

Bombay High Court
Bombay High Court
The President/Secretary vs Shri Pradipkumar S/O ... on 21 February, 2012
Bench: Ravi K. Deshpande
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR

Writ Petition No.3415 of 2011

The President/Secretary,

Vidarbha Youth Welfare Institution

(Society),

'Chaitanya' building,

36, Ganediwal Layout,

Camp, Amravati 444 602. ... Petitioner/ Appellant

Versus

1. Shri Pradipkumar s/o Ramchandrarao

Lambhate,

Aged about 65 years,

Occupation - Not Known,

R/o D-3 & D-4,

Mantri Housing Complex,

Dapodi,

Pune - 12. ... Respondent No.1

2. Controlling Authority (u/PGA) and

Assistant Labour Commissioner,

Amravati.

3. Appellate Authority (u/PGA) and

Additional Labour Commissioner,

Civil Lines, Nagpur. ... Respondent No.2 ... Respondents

Shri S.G. Jagtap, Advocate for Petitioner. Shri S.T. Harkare, Advocate for Respondent No.1. Shri J.B. Jaiswal, AGP for Respondent Nos.2 and 3. 2

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CORAM : R.K. Deshpande, J.

Date of Reserving the Judgment : 14-2-2012 Date of Pronouncing the Judgment : 21-2-2012 Judgment :

1. Rule, made returnable forthwith. Heard Shri Jagtap, the learned counsel for the petitioner; Shri Harkare, the learned counsel for respondent No.1; and Shri Jaiswal, the learned AGP for respondent Nos.2 and 3.

2. This petition challenges the judgment and order dated 29-5-2010 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 and the Assistant Labour Commissioner, Amrvati in Case No.P.G.A. 95/2006 directing the petitioner to pay the gratuity of Rs.3,50,000/- with interest of Rs.1,20,000/- at the rate of 10% per annum for the period from 31-10-2005 to 31-1-2009 and the additional interest of Rs.27,872/- at the rate of 10% per annum with effect from 31-1-2009 to 22-10-2009. The petition also challenges the judgment and order dated 23-3-2011 passed by the Appellate Authority under the Payment of Gratuity Act, 1972 in Appeal No.PGA/60/2010 confirming the judgment and order passed by the Controlling Authority.

3. Respondent No.1 Pradipkumar Lambhate was appointed as Principal of Social Work College run by the petitioner-Society on 10-5-1995. He retired on attaining the age of superannuation with effect from 31-5-2005. Upon his retirement, he submitted an application on 3

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20-9-2006 to the Controlling Authority under the Payment of Gratuity Act, 1972 seeking a direction to the petitioner-Society to make the payment of gratuity along with interest thereon. As pointed out earlier, the said application was allowed by the Controlling Authority and the appeal against it, has been dismissed by the Appellate Authority. Hence, this petition by the employer.

4. The only question urged by Shri Jagtap, the learned counsel for the petitioner, in this case is that respondent No.1 is a Teacher and not covered by the definition of "employee" under Section 2(e) of the Payment of Gratuity Act, 1972 (for short, "the said Act") and hence the provisions of the said Act are not applicable. This very question fell for consideration of the Apex Court in the decision in the case of Ahmedabad Pvt. Primary Teachers' Association v. Administrative Officer & Ors., reported in JT 2004(2) SC 27. The Apex Court has considered the definition of "employee", as it stood then, which is reproduced below : "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 the terms of such employment are express or implied, [and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central government or a State government 4

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and is governed by any other Act or by any rules providing for payment of gratuity]."

The contention that the Teachers should be treated as included in the expression 'unskilled' or 'skilled', was rejected. It was held that the Teachers are also not employed in 'managerial' or 'administrative' capacity, and 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. It was further held that the Teachers are clearly not intended to be covered by the definition of 'employee'. In para 25 of the said judgment, the Apex Court has observed as under : "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 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. " 5

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5. Subsequent to the aforesaid decision of the Apex Court, an amendment was introduced to the definition of 'employee' by the Payment of Gratuity (Amendment) Act, 2009, which was brought into force on 3-4-1997. The amended definition of 'employee' under Section 2(e) runs as under :

"2(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 3 of the Amendment Act inserted in Section 13-A is reproduced below :

"13-A. Validation of payment of gratuity.--Notwithstanding anything contained in any judgment, decree or order of any court, for the period commencing on and 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 6

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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."

6. The Objects and Reasons of the Payment of Gratuity (Amendment) Act, 2009 being relevant, are also reproduced below : "Prefatory Note--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 7

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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 (P) Primary Teachers' Assn. v. Administrative Officer, (2004) 1 SCC 755 : 2004 SCC (L&S) 306 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 8

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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, the 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."

7. In view of the law laid down by the Apex Court in the judgment in the case of Ahmedabad Pvt. Primary Teachers' Association, cited supra, a Teacher was not covered by the definition of 'employee' under Section 2(e) of the said Act. It was suggested in para 25 of the said judgment that the definition 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 9

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the meaning of 'employee' under Section 2(e) of the Payment of Gratuity Act, 1972. Taking a note of such observation, the Legislature has amended the definition of 'employee' under Section 2(e) of the said Act with effect from 3-4-1997, which is in tune with the observations made in para 25 of the judgment of the Apex Court. 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 the Teachers for the purpose of applicability of the said Act. There is no escape but to hold that a Teacher is an 'employee' within the meaning of Section 2(e) of the said Act and hence the provisions of the said Act are applicable. There is no challenge to the judgments and orders passed by the Authorities below on merits. Hence, no fault can be found with the view taken by the Authorities below.

8. In the result, the petition is dismissed. Rule is discharged. No order as to costs.

Judge.

PdI.