

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 03 of 2012**

- President / Secretary, Vidyut Grih Vidyalaya Prabandhan Samiti Korba East, Korba (C.G.) Through its Secretary B.B.D. Jaiswal

---- Petitioner**Versus**

- Smt. Gulab Pandey, Wd/o late Shri Vidyadhar Pandey, R/o Murarka Market, Korba (C.G.)

---- Respondent

For Petitioner	:	Shri N.K. Vyas, Advocate
For Respondent	:	Shri Punit Ruparel, Advocate

SB: Hon'ble Shri Justice P. Sam Koshy
Order on Board

09/03/2017

1. Challenge in the present writ petition is to the order dated 11.10.2011 passed by the Appellate Authority, under Payment of Gratuity Act, 1972 and Deputy Labour Commissioner, Raipur (C.G.) in Appeal No. 12/PGA/2011.
2. Vide the said impugned order, the Appellate Authority has partly allowed the appeal preferred by the Petitioner. It has confirmed the order of payment of gratuity to the Respondent but at the same time, it has modified the order by reducing the gratuity payable to the Respondent from Rs. 4,08,206/- to Rs. 1,00,000/- and interest on the said amount of Rs.1,00,000/- totaling Rs. 2,00,000/-.
3. The relevant facts are that the husband of the Respondent namely Vidyadhar Pandey was working as a teacher in the Petitioner's establishment. The said Vidyadhar Pandey died in harness on 16.10.1996. It is relevant to mention at this juncture that at the time of

death of the deceased employee, the Payment of Gratuity Act was not applicable upon the teacher. It was only made applicable vide the judgment of the Supreme Court passed in case of **Ahmedabad Pvt. Primary Teachers Association v. Administrative Officer and Others** reported in **(2004) 1 SCC 755** bringing teachers within the definition of 'Employee' under the Payment of Gratuity Act. Subsequently, the definition of 'Employee' under the Gratuity Act itself was amended in the year 2009 and the said amendment was brought into force with retrospective effect i.e. 3rd April, 1997.

4. That, in the year 2011, the Respondent filed a claim application before the Controlling Authority under the Payment of Gratuity Act, 1972-cum-Assistant Labour Commissioner, Korba (C.G.), who registered the case as Gratuity Case No. 3/PGA/2011. The Controlling Authority after considering the submission of both the parties, vide order dated 05.07.2011 (Annexure P/6) allowed the application and calculated the payment of gratuity to Rs. 4,08,206/-.
5. This order dated 05.07.2011 of the Controlling Authority was subjected to challenge in an Appeal registered as Appeal No. 12/PGA/2011. The Appellate Authority upheld the order of the Controlling Authority to the extent that the Respondent is entitled for payment of gratuity, however, modified the order to the extent that it reduced the payment of gratuity from Rs. 4,08,206/- to Rs.1,00,000/- and also quantified interest of Rs.1,00,000/-. Thus, it ordered for payment of Rs.2,00,000/- to the Respondent. It is these two orders which are subjected to challenge by filing the present writ petition.
6. Learned counsel for the Petitioner submits that the authorities below

have committed an error in passing the said impugned orders as the death of the employee had taken place on 16.10.1996 and at the time of death of the deceased employee, Payment of Gratuity Act was not applicable on teachers. It was the further contention of the Petitioner that subsequently the amendment which was made in the Payment of Gratuity Act was also from a date much after the death of the deceased employee in the present case. The amendment was brought in the definition of 'Employee' under Payment of Gratuity Act in the year 2009 and the said amendment was brought into force from a retrospective date i.e. 3rd April, 1997. In the instant case, death of employee had taken place on 16.10.1996 i.e. much prior to the amendment being brought into force and therefore, the Respondent was not entitled for gratuity and prayed for setting aside of both the orders impugned.

7. Learned counsel for the Respondent, however, opposing the Petition submits that it is a case where the two authorities have considered the Payment of Gratuity Act liberally and taking a sympathetic view, have allowed the application and that since the Payment of Gratuity Act is a social welfare legislation, the authorities below have passed an order in her favour, which at this juncture cannot be set aside in exercise of writ jurisdiction. He further submits that orders passed by the authorities below also reveal that it was on the basis of a judgment of this High Court passed in W.P. No. 2064/2004 decided on 01.08.2005. It was also the contention of the Respondent that since the amendment Act of the Payment of Gratuity Act amends the definition of 'Employee' for all particular purposes it has to be presumed that it would be applicable from the date the original Act itself had come into force.

8. Having considered the rival contentions put forth by the either side and on perusal of facts and circumstances of the case, undisputedly, the husband of the respondent was working as a teacher in the Petitioner's establishment. It is also not in dispute that he died in harness on 16.10.1996. Another aspect which has to be borne in mind is that prior to the coming into force of Payment of Gratuity Amendment Act, 2009, definition of 'Employee' was not applicable upon teachers. The law by that time stood settled by the judgment of the Supreme Court in the case of **A. Sundarambal v. Govt. of Goa, Daman and Diu [1988 (4) SCC 42]**. This legal position of law stood changed by the Supreme Court in the case of **Ahmedabad Pvt. Primary Teachers Association v. Administrative Officer and Others [(2004) 1 SCC 755]**, wherein it brought teachers within the definition of 'Employee' under the Payment of Gratuity Act.
9. Subsequently, the Payment of Gratuity Act itself was amended in the year 2009. It is pertinent to note that the amendment to the definition of 'Employee' was brought into force from a retrospective date i.e. 3rd of April, 1997. In view of the said amendment brought to the definition of 'Employee' in the Payment of Gratuity Act and also the fact that amendment came into force from retrospective effect i.e. from 3rd April, 1997 for all particular purposes the definition of 'Employee' would have to be considered applicable upon teachers only w.e.f. the date the said amended law was enforced i.e. 3rd April, 1997.
10. From the facts of the present case, undisputedly, the death of deceased employee had taken place on 16.10.1996 i.e. much prior of the date from which the amended Act was made applicable. Another aspect

which cannot be overlooked is the fact that the claim application made in the year 2011, the two Authorities i.e. Controlling Authority as well as Appellate Authority have not discussed the law as far as the applicability of the Payment of Gratuity Act on a teacher in the light of the Amendment in the Act. The orders of the authorities below do not discuss about the amendment which has taken place in the definition of 'Employee' in Payment of Gratuity Act and which was made applicable w.e.f. 3rd April, 1997.

11. In the absence of any discussion made by either of the two authorities the argument put forth by the petitioner-employer is sustainable. Firstly, it had to be seen whether the said Act is applicable or not. Undisputedly, in case of **A. Sundarambal (supra)** the provision of the Act was interpreted by the Supreme Court excluding the Teacher from the purview of Employee under the Payment of Gratuity Act. The teachers were brought within the definition of 'Employee' first time on the basis of the judgment passed in case of **Ahmedabad Pvt. Primary Teachers Association (supra)**. Later, the Government of India itself amended the Gratuity Act in the year 2009 and have made the applicability of the amended Act with a retrospective date i.e. 3rd April, 1997. Therefore, under no circumstances can it be said that definition of 'Employee' stood amended for the period when the Court or the Act has not made it applicable. In view of the same, this Court does not have any hesitation in reaching to the conclusion that the two orders are not sustainable as the respondent was outside the purview of an Employee under the provision of the Payment of Gratuity Act.

12. In view of the above discussion, the two orders passed by the Controlling Authority as well Appellate Authority dated 11.10.2011 (Annexure P/1) and order dated 05.07.2011 (Annexure P/6) both being bad in law deserve to be and are hereby set aside / quashed.
13. The writ petition stands allowed.

Sd/-
(P. Sam Koshy)
JUDGE

chandra