

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

<u>WRIT PETITION NO.8421/2019</u>	
<u>PETITIONER</u>	Jawahar Navodaya Vidyalaya, through its Principal; Selukate; Tehsil and District: Wardha
<u>...Versus...</u>	
<u>RESPONDENT</u>	Suman wd/o Raghunath Rajurkar, Aged Major, Occ. Retired, R/o C/o Sanjay Madhavrao Asudkar; Ward No.5, Jamankar Nagar, Yavatmal, Tah. & Dist. Yavatmal.
Dr. R.S. Sundaram and Ms. U.R. Tanna, Advocates for petitioner Mr. F.I. Khan, Advocate for respondent	

CORAM : AVINASH G. GHAROTE, J.

Date of reserving the judgment : 18/07/2023

Date of pronouncing the judgment : 11/08/2023

1. Heard Dr. R.S. Sundaram, learned counsel for the petitioner and Mr. F.I. Khan, learned counsel for the respondent. Rule. Rule made returnable forthwith. Advocate Mr. F.I. Khan waives service of notice for the respondent on merit. Heard finally with the consent of the learned counsels for the rival parties.
2. The petition challenges the order dated 25/02/2019 passed in PGA Application No.41/2018 by the learned Labour Court, Wardha partly allowing the claim of the respondent for gratuity and

awarding an amount of Rs.1,04,307/- as gratuity along with 10% simple interest from 21/12/2013 till its realization (pg.18).

3. In the instant matter, the respondent was engaged as a cook since 16/06/1988, and has served as such till 21/11/2013, which is a finding recorded by the learned Labour Court. This finding, is on the basis of the cross-examination of the witness for the petitioner, namely, the Principal Shri R. Nagbhushanam, who, in his cross-examination has categorically admitted that the respondent was working as a cook since 1988 on daily wage basis and has resigned on 21/11/2013. On account of such admission by the witness for the petitioner, the above position, becomes an undisputed one.

4. The only contention canvassed by Dr. Sundaram, learned counsel for the petitioner is that in view of the specific provisions of the Navodaya Vidyalaya Samiti Payment of Gratuity Rules, 2007 (“NVS Gratuity Rules, 2007” for short hereinafter), the provisions of the Payment of Gratuity Act, 1972 (“PG Act, 1972” for short hereinafter) were not attracted. In order to support his contention he places reliance upon the definition of employee as contained in Section 2 (e) of the PG Act, 1972, which excludes any

person who is governed by any other Act or Rules providing for payment of gratuity, from the purview of the PG Act, 1972.

5. It is also contended by relying upon *Yeshwant Gramin Shikshan Sanstha Vs. Assistant Provident Fund Commissioner and others (2017) 5 SCC 579* that the NVS Gratuity Rules, 2007 being applicable to the 'establishment' that is the petitioner, even if the respondent did not fall within the definition of employee as defined in Rule II (2) of the NVS Gratuity Rules, 2007, still the said rules would be applicable to the respondent and not the PG Act, 1972 and therefore, the impugned judgment passed by the learned Labour Court, according to him, is required to be quashed and set aside.

6. Mr. Khan, learned counsel for the respondent submits that by virtue of the notification F. No.S-42013/1/95-SS-II dated 03/04/1997 the PG Act, 1972, has been made applicable to educational institutions, in which, ten or more persons are/were employed on any day of the preceding twelve months of the notification, as a class establishment to which the PG Act, 1972 shall apply. That apart, by relying upon the definition of employee as contained in Rule II (2) of the NVS Gratuity Rules, 2007 it is submitted that an employee means a regular employee of the Samiti and since the respondent was daily wager and therefore did not fit

within the parameters of the definition of employee as indicated above, the NVS Gratuity Rules, 2007 would not be applicable to the respondent and therefore the application filed under Section 4 (1) of the PG Act, 1972 did not suffer from any infirmity, which was the same position as to the impugned judgment. He also places reliance upon *Nagar Ayukt Nagar Nigam Kanpur Vs. Mujib Ullah Khan and another (2019) 6 SCC 103* and *Union of India and another Vs. Manik Lal Banerjee (2006) 9 SCC 643*.

7. Section 2 (e) and 14 of the Payment of Gratuity Act, 1972 read as under :-

"Section 2 .

(a)....

(b)....

(c)....

(d)....

(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 any other Act or by any rules providing for payment of gratuity.

Section 14. Act to override other enactments, etc. *The provisions of this Act or any rule made thereunder shall have*

effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.”

8. Section 17 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (for short, “EPF Act”, hereinafter) grants power to the appropriate Government in the manner as indicated therein to exempt from the operation of all or any of the provisions of any scheme, to any establishment to which the EPF Act applies if, in the opinion of the appropriate Government, the Rules of its Provident Fund with respect to the rates of contribution are not less favourable than those specified in Section 6 and the employees are also in enjoyment of other Provident Fund benefits which on the whole are not less favourable to the employees than the benefits provided under the EPF Act or any scheme in relation to the employees in any other establishment of a similar character and so also any establishment if the employees of such establishment are in the enjoyment of benefits in the nature of Provident Fund, pension or gratuity and the appropriate Government is of opinion that such benefits are on the whole not less favourable to such employees. It would therefore appear that the EPF Act being a beneficial piece of

legislation the provision, which confers a larger benefit upon the employee has to be held to be the one governing the employee.

9. Rule II (2) of the NVS Gratuity Rules, 2007 reads as under :

“II. Definitions : In these regulations, unless the context otherwise requires :

1.

2. “Employee” means regular employee of the Samiti.”

10. In ***Nagar Ayukt Nagar Nigam, Kanpur*** (supra) a liberal approach in this regard is indicated. In ***Manik Lal Banerjee*** (supra) in view of the definition as contained in Section 2 (e) of the EPF Act and the case of the respondent was governed by the provisions of the Railway Services (Pension) Rules, 1993 it was held that it would be the rules which would govern.

11. Though reliance has been placed by Dr. Sundaram, learned counsel for the petitioner upon ***Yeshwant Gramin Shikshan Sanstha*** (supra) to contend that the Act was applicable to establishment and therefore even if the respondent was a daily wager he would be governed by the Navodaya Vidyalaya Samiti Payment of Gratuity Rules, 2007, the same has to be construed considering the applicability of the scheme. As indicated above, the

definition of 'employee' in the scheme clearly indicates that it is applicable only to a regular employee and not to anyone else and the respondent does not fall within the said definition. Even if it is considered that the petitioner being an establishment the scheme is applicable to the petitioner, however, in view of the implied exclusion of the petitioner from the scheme on account of the definition of 'employee' as contained in Regulation-II of the scheme, a query was put to the learned counsels as to which Act was more favourable to the employee, to which Mr. Khan, learned counsel for the respondent had replied that the EPF Act was more favourable, which position is not controverted by Dr. Sundaram, learned counsel for the petitioner, in view of which, the fact remains that the provisions of the EPF Act are more favourable to the respondent, considering which, it will have to be held that the respondent would be governed by the EPF Act. That being the position, I do not see any reason to interfere in the impugned order, which holds so. The writ petition is therefore dismissed. Rule stands discharged. No order as to costs.

(AVINASH G. GHAROTE, J.)

Ms. Tanna, learned counsel for the petitioner seeks stay of eight weeks to the judgment. However, considering the fact that the amount awarded by the learned Labour Court, by the impugned and order, dated 25/02/2019 is a sum of Rs.1,04,307/- with interest, I do not see any reason to stay the judgment. Request is, therefore, rejected.

(AVINASH G. GHAROTE, J.)

Wadkar