STATE OF PUNJAB

v.

LABOUR COURT, JULLUNDUR & ORS.

October 16, 1979

[V. R. KRISHNA IYER AND R. S. PATHAK, JJ.]

Payment of Gratuity Act, 1972—*S.* 1(3)(*b*)—*Scope of—A Government project whether an "Industrial Establishment".*

Retrenched workers—If entitled to gratuity—"Retrenchment"—Meaning of.

Act, a self-contained Code—Application for gratuity—If would lie under s. 33 *C*(2) *of Industrial Disputes Act.*

The respondents, who were the employees of the Hydel Department of the Government of Punjab, were retrenched on the completion of the work assigned to them. Their claim for payment of gratuity under the Payment of Gratuity Act, 1972 having been rejected by the appellants, they moved the Labour Court under s. 33-C(2) of the Industrial Disputes Act, 1947. The Labour Court allowed their claim. The High Court dismissed the appellant's appeal *in limine*.

In appeal it was contended that (1) the view of the Labour Court that the project was an establishment within the meaning of the definition of "Industrial establishment" contained in s. 2(ii)(g) of the Payment of Wages Act was erroneous, and the Payment of Wages Act being a Central Act is not an enactment contemplated by s. 1(3)(b) of the Payment of Gratuity Act; (2) since retrenchment is not superannuation or retirement or resignation or death or disablement due to accident or disease as defined in s. 4(1) of the Act, the retrenched employees were not entitled to gratuity; and (3) the Payment of Gratuity Act being a self-contained code, it excludes recourse to any other statute for claiming relief under this Act and, therefore, the respondents' application under s. 33-C(2) of the Industrial Disputes Act was misconceived.

Allowing the appeal in part;

HELD : 1(a). It is not correct to say that what is contemplated by s. 1(3)(b) of the Payment of Gratuity Act is a law enacted by the State Legislature and not a Central Act like the Payment of Wages Act. There can be no doubt that when s. 1(3)(b) speaks of "any law for the time being in force in relation to shops and establishments in a State" it includes the Payment of Wages Act, which is a law in force in the State. [956 B-C]

(b) The Payment of Wages Act is a statute which, while it may not relate to shops, relates to a class of establishments, i.e. industrial establishments. There is no warrant for limiting the meaning of the expression "law" in s. 1(3)(b) to a law which relates to both shops and establishments such as the Punjab Shops and Commercial Establishments Act, 1958. The expression is comprehensive in its scope and can mean a law in relation to shops as well as, separately, a law in relation to establishments or a law in relation to shops

A and commercial establishments and a law in relation to non-commercial establishments. Had the intention of Parliament been to refer to a law relating to commercial establishments it would not have left the expression "establishments" unqualified. There is no reason for giving a limited meaning to s. 1(3)(b). This section applies to every establishment within the meaning of any law for the time being in force in relation to establishments in a State. Such an establishment would include an industrial establishment within the B meaning of s. 2(ii)(g) of the Payment of Wages Act. Therefore, the Payment of Gratuity Act applies to an establishment in which any work relating, among others, to the generation, transmission and distribution of electricity or any other form of power is being carried on as defined in s. 1(3)(b) of the Act. [956 D-H, 957 A]

2. The expression "retrenchment" which has been defined in s. 2(q) to C mean "termination of the service of an employee otherwise than on superannuation" is framed in the widest terms. Except for superannuation, any termination of service would amount to "retirement" for the purposes of the Act. Retrenchment is termination of service. It is immaterial that the termination is occasioned by the need to discharge surplus labour. [957 E-F]

Bersi Light Railway Company Labour v. *K. M. Joglekar*, AIR 1957 SC 121, referred to.

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3(a). Parliament intended that proceedings for payment of gratuity due under the Act must be taken under that Act and not under any other. Therefore the respondents' application did not lie under s. 33-C(2) of the Industrial Disputes Act, and the Labour Court had no jurisdiction to entertain it. [959-E]

E (b). The Payment of Gratuity Act is a complete code containing detailed provisions covering all the essential features of the scheme for payment of gratuity. For the enforcement of its provisions, the Act provides for the appointment of a Controlling Authority for administering the Act. He has been invested with an amplitude of power for the full discharge of his responsibilities under the Act. Any error committed by him can be corrected in appeal by the appropriate Government or an appellate authority particularly F constituted under the Act. [959 B-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8 of 1977.

Appeal by Special Leave from the Judgment and Order dated 5-6-1975 of the Punjab and Haryana High Court in Civil Writ No. 3166/75.

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Soli J. Sorabji, Solicitor General and *O. P. Sharma* for the Appellant.

Hardev Singh for the Respondent.

The Judgment of the Court was delivered by

H PATHAK J.—In this appeal by special leave the State of Punjab appeals against the judgment and order of the High Court of Punjab & Haryana refusing to quash an order under section 33-C(2) of the

Industrial Disputes Act, 1947 for payment of gratuity to the respondents under the Payment of Gratuity Act, 1972.

The Hydel Department of the Government of Punjab had undertaken a Project described as the "Hydel Upper Bari Doab Construction Project." The respondents Nos. 2 to 8 were employed as work-charged employees. On completion of the work assigned to them they were retrenched, and retrenchment compensation was paid to them. The employee respondents claimed that they were also entitled to gratuity, bonus and certain other allowances and benefits. The gratuity was claimed under the Payment of Gratuity Act, 1972. The claim being disputed, the respondents applied under section 33-C(2) of the Industrial Disputes Act, 1947 to the Labour Court, Jullundur. The Labour Court made an order dated April 30, 1975 that the employee respondents were entitled to the gratuity claimed by them but not to bonus and the other allowances and benefits. A writ petition filed by the appellant has been dismissed *in limine* by the High Court of Punjab and Haryana.

In this appeal, the learned Additional Solicitor-General contends on behalf of the appellant that the Payment of Gratuity Act, 1972 cannot be invoked by the respondents because the Project does not fall within the scope of Section 1(3) of that Act. Section 1(3) provides that the Act will 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 establishments 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."

According to the parties, it is clause (b) alone which needs to be considered for deciding whether the Act applies to the Project. The Labour Court has held that the Project is an establishment within the meaning of the Payment of Wages Act, section 2(ii)(g) of which defines an "industrial estsablishment" to mean an "establishment in which any work relating to the construction, development or maintenance of

A 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." It is urged for the appellant that the Payment of Wages Act is not an enactment contemplated by section 1(3)(b) of the Payment of Gratuity Act. The Payment of B Wages Act, it is pointed out, is a central enactment and section, 1(3)(b), it is said, refers to a law enacted by the State Legislature. We are unable to accept the contention. Section 1(3)(b) speaks of "any law for the time being in force in relation to shops and establishments in a State." There can be no dispute that the Payment of C Wages Act is in force in the State of Punjab. Then, it is submitted, the Payment of Wages Act is not a law in relation to "shops and establishments". As to that, the Payment of Wages Act is a statute which, while it may not relate to shops, relates to a class of establishments, that is to say, industrial establishments. But, it is contended, the law referred to under section 1(3)(b) must be a law which relates D to both shops and establishments, such as the Punjab Shops & Commercial Establishments Act, 1958. It is difficult to accept that contention because there is no warrant for so limiting the meaning of the expression "law" in section 1(3)(b). The expression is comprehensive in its scope, and can mean a law in relation to shops as well as, separately, a law in relation to establishments, or a law in relation to E shops and commercial establishments and a law in relation to non-commercial establishments. Had section 1(3)(b) intended to refer to a single enactment, surely the appellant would have been able to point to such a statute, that is to say, a statute relating to shops and establishments, both commercial and non-commercial. The Punjab F Shops & Commercial Establishments Act does not relate to all kinds of establishments. Besides shops, it relates to commercial establishments alone. Had the intention of Parliament been, when enacting section 1(3)(b), to refer to a law relating to commercial establishments, it would not have left the expression "establishments" unqualified. We have carefully examined the various provisions of the Pay- G ment of Gratuity Act, and we are unable to discern any reason for giving the limited meaning to section 1(3)(b) urged before us on behalf of the appellant. Section 1(3)(b) applies to every establishment within the meaning of any law for the time being in force in relation to establishments in a State. Such an establishment would include an industrial establishment within the meaning of section 2(ii)(g) of the H Payment of Wages Act. Accordingly, we are of opinion that the Payment of Gratuity Act applies to an 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 Hydel Upper Bari Doab Construction Project is such an establishment, and the Payment of Gratuity Act applies to it.

The second contention on behalf of the appellant is that retrenchment does not fall within section 4(1) of the Payment of Gratuity Act, under which gratuity is payable to an employee on the termination of his employment. The termination envisaged occurs either

"(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease."

Having regard to the definition of "superannuation" in section 2(r) of the Act, it is clear that the case is not one under clause (a). Nor, admittedly, is it a case which falls under clause (c). As regards clause (b), it is not a case of resignation. The only question is whether it can be regarded under clause (b) as a case of retirement. The expression "retirement" has been defined by section 2(q) to mean "termination of the service of an employee otherwise than on superannuation." The definition is framed in the widest terms. Except for superannuation, any termination of service would amount to "retirement" for the purposes of the Act. Retrenchment is a termination of service. It is immaterial that the termination is occasioned by the need to discharge surplus labour. That retrenchment implies the discharge of surplus labour was explained in *Bersi Light Railway Company Labour* v. *K. M. Joglekar*.(1) Nonetheless, it amounts to termination of service. We are of opinion that the retrenchment of the employee respondents falls within the scope of section 4(1) of the Payment of Gratuity Act, and the employee respondents are therefore entitled to gratuity under that provision.

The third contention raised by the appellant is that the employee respondents were not entitled to apply under section 33-C(2) of the Industrial Disputes Act, 1947 for payment of the gratuity, and should have, if at all, applied under the provisions of the Payment of Gratuity Act. It is urged that the Payment of Gratuity Act is a self-contained code incorporating all the essential provisions relating to payment of gratuity which can be claimed under that Act, and its provisions impliedly exclude recourse to any other statute for that purpose. The

(1) A.I.R.1957 S.C. 121.

A contention has force and must be accepted. A careful perusal of the relevant provisions of the Payment of Gratuity Act shows that Parliament has enacted a closely knit scheme providing for payment of gratuity. A controlling authority is appointed by the appropriate Government under section 3, and Parliament has made him responsible for the administration of the entire Act. In what event gratuity will become payable and how it will be quantified are detailed in section 4. Section 7(1) entitled a person eligible for payment of gratuity to apply in that behalf to the employer. Under section 7(2), the employer is obliged, as soon as gratuity becomes payable and whether an application has or has not been made for payment of gratuity, to determine the amount of gratuity and inform the person to whom the gratuity is payable specifying the amount of gratuity so determined. He is obliged, by virtue of the same provision, to inform the controlling authority also, thus ensuring that the controlling authority is seized at all times of information in regard to gratuity as it becomes payable. If a dispute is raised in regard to the amount of gratuity payable or as to the admissibility of any claim to gratuity, or as to the person entitled to receive the gratuity, section 7(4)(a) requires the employer to deposit with the controlling authority such amount as he admits to be payable by him as gratuity. The controlling authority is empowered, under section 7(4)(b), to enter upon an adjudication of the dispute, and after due inquiry, and after giving the parties to the dispute a reasonable opportunity of being heard, he is required to determine the amount of gratuity payable. In this regard, the controlling authority has all the powers as are vested in a court while trying a suit under the Code of Civil Procedure, 1908 in respect of obtaining evidentiary material and the recording of evidence. The amount deposited by the employer with the controlling authority as the admitted amount of gratuity will be paid over by the controlling authority to the employee or his nominee or heir. Section 7(7) provides an appeal against the order of the controlling authority under section 7(4) to the appropriate Government or such other authority as may be specified by the appropriate Government in that behalf. The appropriate Government or the appellate authority is empowered under section 7(8), after giving the parties to the appeal a reasonable opportunity of being heard, to confirm, modify or reverse the decision of the controlling authority. Where the amount of gratuity payable is not paid by the employer within the prescribed time, the controlling authority is required by section 8, on application made to it by the aggrieved person, to issue a certificate for that amount to the Collector. The Collector, thereupon, is empowered to recover the amount of gratuity, together with compound interest thereon at the rate of nine per cent per annum from the date

of expiry of the prescribed time, as arrears of land revenue, and pay the same to the person entitled thereto. A

It is apparent that the Payment of Gratuity Act enacts a complete code containing detailed provisions covering all the essential features of a scheme for payment of gratuity. It creates the right to payment of gratuity, indicates when the right will accrue, and lays down the principles for quantification of the gratuity. It provides further for recovery of the amount, and contains an especial provision that compound interest at nine per cent per annum will be payable on delayed payment. For the enforcement of its provisions, the Act provides for the appointment of a controlling authority, who is entrusted with the task of administering the Act. The fulfilment of the rights and obligations of the parties are made his responsibility, and he has been invested with an amplitude of power for the full discharge of that responsibility. Any error committed by him can be corrected in appeal by the appropriate Government or an appellate authority particularly constituted under the Act. B C D

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. E

In the circumstances, it is not necessary to notice the further submission on behalf of the appellant that where a serious dispute exists in regard to the basis of a claim for payment of gratuity, no proceedings will lie under section 33-C(2) of the Industrial Disputes Act. F

The appeal is allowed, and the order dated April 30, 1975 of the Labour Court, Jullundur is quashed. Having regard to the terms on which special leave was granted by this Court to the appellant, the appellant shall pay to the employee respondents their costs of this appeal. G

At this stage we put to the learned Solicitor-General, who appeared for the State whether in the special circumstances it was not fair that the entire amount be paid by the appellant to the employees without H

A driving them to a separate proceeding. He has fairly stated that the appellant is willing to do so and the sole object of this litigation was to have the law clarified. We, therefore, direct the appellant to pay to the employee respondents within one month from today the amounts that may be due to them, if they have not already been paid.

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P.B.R. *Appeal allowed*