

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.870 of 2017

In

Civil Writ Jurisdiction Case No.18254 of 2016

State Bank Of India, Supervising Staff-co-operative Credit Society Limited
situated Judges Court Road, Police Station- Gandhi Maidan, District- Patna
through its Honorary Secretary, Ghanshyam Prasad Srivastava, Son of Late
Nagendra Prasad.

... .. Appellant/s

Versus

1. The State of Bihar through the Secretary Labour and Resources Department,
New Secretariat, Patna.
2. The Labour Commission-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 Palace, Rukanpura, Bailey Road, P.S.- Rupaspur, District-
Patna- 800014.

... .. Respondent/s

Appearance :

For the Appellant : Mr. Abhinav Shrivastava, Advocate.
Mr. Binod Kumar Sinha, Advocate.

For the Respondent No. 4: Mr. Nalin Kumar, Advocate.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-09-2018

1. Feeling aggrieved and dissatisfied with the
impugned order and judgment passed by the learned Single
Judge on 10.05.2017 in C.W.J.C. No. 18254 of 2016 by which
the learned Single Judge has dismissed the writ petition, the
original writ petitioner has preferred the present Letters Patent
Appeal under Clause 10 of the Letters Patent.

2. We have heard the learned counsel for the
respective parties at length.

2.1. At the outset, it is required to be noted that as
such there are concurrent findings given by the authorities
below confirmed by the learned Single Judge that after hearing



the original writ petitioner, the appellate authority came to the conclusion that the original writ petitioner is an establishment within the definition of the Payment of Gratuity Act, 1972 and the Payment of Gratuity Act shall be applicable to the employee/employees of the appellant.

3. Learned counsel for the appellant/original writ petitioner has submitted that as such the appellant did not get the registration under the Bihar Shops and Establishment Act, 1953 renewed and therefore it is wrongly considered that the appellant/original writ petitioner was registered as establishment under the Bihar Shops and Establishment Act, 1953. It is further submitted on behalf of the appellant/original writ petitioner that even otherwise the appellant is a non-profit establishment and therefore also the payment of Gratuity Act shall not be applicable. It is also submitted that even the activities of the appellant cannot be said to be commercial in nature and therefore also the payment of Gratuity Act shall not be applicable. Making above submissions, it is requested to admit/allow the present appeal.

4. *Per contra*, the learned counsel for the respondent-employee has supported the orders passed by the authorities below confirmed by the learned Single Judge.

5. Having heard the learned counsel for the respective parties and considering the activities, even otherwise, the appellant/original writ petitioner can be said to be an establishment within the definition of Section 1(3)(b) of the Payment of Gratuity Act. It also cannot be disputed that the appellant/original writ petitioner has more than 21



employees. Under the circumstances, even if it is considered for the sake of acceptance that the appellant did not get the registration renewed under the Bihar Shops and Establishment Act, 1953 and therefore whether the petitioner can be said to be establishment registered under the Bihar Shops and Establishment Act, 1953 or not, in that case also, considering the definition of the establishment contained in Section 1(3)(b) of the Payment of Gratuity Act, the appellant can be said to be an establishment and therefore the payment of gratuity shall be applicable. Considering the decision of the Hon'ble Supreme Court in the case of ***State of Punjab vs. the Labour Court, Jullundur & Ors. [AIR 1979 SC 1981]***, the appellant/original writ petitioner is rightly considered to be an establishment and therefore has rightly held that the Payment of Gratuity Act shall be applicable to the appellant. As observed above as such there are concurrent findings by authorities below confirmed by the learned Single Judge that the Payment of Gratuity Act shall be applicable to the appellant/original writ petitioner.

6. Now so far as the submission on behalf of the appellant concerned that the activities of the appellant cannot be said to be commercial in nature and, therefore, the Payment of Gratuity Act shall not be applicable, has no substance and is required to be rejected outright. Even if, the activities may not be commercial in nature in that case also the Payment of Gratuity Act shall be applicable to the establishment under Section 1(3)(b) of the Act.



7. Similarly, the statement on behalf of the appellant that as the appellant is a non-profit making establishment and therefore the Payment of Gratuity Act shall not be applicable is also required to be rejected outright. The applicability of the Payment of Gratuity Act shall not be depend upon whether the establishment is a profit making or not. We are of the view that no interference is called for by this Court in intra court appellate jurisdiction.

8. In view of the reasons stated above there is no substance in this appeal and the appeal is accordingly dismissed.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
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