

2024:PHHC:172552



**201 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA-1169-2015 (O&M)
DECIDED ON:22.11.2024**

PRESIDENT DADRI EDUCATION SOCIETY ETC.

.....APPELLANT

VERSUS

MAN SINGH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ravi Kamal Gupta, Advocate
for the appellant.

Mr. Jitender Nara, Advocate
for the respondent.

SANDEEP MOUDGIL, J

1. Appellants – President Dadri Education Society, Carkhi Dadri, District Bhiwani, alongwith Manager and Principal of D.R.K., D.E.S. Senior Secondary School, Charkhi Dadri, District Bhiwani, have approached this Court by filing the present Regular Second Appeal to impugn the judgment and decree passed by the District Judge, Bhiwani, whereby appeal has been partly allowed and the judgment and decree passed by the Additional Civil Judge (Senior Division), Charkhi Dadri, dismissing the suit of plaintiff/respondent Maan Singh s/o Mani Ram has been partly set aside and partly allowed in favour of the plaintiff/respondent.

2. The brief facts of the case are that Plaintiff –respondent Maan Singh filed suit for declaration to the effect that he is entitled for gratuity and leave encashment for the services rendered by him on the post of Chowkidar in D.R.K. D.E.S., Charkhi Dadri, alongwith interest @ 18% per annum and also sought mandatory injunction directing the defendants/appellants to release the said payment, wherein he had pleaded that defendants/appellants D.E.S. is a registered Society and the plaintiff/respondent joined on the post of Chowkidar in 1980 and his services were confirmed vide letter No.H-104/84/85 dated 20.07.1984. He, thereafter, retired from the post of Chowkidar on 30.06.2004 and, as such, served the defendants for 24 years. The plaintiff/respondent received Provident Fund in time and is entitled for the payment on account of gratuity and leave encashment for the services rendered by him. Repeated requests of the plaintiff/respondent to the defendants were not paid any heed to. Even a legal notice served upon defendants/appellants went in vain. Hence, this suit.

4. It is argued by the learned counsel for the appellants that the learned lower Appellate Court has gone wrong in reversing the finding of the lower court, which had held that the claim of the plaintiff/respondent from 1984 to 1992 is barred by the law of limitation as the present suit was filed on 04.10.2006 and claim of the gratuity and leave encashment for the period 1984 to 1992 is rendered being barred by limitation in view of Article 54 of Limitation Act and that the provisions of the Payment of Gratuity Act, 1972 (in short ‘Act of 1972’), are not applicable to the case of the plaintiff/respondent as observed by the learned trial Court, according to which, the learned trial Court has observed, the employee has

to file application for gratuity within 30 days from the date when the same becomes due but admittedly no such application was filed by the plaintiff/respondent in the stipulated period or in the prescribed proforma. He has further contended that the learned trial court has observed that in case the plaintiff had complied with the same the plaintiff/respondent was entitled to the remedy as stipulated in Sections 10 and 18 of the Act of 1972, and that even after filing of such an application, the plaintiff had to prove that his case falls within the definition of employee mentioned in Section (e) of the Act. Therefore, the learned trial Court has rightly held that the case of the plaintiff does not fall within the definition of 'employee' under the said Act. The learned lower Appellate Court further erred in partly allowing the appeal of the plaintiff/respondent because the plaintiff/respondent has failed to produce on record the relevant rules and regulations under which his case was covered because once the services of the plaintiff were terminated from the year 1992 to 1997 as such the rules, as applicable in the year 1997, would be applicable to the case of the plaintiff/respondent as are applicable to an unaided institution. Therefore, the judgment and decree passed by the learned lower Appellate Court vide which the appeal of the plaintiff/respondent has been allowed partly, is liable to be set aside and appeal is liable to be dismissed.

5. On the other hand, learned counsel for the respondent/plaintiff has argued that the learned lower Appellate Court has delivered a just and proper judgement in view of the facts and circumstances of the present case by holding the plaintiff/respondent liable to get gratuity even though his claim for getting leave encashment was dismissed erroneously. The plaintiff has served the appellant-

Institution for 24 years i.e. from 1980 to 2004. Ex.P3 clearly shows that the plaintiff had submitted his claim time and again. The learned trial Court has wrongly observed that the plaintiff had worked in two terms i.e. from 1980 to 1992 and thereafter from 1997 to 2024, which is totally incorrect because the services of the plaintiff were confirmed by the defendants/appellants in the year 1984. No service benefits were given by the defendants/appellants to the plaintiff in the year 1992, if the plaintiff/respondent was terminated, as alleged. The plaintiff's case falls within the definition of employee as envisaged in Section 2(e) of the Act of 1972. The plaintiff/respondent has adduced in evidence documents namely Pension letter dated 21.12.2005 (Ex.P4), copy of letter regarding payment of Provident Fund (Ex.P9), Copy of application for gratuity and leave encashment (Ex.P12), copy of legal notice (Ex.P13), letter of confirmation (Mark A) whereas the defendants/appellants have failed to adduce convincing evidence and examined on one witness – Jai Parkash Manager as DW1 and copy of resolution dt. 1.8.2010, Exh.DW1/B, as such the learned trial Court gravely erred in dismissing the suit of the plaintiff. Accordingly, the judgment and the decree passed by the learned lower Appellate Court, dated 03.01.2015, is a just and reasoned judgment which is liable to be maintained/upheld.

6. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case titled **"State of Punjab Vs. the Labour Court, Jullundur and others"** being Civil Appeal No.8 of 1977, decided on 16.10.1979, reported as ***AIR 1979 Supreme Court 1981*** and also another judgment of Division Bench of this Court passed in C.R. No.4315 of 2012 titled **"Management of S.D.Model Senior Secondary School and**

another versus District Juge-cum-Service Tribunal and another”

decided on 27.11.2013, in support of his case and has contended that proceedings for payment of gratuity due under the Act of 1972 must be taken under that Act and not under any other Act; and that the payment of gratuity is payable to the teaching and non-teaching staff in terms of the Act of 1972.

7. Heard learned counsel for the respective parties.

8. After hearing the parties and on going through the case file, this Court is of the considered opinion that the plaintiff/respondent has successfully proved his case as far as his entitlement of release of Gratuity is concerned because according to the plaintiff's claim, he had joined as Chowkidar in 1980 under the defendants and his services were confirmed vide letter No.H-104/84/85 dated 20.07.1984. However, the defendants/appellants have not disputed the letter of confirmation of the plaintiff rather have taken a plea in their written statement that D.R.K. School was not in existence in the year 1980 or 1984, hence, the question of plaintiff joining the duty on the post of Chowkidar in the said school does not arise. The plaintiff has in support of his case produced on record letter of his confirmation as Mark 'A'. Therefore, the date of confirmation of services of the plaintiff is accepted by the defendants. As far as the claim of the plaintiff being time barred is concerned, it can be seen from the evidence of the plaintiff that he has produced on record a copy of application for gratuity and leave encashment (Ex.P12), a copy of legal notice (Ex.P13). The learned trial Court has counted the date of limitation keeping in view the date of filing of the suit i.e. 04.10.2006 instead of the date of filing of application, therefore, the approach of the learned trial

Court to deal with the law of limitation is wrong and incorrect because after retiring of the plaintiff in the year 2004, filing of suit on 04.10.2006 is well within the period of limitation. Moreover, the defendants have not placed on record the termination letter of the plaintiff from October, 1992 to May 1997 nor adduced the same in evidence. Therefore, it is mere assertion to deny the claim of the plaintiff and nothing more. The trial Court has further observed that the case of the plaintiff does not fall within the definition of 'employee' mentioned in Section 2(e) of the Act of 1972, because this Section does not include any person who holds a post under the Central Government or a State Government and is governed by any Act or by any rules providing for payment of gratuity. In the view of this Court, as per the claim of the plaintiff, the defendants D.E.S. is a registered society meaning thereby, the defendants (Society) do not fall either under Central Government nor under State Government but are educational institute irrespective of the fact whether aided or unaided. The defendants have nowhere stated in their written statement that they are Central/State Government organization, as such, the approach of the learned trial Court is patently illegal and erroneous on the face of it. Therefore, according to this Court, the trial Court dismissed the suit of the plaintiff in a mechanical manner without going into the real controversy involved in the case.

9. The learned lower Appellate Court has appreciated the controversy involved and has observed in para 23 of its judgment that :

“....The defendants have taken different stands at different occasion as during the course of arguments, it was submitted that as per payment of Gratuity Rules, an employee shall file an application for gratuity within 30 days from the date of its

becoming due in Form I but no such application was filed by the plaintiff within stipulated period and in case of non payment of gratuity by the employer, the plaintiff was to file application to the Controlling Authority in Form N, but no such application was presented by the plaintiff before the Controlling authority and further the order of Controlling Authority was an appealable order and in this manner, the plaintiff has not availed the equally efficacious remedy available to him. If these submissions raised before this Court are appreciated, the relief of plaintiff to gratuity as declined as he did not avail efficacious remedy. Meaning thereby, he was fully entitled for gratuity under the provisions of Gratuity Act, 1972 and the rules made thereunder. In written statement, no such plea was taken and it was only alleged that the plaintiff was retired from service as he failed to produce the documents regarding his date of birth, whereas in the reply to legal notice (Exhibit P14), it was claimed that the defendant institution was unaided and the provisions of Gratuity Act were not applicable. Moreso, the defendants have not produced the record pertaining to the service of plaintiff despite orders of the court and hence, in such circumstances, the plaintiff is entitled for the benefit of gratuity.”

10. Thus, the defendants are making mere wrong assertions to deny the genuine claim of the plaintiff to get gratuity from the defendants who he has served for a long period of 24 years. In the absence of any termination letter being placed on record by defendants, the oral assertion of termination of the plaintiff cannot be accepted. Even otherwise, it is quite unbelievable that an employee whose services were terminated in the year 1992 will be taken back in service by the same organization/institution in the year 1997 i.e. after five years. As such, it is mere a trick being played by the appellants to deprive the

respondent/plaintiff from his right to claim gratuity but surprisingly, the trial court has failed to apply its judicious mind to notice this trick of the defendants/appellants played before it.

11. The judgment of the lower Appellate Court further goes to show that the judgements relied upon by it to reach its conclusion have rightly been applied and the appeal of the plaintiff/appellant has rightly been decided as regards payment of gratuity is concerned. Accordingly, this Court does not find any illegality and perversity in the judgement of the lower Appellate Court, dated 03.01.2015.

12. The judgements relied upon by the learned counsel for the plaintiff/respondent are, though not completely, applicable to the case of the plaintiff/respondent because in the judgment passed by the Apex Court, titled **State of Punjab Vs. The Labour Court, Jullundur and others** (supra) the matter relates to the jurisdiction of Labour Court over proceedings under Payment of Gratuity Act, which is not the case in the matter in hand. However, the Hon'ble Supreme Court has held as under:

“Upon all these considerations, the conclusion is inescapable that Parliament intended that proceedings for payment of gratuity due under the Payment of Gratuity Act must be taken under that Act and not under any other. That being so, it must be held that the applications filed by the employee respondents under Section 33-C(2) of the Industrial Disputes Act did not lie and the Labour Court had no jurisdiction to entertain and dispose of them. On that ground, this appeal must succeed”.

13. However, in this judgment the Hon'ble Apex Court has held that Act of 1972 enacts a complete Code containing detailed provisions covering all the essential features of a scheme for payment of Gratuity and it creates the right to payment of gratuity, indicates when the right will

accrue, and lays down the principles for quantification of the gratuity.

14 However, in the Division Bench judgment of this Court, titled **“Management of S.D.Model Senior Secondary School etc. Vs. District Judge-cum-Service Tribunal etc.”** (supra), the Hon’ble Division Bench has held in para 18 of the judgment that:

“18. Initially, the definition of ‘employee’ as contained in Section 2(e) of the Payment of Gratuity Act, 1972, (for short the “Gratuity Act”) contemplated to mean any person engaged to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work. Such definition was examined by the Supreme Court in Ahmedabad Pvt. Primary Teachers Association v. Administrative Officer & others 2004(1) S.C.T. 667: (2004) 1 SCC 755, wherein it was held that the teachers do not answer description of being employee who are skilled, semi-skilled or unskilled. Thus, the teacher as a class does not fall within the definition of ‘employee’ as contained in Section 2(e) of the Gratuity Act. Thereafter, Section 2(e) has been substituted vide the Payment of Gratuity (Amendment) Act, 2009 (No.47 of 2009) on 31.12.2009 with retrospective effect i.e. from 03.04.1997. It may be noticed that 03.04.1997 is the date, when a notification was issued to extend the provisions of the Payment of Gratuity Act, 1972 to the Educational Institutions. The said notification reads as under:

“Notification No. 5-42013/1/95-SS II dated 3rd April, 1997 – In exercise of the powers conferred by Clause (c) of sub-clause (3) of Section 1 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies the educational institutions in which ten or more persons are employed or were employed on any day preceding 12 months as class of establishments to which the said Act shall apply with effect from the date of publication of this notification. Provided that nothing contained in this notification shall

affect the operation of the notification of the Ministry of Labour S.O. 239 dated 8th January, 1982.”

15. Therefore, though the Educational Institutions were governed by Act of 1972, but the teachers were excluded out of it for the reason that they were not falling in the category of skilled, semi-skilled or unskilled workers. But after the substitution of definition of ‘employee’ under Section 2(e) vide Act No.47 of 2009 on 31.12.2009, any person who is engaged in any kind of work manual or otherwise, is an employee governed by the Act of 1972. Such is the view taken by Karnataka High Court in Shamaraja Udupa’s case (supra), wherein it has been held that teachers working in Educational Institutions are now entitled to benefit of gratuity under the Act of 1972. The Court held as under:

“13. A careful reading of the abovesaid definition makes it clear that consciously, the Parliament has used the word ‘any kind of work, manual or otherwise’. Therefore, the definition of ‘employee’ as amended, includes the teaching staff of educational institutions. The said benefit is given from 3rd April, 1997, the day on which the notification was issued by the Central Government by clause (c) of sub-section (3) of Section 1 of the Act, making the Act applicable to educational institutions. Therefore, the aforesaid judgment rendered by the Apex Court in the context or definition of Section 2(e) prior to amendment has no application to the case arising after substitution of new definition of employee under Section 2(e) of the Act. Therefore, in view of express words used in the amended definition of ‘employee’ under Section 2(e) of the Act, where the words ‘in any kind of work, manual or otherwise, in or in connection with establishment to which the Act applies’, are used, the teachers working in educational institutions are now entitled to the benefit of payment of gratuity under the Act.”

16. Therefore, the above clarifications given by the Hon’ble Courts leave behind no confusion with respect to the applicability of the Act of 1972, to the Educational Institutions also, including teaching and non-teaching staff. Accordingly, the question of law put-forth by the learned counsel for the appellants also stands answered with above interpretation of word ‘employee’ used in the above Act.

17. In view of the above discussions, this Court does not find any merit in the present Regular Second Appeal and as a result, the judgment and decree passed by the District Judge, Bhiwani, is maintained/upheld and the present appeal stands dismissed, with no order as to costs. Parties are left to bear their own costs.

18. Pending application, if any, also stands dismissed, accordingly, with the final dismissal of the main appeal.

22.11.2024
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No