

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (L) No.4196 of 2010

Factory Manager, Orient Paper Mill, Shikshan Kendra, Amalai,
Distt : Shahdol

---- Petitioner

Versus

1. Shri Dhanna Lal Hariharno, R/o Diwan Para, Ward No.22, Infront of Gaura Chowk, Rajnandgaon (CG)
2. Appellate Authority under Payment of Gratuity Act, Deputy Labour Commissioner, Near Bottle House, Gitanjali Nagar, Raipur
3. Controlling Authority Under Payment of Gratuity Act, cum Labour Officer, Rajnandgaon (CG)

---- Respondents

For Petitioner:	Mr.N.K.Vyas, Advocate
For Respondent No.1:	Mr.H.B.Agrawal, Senior Advocate with Mrs.Prabha Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/04/2018

1. Respondent No.1 retired as Headmaster on 25.8.1995 from private school run by the petitioner-Orient Paper Mill. He made an application under Section 4 read with Section 7 of the Payment of Gratuity Act, 1972 (hereinafter called as "the Act of 1972") claiming gratuity. That application was decided by the controlling authority on 25.8.1998 holding that respondent No.1 is entitled for gratuity of ₹ 53,974.80. Questioning that order, the petitioner preferred an appeal before the appellate authority. The appellate authority affirmed the order passed by the controlling authority, against which, this writ petition has been filed by the petitioner herein.
2. Mr.N.K.Vyas, learned counsel for the petitioner, would submit that the order passed by the controlling authority as affirmed by the

appellate authority is clearly perverse and contrary to law as amended definition of Section 2(e) of the Act of 1972 came into force w.e.f. 3.4.1997 by amendment made in the definition of Section 2(e) of the Act of 1972 by Act No.47 of 2009, amended on 31.12.2009 and therefore, respondent No.1 having retired prior to 3.4.1997 is not entitled for the benefit of gratuity. Therefore, the orders passed by the controlling authority and the appellate authority deserve to be set aside.

3. On the other hand, Mr.H.B.Agrawal, learned Senior Advocate appearing for respondent No.1 with Mrs.Prabha Sharma, Advocate, would submit that respondent No.1 is entitled for gratuity as per law laid-down by this Court in Administrator, Lahidhi Multipurpose Higher Secondary School and Another v. Vidyavati Chaturvedi and others¹.

4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also gone through the records with utmost circumspection.

5. In order to answer the question raised at the Bar, it would be appropriate to notice the Statement of objects and Reasons of the Act of 1972 (unamended) justifying the statutory grant of gratuity which states as under:-

“An Act to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto.”

6. A meaningful reading of the aforesaid Objects and Reasons of the

¹ 2006 LLR 624

Act, which is a beneficial legislation, would show that a beneficial interpretation has to be preferred which advances the Object of the Act. Nevertheless it is to be borne in mind that a beneficial interpretation should be applied only to those employees who are intended to be covered by the Act and not to others.

7. “Employee” under Section 2(e) of the (unamended) Act of 1972 is defined as under:-

“2(e) “employee means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether or not such person is employed in a managerial or administrative capacity.”

8. The question whether “teacher” would come within the meaning of employee as defined in Section 2(e) of the Act of 1972 (unamended) came to be considered before the Supreme Court in the matter of Ahmedabad Pvt. Primary Teacher’s Assn. v. Administrative Officer & Ors.² and it has been held by Their Lordships that employee as defined in Section 2(e) of the Act of 1972, the teachers are not covered. Their Lordships observed as under:-

“24. The contention advanced that teachers should be treated as included in the expression 'unskilled' or skilled' cannot, therefore, be accepted. The teachers might have been imparted training for teaching or there may be cases where teachers who are employed in primary schools are untrained. A trained teacher is not described in industrial field or service jurisprudence as a “skilled employee”. Such adjective generally is used for an employee doing manual or technical work. Similarly, the words “semi-skilled” and “unskilled” are not understood in educational establishments as describing nature of job of untrained

² (2004) 1 SCC 755

teachers. We do not attach much importance to the arguments advanced on the question as to whether “skilled”, “semi-skilled” and “unskilled” qualify the words “manual”, “supervisory”, “technical” or “clerical” or the above words qualify the word “work”. Even if all the words are read disjunctively or in any other manner, trained or untrained teachers do not plainly answer any of the descriptions of the nature of various employments given in the definition clause. Trained or untrained teachers are not “skilled”, “semi-skilled”, “unskilled”, “manual”, “supervisory”, “technical” or “clerical” employees. They are also not employed in “managerial” or “administrative” capacity. Occasionally, even if they do some administrative work as part of their duty with teaching, since their main job is imparting education, they cannot be held employed in “managerial” or “administrative” capacity. The teachers are clearly not intended to be covered by the definition of “employee”.

25. The Legislature was alive to various kinds of definitions of word “employee” contained in various previous labour enactments when the Act was passed in 1972. If it intended to cover in the definition of “employee” all kinds of employees, it could have as well used such wide language as is contained in section 2(f) of the Employees' Provident Funds Act, 1952 which defines “employee” to mean “any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment”. Non-use of such wide language in definition of “employee” in section 2(e) of the Act of 1972 reinforces our conclusion that teachers are clearly not covered in the definition.”

9. While concluding, Their Lordships of the Supreme Court further observed that it is for the legislature to take cognizance of situation of such teachers in various establishments where gratuity benefits are not available and think of a separate legislation for them in this regard by holding as under:-

26. Our conclusion should not be misunderstood that teachers although engaged in a very noble profession of educating our young generation should not be given any gratuity benefit. There are already in several States separate statutes, rules and regulations granting gratuity benefits to teachers in educational institutions which are more or less beneficial than the gratuity benefits provided under the Act. It is for the Legislature to take

cognizance of situation of such teachers in various establishments where gratuity benefits are not available and think of a separate legislation for them in this regard. That is the subject-matter solely of the legislature to consider and decide.”

10. The competent Legislature took cognizance of the judgment of the Supreme Court particularly the observation made in paragraph 26 of the aforesaid judgment and the Payment of Gratuity (Amendment) Act, 2009 was introduced to widen the definition of “employee” and to extend the benefit of gratuity to teacher. Statement of objects and Reasons of the payment of Gratuity (Amendment) Act, 2009 states as under:-

“Statement of Objects and Reasons.-The Payment of Gratuity Act, 1972 provides for payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishment and for matters connected therewith or incidental thereto. Clause (c) of sub-section (3) of section 1 of the said Act empowers the Central Government to apply the provisions of the said Act by notification in the Official Gazette to such other establishments or class of establishments in which ten or more employees are employed, or were employed, on any day preceding twelve months. Accordingly, the Central Government had extended the provisions of the said Act to the educational institutions employing ten or more persons by notification of the Government of India in the Ministry of Labour and Employment vide number S.O.1080, dated the 3rd April, 1997.

2. The Hon’ble Supreme Court in its judgment in Civil Appeal No.6369 of 2001, dated the 13th January, 2004, in Ahmedabad Private Primary Teachers’ Association vs. Administrative Officer and others [AIR 2004 Supreme Court 1426] had held that if it was extended to cover in the definition of ‘employee’, all kind of employees, it could have as well used such wide language as is contained in clause (f) of section 2 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 which defines ‘employee’ to mean any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment. It had been held that non-use

of such wide language in the definition of 'employee' under clause (e) of section 2 of the Payment of Gratuity Act, 1972 reinforces the conclusion that teachers are clearly not covered in the said definition.

3. Keeping in view the observations of the Hon'ble Supreme Court, it is proposed to widen the definition of 'employee' under the said Act in order to extend the benefit of gratuity to the teachers. Accordingly, the Payment of Gratuity (Amendment) Bill, 2007 was introduced in Lok Sabha on the 26th November, 2007 and same was referred to the Standing Committee on Labour which made certain recommendations. After examining those recommendations, it was decided to give effect to the amendment retrospectively with effect from the 3rd April, 1997, the date on which the provisions of the said Act were made applicable to educational institutions.

4. Accordingly, the Payment of Gratuity (Amendment) Bill, 2007 was withdrawn and a new Bill, namely, this Payment of Gratuity (Amendment) Bill, 2009 having retrospective effect was introduced in the Lok Sabha on 24th February, 2009. However, due to dissolution of the Fourteenth Lok Sabha, the said Bill lapsed. In view of the above, it is considered necessary to bring the present Bill. .

5. The Bill seeks to achieve the above objectives.”

The above-stated amendment Act, amending the Act of 1972, bringing the “teacher” within the definition of “employee” was passed and brought into force w.e.f. 3.4.1997. The amended definition of 'employee' under Section 2(e) states as under:-

“(e) “employee” means any person (other than an apprentice)) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by the any other Act or by any rules providing for payment of gratuity.”

Section 13-A was also inserted by the Payment of Gratuity (Amendment) Act, 2009 which states about the validation of the Payment of Gratuity Act by stating as under:-

3. Insertion of new section 13A. After section 13 of the principal Act, the following section shall be inserted, namely:-

“13A. Validation of payment of gratuity.- Notwithstanding anything contained in any judgment, decree or order of any court, for the period commencing on or from the 3rd day of April, 1997 and ending on the day on which the payment of Gratuity (Amendment) Act, 2009, receives the assent of the President, the gratuity shall be payable to an employee in pursuance of the notification of the Government of India in the Ministry of Labour and Employment vide number S.O.1080, dated the 3rd day of April, 1997 and the said notification shall be valid and shall be deemed always to have been valid as if the Payment of Gratuity (Amendment) Act, 2009 had been in force at all material times and the gratuity shall be payable accordingly:

Provided that nothing contained in this section shall extend, or be construed to extend, to affect any person with any punishment or penalty whatsoever by reason of the non payment by him of the gratuity during the period specified in this section which shall become due in pursuance of the said notification.”

11. Thus, the Legislature has taken cognizance of the observation made by the Supreme Court in paragraph 25 of **Ahmedabad Pvt. Primary Teacher's Assn. case** (supra), in which it has been held that definition of “employee” under Section 2(e) of the said Act has to be couched in the wide language as is contained in the definition of “employee’ under Section 2(f) of the Employees’ Provident Funds Act, 1952 so as to include a teacher within the meaning of “employee” under Section 2(e) of the Act of 1972. Thus, taking a note of such observation, the Legislature has amended the definition of “employee” under Section 2(e) of the said Act that too with retrospective effect from 3rd April, 1997. The Objects and

Reasons of such amendment make the intention of the Legislature very clear to apply the provisions of the Payment of Gratuity Act to the teachers also. The amended definition is wide enough to cover the category of “teacher” for the purpose of applicability of the said Act. There is no escape but to hold that teacher is an “employee” within the meaning of Section 2(e) of the Act of 1972 and hence, the provisions of the said Act are applicable. The said amendment has been brought into force w.e.f. 3.4.1997 by virtue of Section 13-A of the Amendment Act, 2009.

12. Thus, a person who has worked as teacher on or after 3.4.1997 would be an “employee” within the meaning of Section 2(e) of the Act of 1972 and would be entitled for the amount of gratuity. Since respondent No.1 has retired on 25.8.1995 i.e. much prior to coming into force of the Payment of Gratuity (Amendment) Act 2009 w.e.f. 3.4.1997, he would not be entitled for gratuity and both the authorities are unjustified in granting the gratuity to him.
13. So far as the judgment of this Court in **Administrator, Lahidhi Multipurpose Higher Secondary School** (supra) is concerned, in that case, the concerned employee has died during service on 21.9.2001 after coming into force of the Amendment Act 2009 w.e.f. 3.4.1997, therefore, that decision is clearly distinguishable to the facts of the present case.
14. As a fallout and consequence of the above-stated discussion, the order passed by the controlling authority as affirmed by the appellate authority are hereby quashed. However, it is made clear that if gratuity amount is already disbursed in favour of respondent

No.1 that shall be not recovered from him.

15. The writ petition is allowed to the extent sketched herein-
above leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-