

Before D. S. Tewatia and S. S. Sodhi, JJ.

KUNDAN LAL NARANG,—Petitioner.

versus

THE STATE OF HARYANA AND ANOTHER,—Respondents.

Civil Writ Petition No. 427 of 1987.

August 25, 1987.

Payment of Gratuity Act (XXXIX of 1972)—Section 1(3) (b) and (c)—Applicability of Act—Local Bodies—Whether 'establishments' as defined in Section 1(3)(b)—Notification under Section 1(3)(c) extending provisions of Act to local bodies—Whether conclusive that such bodies were not covered earlier by section 1(3)(b)—Employees of municipal committee retiring after date of notification—Whether entitled to payment of gratuity.

Held, that the provisions of the payment of Gratuity Act are attracted to all establishments which were covered by any law relating to the establishments covered in the State. Hence municipality is covered by the expression 'establishment' occurring in section 1(3)(b) . (Para 3).

Held, that the notification issued by Central Government under Section 1(3)(c) extending the provisions of the Act to local bodies would not conclusively indicate that such establishments as are being now covered could not have been covered already by the provisions of Section 1(3)(b) of the Act. Therefore, it is held that such municipal employees as have retired after the enforcement of the Act are entitled to payment of gratuity in accordance with the provisions of the Act. (Paras 4 and 5).

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may very kindly be pleased to call for the records from the respondents and after perusing the same :—

- (a) issue a writ in the nature of certiorari quashing the impugned instructions (Annexure P/2).
- (b) issue a writ in the nature of mandamus directing the respondents to make payment of the gratuity amount to the petitioner, as admissible to him, in accordance with law, within shortest possible time alongwith interest at the rate of 18 per cent per annum.
- (c) issue any other appropriate writ, order or direction as may be deemed fit and proper on the facts and in the circumstances of the case.

(d) *exempt the filing of certified copies of Annexures P/1 to P/5 and dispense with the requirement of serving advance notices upon the respondents.*

(e) *award costs of the petition to the petitioner.*

R. L. Sharma, Advocate, for the Petitioner.

Sumit Kumar, Advocate, for the State-Respondent.

H. S. Hooda, Sr. Advocate with Shishpal Singh, Advocate for the Municipal Committee-respondent No. 2.

JUDGMENT

D. S. Tewatia, J.

(1) This order will dispose of Civil Writ Petitions Nos. 427 of 1987 and 5450, 6064 and 6663 of 1986 as common question of law and fact are involved in them.

(2) The short question that falls for determination in the writ petitions is as to whether the employees of the Municipal Committees and Faridabad Complex Administration located in the State of Haryana, who retired after the enforcement of the payment of Gratuity Act, 1972 (for short 'the Act') were entitled to the payment of gratuity under the provisions of the said Act. The stand taken on behalf of the respondent-state and the concerned Local Bodies is that they were entitled to payment of such gratuity only from the date the provisions of the said Act extended *inter alia* to Local Bodies by notification issued to give effect to the provision of section 1(3) (c) of the Act on 23rd January, 1982, and only such employees as had retired on or after 23rd January, 1982, were entitled to the payment of gratuity in terms of the relevant provisions of the said Act.

(3) The matter is not **res integra**. The question directly arose for consideration before a learned Single Judge of this Court in *Chaman Lal v. Municipal Committee, Panipat* (1). The question posted before the learned Single Judge was as to whether the Municipal employees were entitled to the payment of gratuity in terms of the said Act. The learned Judge was of the opinion that

(1) 1985 (1) PLR 513.

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the Municipality is covered by the expression 'establishment' occurring in clause (b) of sub-section (3) of section 1 of the Act, which reads :—

“1(3) (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.”

The learned Judge held that the provisions of the Act were attracted to all establishments, which were covered by any law relating to the establishments in the State. The learned Judge referred to the provisions of section 2(ii)(g) of the payment of Wages Act, 1936 (hereinafter referred to as 'the Wages Act'), which was applicable to all the States, including the State of Haryana, Section 2(ii)(g) of the Wages Act is in the following terms :—

“2(ii) (g) : establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on;”

The learned Judge in Chaman Lal's case (supra) after referring to the definition of "establishment" as indicated in sub-clause (g) observed :—

“It is clear from the definition that a Corporation carrying on the work of construction, development and maintenance of roads is included in the term 'establishment'. It cannot be disputed that a municipality looks after the construction, development and maintenance of roads, and therefore, it is covered by the above definition. Thus the provisions of the Gratuity Act are applicable to the respondent.”

With respect, we entirely concur in that view. The learned counsel for the respondents, however, drew our attention to the Notification dated 23rd January, 1982, issued under section 1(3)

(c) of the Act, whereby the provisions of the Act had been made applicable to the Local Bodies and it was contended that issuance of such a notification by the Central Government was indicative of the fact that the establishments like Local Bodies were covered by section 1(3)(c) of the Act and not by section 1(3)(b) of the Act, otherwise there would have been no necessity of issuing such a notification.

(4) In our opinion, there is no merit in this contention. Perusal of section 1(3) (b) of the Act would show that the Act was to apply to such establishments as were covered by any law relating to establishment and applicable in a given State. Question arises as to what was to happen to an establishment which was not covered by any such law. Such establishments were to fall in section 1(3) (c) and the Act was to become applicable only if a notification was to be issued by the Central Government as envisaged by section 1(3) (c) of the Act. So a notification in question under section 1(3) (c) of the Act would not conclusively indicate that such establishments as are being now covered could not have been covered already by the provision of section 1(3) (b) of the Act.

(5) For the reasons, aforementioned, we hold that all such municipal employees in Haryana as retired after the enforcement of the Act are entitled to payment of gratuity in accordance with the provisions of the Act.

(6) We, therefore, allow these petitions (Civil Writ Petitions Nos. 427 of 1987 and 5450, 6064 and 6663 of 1986) in limine and direct the respondents to pay to the petitioners gratuity within three months from today with 12 per cent interest from the date it became due upto the date of the payment.

R. N. R.

Before D. S. Tewatia and S. S. Sodhi, JJ.

BALJINDER KAUR,—Appellant.

versus

GURDAS RAM AND ANOTHER,—Respondents.

Regular Second Appeal No. 2630 of 1983.

August 26, 1987.

Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Section 13—Suit for permanent injunction in civil court—Allegation of enforcement on public street—Defendant denying the