

Before R. N. Mittal, J.

CHANAN LAL,—Petitioner.

versus

MUNICIPAL COMMITTEE,—Respondent.

Civil Misc. No. 5329-CII of 1984.

May 6, 1985.

*Payment of Gratuity Act (39 of 1972)—Section 1(3)(b)—Payment of Wages Act (IV of 1936)—Section 2(ii)(g)—Provisions of Gratuity Act—Whether applicable to the Municipalities in Haryana—Such Municipalities—Whether covered under the term 'establishment' in the Wages Act.*

*Held*, that a reading of section 1(3)(b) of the Payment of Gratuity Act 1972 shows that it applies to all establishments which are covered by any law relating to the establishments in a State. If there are more than one statute in a State dealing with the said term the provisions of Gratuity Act can be read in conjunction with any of such statutes. The Payment of Wages Act, 1936 deals with establishments and is applicable to all the States including the State of Haryana. Therefore, the provisions of Wages Act, can be taken into consideration to find out whether a Municipality in Haryana is an establishment or not. According to the definition of the word 'establishment' as given in section 2(ii)(g) of the Wages Act a Corporation carrying on the work of construction, development and maintenance of roads is included in the term "establishment". A Municipality looks after the construction, development and maintenance of roads and is, therefore, covered by the definition. As such the provisions of Payment of Gratuity Act are applicable to the Municipalities in the State of Haryana.

(Paras 2 & 3)

*Case treated as Civil Miscellaneous upon receiving an application of Shri Chanan Lal addressed to Hon'ble the Chief Justice Punjab and Haryana High Court. Hon'ble Mr. Justice R. N. Mittal ordered on 4th September, 1984 that the application be registered as C. M. subject to the payment of court fee by the petitioner. The applicant prayed in his application that he may be allowed payment of gratuity as was allowed to Shri Udham Singh Chuhan retd. Octroi Moharrir of M. C. Ambala in C. M. No. 2173-CII-1983 decided on 24th May, 1983 by Hon'ble Mr. Justice M. R. Sharma.*

Tripat Moudgil, Advocate, for the Petitioner.

Dewan Singh, Advocate, for the Respondent.

## JUDGMENT

*Rajendra Nath Mittal, J.*

(1) Briefly, the facts are that the petitioner was in the service of the municipality Panipat and retired from there on 30th September, 1981. It is stated that he served it for a period of 34 years but he has not been paid the gratuity upto-date. Consequently he filed a Civil Miscellaneous application and prayed that the respondent be directed to pay the gratuity to him. Notice of the application was given to the Municipality which has contested it and pleaded that the provisions of Payment of Gratuity Act (referred to as the 'Gratuity Act') are not applicable to it and, therefore, the petitioner is not entitled to gratuity.

(2) The only question that arises for determination is, whether the provisions of the Gratuity Act are applicable to the Municipalities in Haryana. In order to determine the question it is necessary to notice section 1(3) (b) of the Gratuity Act, which reads as follows:—

Section 1(3) "It shall apply to—

(a) x        x        x        x

(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."

(3) It is evident from a bare reading of the section that the Gratuity Act applies to all establishments which are covered by any law relating to the establishments in a State. If there are more than one statute in a State dealing with the said term, the provisions of the Gratuity Act can be read in conjunction with any of such statutes. The Payment of Wages Act, 1936 (referred to as the 'Wages Act') deals with establishments and is applicable to all the States including the State of Haryana. Therefore, the provisions of Wages Act can be taken into consideration to find out whether a Municipality in Haryana is an establishment or not. The term "establishment" has been defined in the Wages Act in section

2(ii) (g) as follows:—

“2. In this Act, unless there is anything repugnant in the subject or context.—

(ii) “industrial or other establishment” means any—

(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 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 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.

(4) I am fortified in the above view by the observation of the Supreme Court in *State of Punjab v. The Labour Court, Jullundur and others* (1). In that case, the Hydel Department of the Government of Punjab had undertaken a Project described as the “Hydel Upper Bari Doab Construction project”. On completion of work, it retrenched its employees and paid them retrenchment compensation. The employees claimed that they were entitled to gratuity under the Gratuity Act. Their claim was not accepted by the Government and, therefore, they made an application under section 33-C(2) of the Industrial Disputes Act, 1947 to the Labour Court for recovery of the gratuity. The Labour Court accepted the application and held that the employees were entitled to get the gratuity. The State Government challenged the award of the Labour Court in this Court through a writ petition which was dismissed. Having felt aggrieved against the judgment of this Court it went up in appeal before the Supreme Court. R. S. Pathak, J. speaking for the Court observed that clause (b) of sub-section (3) of section 1 of the Payment of Gratuity Act applied to every establishment within the

(1) A.I.R. 1979 S.C. 1981.

meaning of any law for the time being in force in relation to establishment in a State. Such an establishment would include an industrial establishment within the meaning of sub-clause (g) of clause (ii) of section 2 of the Payment of Wages Act. The Payment of Gratuity Act therefore applied to an establishment in which any work relating to the constructions, 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 was being carried on. The learned Judge further observed that the Hydrel Upper Bari Doab Construction Project was such an establishment and the Payment of Gratuity Act applied to it. The above observations fully cover the present case.

(5) This very question arose before this Court in *Udham Singh Chauhan v. Municipal Committee, Ambala* (2). It was observed by Sharma J. that the provisions of the Payment of Wages Act applied to Municipal Committee, Ambala. The said judgment was followed by a Division Bench of this Court in *Ram Singh v. The Municipality Ambala* (3).

(6) The learned counsel for the respondent has drawn my attention to Section 44(2) of the Haryana Municipal Act, 1973 and argued that the gratuity can be granted if the State Government grants the sanction and not otherwise. I am not impressed with the contention. Section 44(2) applies to the cases where gratuity is to be paid to an employee injured or to the family of an employee killed in execution of his duty. It does not create any bar regarding payment of gratuity by a Municipality to its other employees. Even if it may be assumed that the section impliedly bars the payment of gratuity, it shall have no effect as section 14 of the Gratuity Act provides that the provisions of that Act shall have effect notwithstanding anything inconsistent therewith contained in any other enactment.

(7) For the aforesaid reasons I accept the Civil Miscellaneous and order the respondent to pay the gratuity to the petitioner in accordance with law.

N.K.S.

(2) C. M. 2173-CII of 83 decided on 24th May, 1984.

(3) C. W. 1662 of 84 decided on 16th August, 1984.