative Credit Society Limited is a Society registered under Bihar Co-operative Societies Act, 1935.

4. From the pleading of the parties, it would be evident that respondent no. 4 Ravindra Kumar Sinha was working as an employee under the petitioner Society since 01.08.1983 and he superannuated on 30.04.2009. On 30.05.2011, he filed claim for payment of his gratuity amounting to Rs.2,65,514 with due interest before the Deputy Labour Commissioner-cum- Controlling Authority under the Payment of Gratuity Act, 1972 vide G.A. Case No. 6 of 2011. After considering the legal and factual aspects, the Deputy Labour Commissioner-cum-Controlling Authority vide order dated 14.11.2014 directed the petitioner to pay the gratuity amounting to Rs.2,29,125/- to the respondent no. 4 for his 25 years of service with 8.5 per cent interest thereon within 30 days from the order. Against the order dated 14.11.2014 of the Deputy Labour Commissioner, the petitioner preferred an appeal before the Labour Commissioner-cum-Appellate Authority vide Appeal No. 1 of



2015. After hearing the parties, the Appellate Authority came to the conclusion that the Society is an establishment and the Payment of Gratuity Act, 1972 is applicable in the case. It held that respondent no. 4 is entitled to get gratuity claimed under Section 4(1) of the Payment of Gratuity Act and, hence, it confirmed the order of the Deputy Labour Commissioner and the appeal was dismissed vide order dated 29.09.2016.

5. While challenging the aforesaid order dated 29.09.2016 passed by the Labour Commissioner-cum-Appellate Authority, the petitioner contended that the Society in question is not a profit making Society rather it has been formed to help its members in case of their needs and exigencies. It was registered under the Shops and Establishment Act, 1953 for one year but thereafter the co-operative store was closed and the Licence under the Bihar Shops and Establishment Act was never renewed, therefore, it cannot be said that till date the Society is registered under Bihar Shops and Establishment Act, 1953. The petitioner would contend that since the Society is not working for profit, it does not come under the definition of establishment, hence, the Payment of Gratuity Act does not attract against it.

6. *Per contra*, the contention of the respondent no. 4 is that the law does not mandate that an establishment should be



covered under the Bihar Shops and Establishment Act, 1953 for the provisions of Payment of Gratuity Act, 1972 to apply on it. Learned counsel for the respondent no. 4 would submit that neither Section 1(3) (b) nor any other provision under the Payment of Gratuity Act, 1972 prescribes a bar to the application of the said Act to non-commercial establishment. He would contend that the petitioner Society is in fact registered under the Bihar Shops and Establishment Act and in the said registration total strength has been indicated as twenty one persons. He would further contend that mere non-renewal of registration certificate would not mean that the Society is not covered under the Shops and Establishment Act. He would further contend that the petitioner's Bye Laws clearly shows that it is generating profit. Lastly, he would contend that even otherwise the petitioner cannot deny gratuity to its employees whom it has hired for wages.

7. Having considered rival submissions, at this stage, I think it appropriate to refer to Section 1(3)(b) of the Payment of Gratuity Act, 1972 which reads as follows :-

“(3) it shall apply to –

(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.”



8. From perusal of the aforesaid provision, it would be evident that it nowhere provides that an establishment should be covered under the Bihar Shops & Establishment Act, 1953 for the provisions of the Payment of Gratuity Act, 1972 to apply on it.

9. The issue raised in the present writ application in this regard was considered by the Hon'ble Supreme Court in the case of **State of Punjab vs. the Labour Court, Jullundur & Ors. [AIR 1979 SC 1981]**, wherein in paragraph 3 the Hon'ble Supreme Court answered the issue by holding as follows :-

"3. In this appeal, the learned Additional Solicitor-General contends on behalf of the appellant that the Payment of Gratuity Act, 1972 cannot be invoked by the respondents because the Project does not fall within the scope of S. 1 (3) of that Act. Section 1 (3) provides that the Act will 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 establishment 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."

According to the parties, it is clause (b) alone which needs to be considered for deciding whether the Act applies to the Project. The Labour Court has held that the Project is an establishment within the meaning of the Payment of Wages Act, Section 2 (ii) (g) of which defines an "industrial establishment" to mean any 'establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on.' It is urged for the appellant that the Payment of Wages Act is not an enactment contemplated by Section 1 (3) (b) of the Payment of Gratuity Act. The Payment of Wages Act, it is pointed out, is a central enactment and Section 1 (3) (b), it is said, refers to a law enacted by the State Legislature. We are unable to accept the contention. Section 1 (3) (b) speaks of "any law for the time being in force in relation to shops and establishments in a State". There can be no dispute that the Payment of Wages Act is in force in the State of Punjab. Then, it is submitted, the Payment of Wages Act is not a law in relation to "shop and establishments". As to that, the Payment of Wages Act is a statute which, while it may not relate to shops, relates to a class of establishments, that is to say, industrial establishments. But, it is contended, the law referred to under Section 1 (3) (b) must be a law which relates to both shops and establishment, such as the



Punjab Shops and Commercial Establishments Act, 1958. It is difficult to accept that 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. The Punjab Shops and Commercial Establishment Acts does not relate to all kinds of establishments. Besides shops, it relates to commercial establishments alone. 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 an establishment would include an industrial establishment within the meaning of Section 2 (ii) (g) of the Payment of Wages Act. Accordingly, we are of opinion that the Payment of Gratuity Act applies to an establishment in which any work relating to the



construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on. The Hydel Upper Bari Doab Construction Project is such an establishment, and the Payment of Gratuity Act applies to it.”

10. Thus, it would be evident from the aforesaid decision of the Supreme Court that even if an establishment is not covered under the local Shops and Establishments Act of a State, still the provisions of the Payment of Gratuity Act, 1972 can apply on it if the said establishment comes within the meaning of any law (Central or State) for the time being in force in relation to establishment of a State.

11. So far as the petitioner is concerned, it would certainly come within the meaning of ‘Co-operative Society’ as defined under Section 2(10) of the Bihar Co-operative Societies Act, 1935. It also qualifies under the definition of ‘Establishment in Private Sector’ given under Section 2(15) of the said Act. It would also come under the definition of ‘industrial establishment’ as defined in Section 2(ka) of the Industrial Disputes Act, 1947. Hence, the provisions of the Payment of Gratuity Act, 1972 would certainly be applicable on the petitioner Society.



12. So far as the next point raised by the petitioner that it is a non-commercial establishment is concerned, it is well settled that Payment of Gratuity Act applies both to the commercial and non-commercial establishments such as Cantonment Board, Indian Red-Cross Society, Municipal Corporations etc. In **the State of Punjab vs. the Labour Court, Jullundur & Ors** (supra) the Hon'ble Supreme Court also *observed* "... *Had the intention of Parliament been to refer to a law relating to commercial establishments, it would have left the expression "establishments" unqualified...*". Hence, there is no doubt that the expression 'establishments' used in Section 1(3)(b) of the Payment of Gratuity Act is not only confined to commercial establishments but even includes non-commercial establishments.

13. It is also apparent from the record that the petitioner is registered under the Bihar Shops and Establishment Act, 1953 having Registration No. P.T.-33288 (506-4) since 1991 and in the said registration certificate the total strength of the employment has been indicated as 21 persons.

14. The aforesaid fact has been admitted by the petitioner Society and thus it is not open to the petitioner Society to contend that it not an establishment under the Bihar Shops and Establishment Act, 1953 as it has not renewed its registration. The



fact of the matter is that the registration has certainly not been surrendered. Hence, the petitioner continues to be an establishment under the Bihar Shops and Establishment Act,

15. It is not disputed that respondent no. 4 was appointed on the post of clerk on 01.08.1983 and was in continuous employment since then and superannuated from service on 30.04.2009 on attaining the age of 58 years rendering more than 25 years of service. He has rightly been ordered to be paid gratuity under the provision of the Payment of Gratuity Act, 1972.

16. In that view of the matter, if the Appellate Authority has dismissed the appeal preferred by the petitioner against the order of the Controlling Authority, no illegality can be found with the order impugned.

17. Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.05.2017
Transmission Date	NA

