

The Management Vs. Joint Commissioner of Labour and ors.

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Court : Chennai

Decided On : Jan-06-2012

Judge : R.Sudhakar, J.

Acts : [Payment of Gratuity Act, 1972](#)

Appeal No. : Writ Petition No.14737 of 2002

Appellant : The Management

Respondent : Joint Commissioner of Labour and ors.

Advocate for Def. : Mr.S.V.Durai Solaimalai Malai, Adv.

Advocate for Pet/Ap. : Mr.M.R.Raghavan, Adv.

Judgement :

Writ Petition is filed praying to issue a Writ of Certiorari, to call for the records on the file of the Joint Commissioner of Labour (Appellate Authority under the [Payment of Gratuity Act, 1972](#)), Chennai-6, the first respondent pertaining to P.G.A.206 of 2001 and to quash the order passed therein dated 14.3.2002.

2. Heard Mr.M.R.Raghavan, learned counsel appearing for the petitioner, Mr.S.V.Durai Solaimalai, learned Additional Government Pleader, appearing for the respondents 1 and 2 and Mrs.A.Dinakari, learned counsel appearing for the third respondent.

3. The private Matriculation Higher Secondary School, has challenged the order of the Joint Commissioner of Labour, the Appellate Authority under [Payment of Gratuity Act, 1972](#). The third respondent, Post Graduate Assistant claimed that she is an employee of the petitioner school, an establishment and therefore, entitled to the benefit of Payment of Gratuity under the Gratuity Act. The second respondent Controlling Authority ordered Payment of Gratuity. Aggrieved thereby, the petitioner management preferred an appeal to the first respondent Joint Commissioner of Labour, Appellate Authority, who by order dated 14.3.2002, which is under challenge, upheld the order of the Controlling Authority and dismiss the appeal. Challenging the same, the writ petition is filed.

4. The undisputed fact is that the writ petitioner management is covered by the provisions of the Payment of Gratuity Act insofar as the employees are concerned. However, their plea is that a teacher will not be covered under the provisions of the Payment of Gratuity Act as they do not fall under the definition of employee. This issue was raised by the writ petitioner at the time of admission itself based on the decision of the Supreme Court in Ahmedabad Pvt. Primary Teachers' Association Vs. - Administrative Officer and others reported in (2004)¹ Supreme Court Cases 755 where a similar claim of gratuity was considered by the Apex Court and declined. Paras 21, 24, 25 and 26 of the decision reads as follows:-

21. Having thus compared the various definition clauses of the word employee in different enactments, with due regard to the different aims and objects of the various labour legislations, we are of the view that even on plain construction of the words and expression used in the definition clause 2(e) of the Act, teachers who are mainly employed for imparting education are not intended to be covered for extending gratuity benefits under the Act. Teachers do not answer description of being employees who are skilled, semi-skilled or unskilled. These three words used in association with each other intend to convey that a person who is unskilled is one who is not skilled and a person who is semi-skilled may be one who falls between the two categories, meaning he is neither fully skilled nor unskilled. The Black's Law Dictionary defines these three words as under:

Semi-skilled work:- Work that may require some alertness and close attention, such as inspecting items or machinery for irregularities, or guarding property or people against loss or injury.

Skilled work:- Work requiring the worker to use judgment, deal with the public, analyze facts and figures, or work with abstract ideas at a high level of complexity.

Unskilled work:- Work requiring little or no judgment, and involving simple tasks that can be learned quickly on the job.

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 the 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 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 the 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 the definition of employee in Section 2(e) of the Act of 1972 reinforces our conclusion that teachers are clearly not covered in the definition.

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. (emphasis supplied)

5. In view of the decision of the Apex Court holding that the teacher is not covered by the definition of an employee under the provisions of the Payment of Gratuity Act, the order of the first respondent Appellate Authority is set aside.

6. The third respondent employee who has already withdrawn the amount, pursuant to order of court, can seek regularisation of the amount withdrawn in terms of para 26 of the Supreme Court referred to above, if there is any other provision under State enactment granting such benefits. The petitioner management is at liberty to recover the gratuity amount withdrawn by the third respondent as per procedure. The Writ Petition is allowed as above. No costs.

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