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SooperKanoon Citation : sooperkanoon.com/427984

Court : Andhra Pradesh

Decided On : Apr-14-1988

Reported in : [1989(59)FLR195]; (1989)IILLJ95AP; (1989)IILLJ95SC

Judge : Y.V. Anjaneyulu, J.

Acts : [Payment of Gratuity Act, 1972](#) - Sections 1(3)

Appeal No. : W.P. No. 10449/1987

Appellant : Chairman, Governing Body, S.M.V.M. Polytechnic, Tanuku

Respondent : Government of Andhra Pradesh and ors.

Judgement :

1. This writ petition raises a short but an interesting question as to the eligibility of a college teacher to gratuity under the [Payment of Gratuity Act, 1972](#) ('the Act' for short).

2. Respondent No. 5 was a Physical Director in M.V. Memorial Polytechnic at Tanuku and retired from service on 30th September 1984. There is no dispute that he was a member of the teaching staff while he was in service. At the time of retirement he was drawing a salary of Rs. 1640/-. It is also not in dispute that the petitioner-institution has no gratuity scheme under which gratuity is paid to its

employees irrespective of the application of the Act.

3. Having retired from service, respondent No. 5 kept quiet without laying any claim for payment of gratuity. However, on 15th March 1986 he addressed a letter to the petitioner management claiming payment of gratuity under the Act. On 18th August 1986 the petitioner-management sent a reply stating that it has no gratuity scheme and, therefore, no gratuity was payable to respondent No. 5. Thereupon, respondent No. 5 made an application in the Court of the Controlling Authority under the Act (Asst. Commissioner of Labour, Eluru) seeking orders relating to the payment of gratuity. The Controlling Authority issued notices to the petitioner-management. The matter had been enquired into, during the course of which the delay in filing the application claiming gratuity, was condoned. Eventually, the Controlling Authority held that respondent No. 5 was entitled to claim gratuity under the Act - Vide order dated 2nd June 1987. This order is assailed in the present writ petition.

4. Learned Counsel for the petitioner Sri Pravatha Rao invites attention to the provisions of the Act. It is pointed out that the Act is applicable only to the categories specified in Section 1(3) of the Act, For Convenient reference, Section 1(3) is re-produced below :

'1(3) : It shall apply to -

(a) every factory, mine, oilfield, plantation port and railway company;

(b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;

(c) such other establishment or class of establishments in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.'

Learned Counsel contends that, if anything, the petitioner-institution will be governed by the expression, 'establishment' occurring in clause (b) above. But

then it is pointed out that the expression 'establishment' refers to the meaning of that expression according to the A.P. Shops and Establishments Act, 1966. It is, therefore, urged that in order to determine whether the petitioner-institution is an 'establishment' for the purpose of clause (b) of subsection (3) of S. 1 of the Act, the definition contained in the Shops and Establishments Act of the expression 'establishment' will have to be looked into. Attention is invited to s. 2(10) of the Shops and Establishments Act which defined the expression 'establishment' in the following terms :

'(10) 'Establishment' means a shop, restaurant, eating-house residential hotel, lodging house, theatre or any place of public amusement of entertainment and includes a commercial establishment and such other establishment as the Government may, by notification, declare to be an establishment for the purposes of the Act;'

Learned Counsel contends that if regard be had to the definition of the expression 'establishment', occurring in the Shops and Establishments Act, the petitioner-institution does not qualify to be treated as an 'establishment' because it cannot be said to be a 'commercial establishment' and it is not also 'other establishment' governed by any notification issued for the purposes of the Shops and Establishments Act.

5. The expression 'establishment' occurring in the Shops and Establishments Act, has come up for judicial scrutiny. Reference may be made to the decision of the Supreme Court in *V. Sasidharan v. M/s. Peter & Karunakar* (1984-II-LLJ-385). The question that arose for consideration in that case is whether the office of an advocate could be regarded as a 'commercial establishment', within the meaning of S. 2(10) of the Shops and Establishments Act. The Supreme Court held that the officer of a Lawyer or Solicitor, cannot be considered to be a 'commercial establishment' within the meaning of S. 2(10) of the Shops and Establishments Act. While the supreme Court was solicitous about the welfare of those who work in the lawyers' offices. it observed that there are many others ways in which their welfare can be ensured. It was pointed out that the earnings of lawyers' clerks cannot in reality bear reasonable comparison with the earnings of employees of

commercial establishments, properly so called. The Supreme Court further observed that lawyers' clerks undoubtedly work hard but they do not go without their reward. Before the Supreme Court reliance was placed on the decision of the Supreme Court in Bangalore Water Supply and Sewage Board v. A. Rajappa (1978-1-LLJ 349). It was pointed out that the sweep of the meaning of the word 'industry' was the subject-matter in the Bangalore Water Supply case (supra). The Supreme Court observed that the question that arose in that case was clearly different. It was held that considerations which were germane to the determination of the question in the Bangalore Water Supply case (supra) are inapplicable to the question arising for consideration in the case of lawyers' clerks.

6. Learned Counsel for respondent No. 1 and also the learned Counsel for respondent No. 5 rely on the aforesaid decision of the Bangalore Water Supply case (supra) in support of the contention that the educational institutions should be regarded as commercial establishments for the purposes of S. 2(10) of the Shops and Establishments Act and consequently for the purpose of S. 1(3) of the Act. As already observed this contention has been squarely considered and rejected by the Supreme Court in Sasidharan's case (supra).

7. Whether or not the establishment of an educational institution results in income or loss, it is difficult in common parlance to understand that any educational institution is a commercial establishment. It is one thing to say that an educational institution is an establishment and a different thing to state that it is a commercial establishment, coming within the purview of the Acts above referred. Unless it is possible to state that an educational institution, like the petitioner in the present case, can be held to be a commercial establishment, it is not possible to hold that the Act 1972 has application to the institution like the petitioner. I am, therefore, of the opinion that Act 1972 has no application to the petitioner institution and the claim of respondent No. 5 to the payment of gratuity was correctly rejected. The impugned order dt. 2nd June 1987 of Resp. No. 4, 6 is set aside. The writ petition is accordingly allowed. No costs. Advocate's fee Rs. 250/-.