WP(C) 5900/2001
BEFORE
HON'BLE MR. JUSTICE B.K. SHARMA

The challenge made in this writ petition is the judgment and order passe d by the authority under Payment of Gratuity Act, 1972 and the appellate order t hereof passed by the Appellate Authority.

2. The facts leading to filing of the instant writ petition are that the re spondent No. 3, retired Deputy Editor of the news paper called Assam Tribune r epresented by the petitioner management, after retirement from service in 1997 a nd after receipt of the gratuity amounting to Rs. 1,69,181/- submitted represent ation dated 11.9.1997 claiming gratuity following the norms of 26 days average m onth under the Payment of Gratuity Act, 1972. The amount claimed was for Rs. 2,2 3,128.17.

3. When the aforesaid claim of the respondent No. 3 was not accepted by the petitioner/management, he made a further representation to the Controlling Auth ority-cum-Senior Assistant Labour Commissioner praying for recovery of the balan ce amount of gratuity payable to him. It was claimed that his monthly wages shou ld have been computed at Rs. 10,709/- and the period of one month for the purpos e of gratuity should have been computed at 26 days in place of 30 days. The repr esentation was made on 16.10.1997.

4. The aforesaid prayer of the respondent No. 3 was allowed by the Controll ing Authority i.e. the respondent No. 2 by the impugned judgment and order dated 6.3.1998. Being aggrieved, the Management preferred an appeal under Section 7 o f the Act. However, the same having been dismissed by the appellant authority i. e. the respondent No. 1 by his order dated 26.3.2001, the petitioner has preferr ed this writ petition assailing the legality and validity of the same. According to the petitioner, the respondent No. 3 was governed by the provisions of Worki ng Journalist and Other News Paper Employees (Condition of Service) and Misc-Pro visions Act, 1955 (hereinafter referred to as the Act of 1955) and not by the pr ovisions of the Payment of Gratuity Act, 1972 (herein after referred to as the Act of 1972 ). In this connection, the petitioner/management has also referred t o the Annexure-III letter dated 20.12.1996, which was issued by way of clarifica tion in respect of an earlier notification dated 24.9.1996 by the Government of India and circulated by the Indian News Paper Society by its letter dated 20.12. 1996. The text of the letter dated 17.12.1996 is reproduced below:

\Letter No. V-24032/3/95-WBdatedl7.12.1996

Please refer to your letter dated 7.10.96 seeking following clarification in res pect of notifications dated 24.9.96 granting interim rates of wages with effect from 20.4.95 to Working Journalists and Non-Journalist Newspaper and News-Agenc y employees:-

1. Consequential benefits such as Provident fund, bonus, gratuity etc. on t he interim rates of wages; and

2. Whether the interim rates of wages w.e.f. will remain fixed or will have incremental effect.

2. So far as 1. above is concerned, it may be stated that the notification dated 24.9.96 fixes interim rates of wages of Working Journalists and Non-journalist Newspaper and News-agency Employees at the rate of 20% of the basic wage and an additional amount of Rs. 100/- per month. Therefore, no additional benefits as s tated in para 1 above would accrue. As regards 2 above, the increase in basic wa ge due to increment has to be taken into account for determination of interim re

lief of 20% of the basic wage. \

5. Inspite of service of notice on the respondent No. 3, there is no respon se from his side. The other respondents have also not filed any counter affidavi t controverting the stand of the petitioner/ management in the writ petition.

6. I have heard Mr. L.P. Sarma, learned counsel for the petitioner as well as Ms. R. Chakraborty, learned State Counsel.

7. Referring to the provisions of the aforesaid Act of 1955 and 1972, Mr. S arma, learned counsel for the petitioner has submitted that the respondent No. 3 himself having applied for payment of gratuity as per the provisions of the Act of 1955 and after receipt of the full amount of the gratuity could not have tak en another stand so as to claim gratuity amount of Rs. 2,23,128.17 and the Contr olling Authority also could not have converted the claim to one under Payment of Gratuity Act. He has placed reliance on the decisions of the Apex Court reporte d in (2004) 11 SCC 526 [Expressed Publications (Madurai) Ltd. Vs. Union of India ]; AIR 1987 SC 1869 (Sri Shamarjit Ghosh Vs. M/s. Bennett Coleman Co.). He has a lso placed reliance on the decision of the Karnataka High Court (DB) reported in 1998 Lab.I.C. 3062, (Management of Indian Express (Madurai) Pvt. Ltd. Vs. J.M. Jeswant).

8. Ms. R. Chakraborty, learned Addl. Sr. Government Advocate upon a referen ce to the impugned orders made submissions supporting the same.

9. Section 2 (c) of the Act of 1955 defines newspaper employee as any wor king journalist and includes any other person employed to do any work in, or in relation to any newspaper establishment. Section 2 (eee) defines wages as all remuneration capable of being expressed in terms of money, which would if the te rms of employment, expressed or implied, were fulfilled, be payable to a newspap er employee in respect of his employment or of worked done in such employment an d would also include the allowances mentioned therein.

10. Section 5 of the Act of 1955 makes provisions of payment of gratuity to any working journalist who has been in continuous service for not less than 3 ye ars in any newspaper establishment. Section 17 of the Act dealing with Recovery of money due from an employer provides that when amount is due to a newspaper employee from an employer, the newspaper employee himself or any person authoriz ed by him in writing in this behalf, or in the case of the death of the employee , any member of his family may, make an application to the State Government for the recovery of the amount due to him. The State Government or the prescribed au thority, if satisfied that any amount is due, it shall issue a certificate for t hat amount to the collector, and the collector shall proceed to recover that amo unt. If, any question arises as to the amount due the State Government may on it s own motion or upon application make to it refer the question to any Labour Cou rt constituted under the Industrial Act, 1947 or under any corresponding law rel ating to investigation and settlement of industrial disputes.

11. Referring to the aforesaid provisions of the Section 17 of the Act, the petitioner has contended that the controlling authority under the Payment of Gra tuity Act, 1972 had no authority to take cognizance of the matter and passed the impugned judgment and order dated 6.3.1998. Admittedly the respondent No. 2 is not the Government and thus, taking note of Section 17 of the Act, it cannot be said that this is authority was empowered to deal with the matter.

12. The respondent No. 3 had applied for gratuity under the provisions of th e Act of 1955 before the respondent No. 2, who converted the representation made by the said respondent to be the one under the provisions of the Payment of Gra tuity Act. He had no authority to do so, more particularly, when the Payment of

Gratuity Act, 1972 is not applicable to the case of the respondent No. 3. Both the Acts i.e. the Act of 1955 and the Act of 1972 are self contained and self sufficient Acts. No amendment has been brought to the Act of 1955 providing that the Act of 1972 will be applicable to the newspaper employees. Besides, there is also no amendment to the Act of 1955 providing computation of the period of 26 days a month as in the case of Payment of Gratuity Act. Accordingly, the computation of 26 days a month by the respondent No. 2 is contrary to the provisions of the Act of 1955.

13. Unlike, Section 5 of the Act of 1955 as per which 3 years of service is the minimum requirement for payment of gratuity, under Section 4 of the Payment of Gratuity Act, minimum service is 5 years. The benefit of 2 more years of service has been given to the newspaper employees and as stated above, both the Acts being independent and self contained, the computation of payment of gratuity as per the provisions of Payment of Gratuity Act to the newspaper employee would be without jurisdiction. Further as per Annexure-III letter dated 17.12.1996, the interim relief amount cannot be computed for the purpose of gratuity and as such the computation for payment of gratuity on interim relief amount by the respondent No. 2 is also without jurisdiction. There is also no reference made by the Government to the Labour Court and in absence of such reference, the respondent No. 2 exercising its power and jurisdiction under the provisions of Payment of Gratuity Act, 1972 could not have computed the gratuity as has been done by the impugned judgment dated 6.3.1998.

14. The respondent No. 1 also acted illegally and without jurisdiction in passing the appellate order dated 26.3.2001 without addressing itself to the aforesaid issues. None of the grounds urged by the petitioner has been discussed by the appellate authority. It was wrong on the part of the appellate authority to hold that the Act of 1955 having not provided the methodology for working out gratuity, the Act of 1972 would be applicable. The appellate authority simply brushed aside the contention relating to Section 17 of the Act of 1955 by observing that the same is not a bar for taking recourse to any other mode of recovery.

15. The appellate authority simply referred to an earlier incident in which the gratuity was calculated as per the provisions of Payment of Gratuity Act, 1972. The matter was clarified according to which the solitary instance was by way of a mistake and that such mistake cannot form the basis of claim made by other employees. If any mistake was committed earlier, same cannot give rise to any right. Similarly, the plea of the petitioner/ management regarding limitation was also rejected on the ground that such plea was not raised before the controlling authority. Limitation being a question of law, could have been decided by the appellate authority.

16. In the judgment of the Karnataka High Court (DB) in J.M. Jeswant (supra), it has been held that Section 14 of the Act of 1972 does not specifically override the provisions of the Act of 1955. It has been held that the question of conferring more favourable benefit under the Act of 1972 does not arise.

17. In Bennett Coleman (supra), the Apex Court held that upon failure of conciliation, the Government was empowered to make reference. This decision has been referred to emphasis on the point of argument under Section 17 of the Act of 1955. In Express Publications (supra), the Apex Court held that the exclusion of employees of newspaper establishment from the purview of Employees' Provident Fund Scheme, 1952 is not violative of Article 14 and 19 (1) (a) of the Constitution of India. It has been held that the employees of the newspaper establishment, as distinguished from those of other industrial establishments constitute a separate class and the classification has a reasonable relation to the object of ameliorating service conditions of such employees.

18. The respondent No. 3, after retirement from service was paid gratuity am

ount of Rs. 1,69,181/- taking into account his last wage of Rs. 8947/-. He received the same without any reservation and thereafter made the representation before the respondent No. 2 for payment of enhanced gratuity amount to Rs. 2,23,128. 17. The controlling authority as well as the appellate authority under the Payment of Gratuity Act, without addressing themselves to the factual and legal position discussed above, passed the impugned judgment 6.3.1998 and the order dated 26.3.2001 respectively.

19. For all the foregoing reasons, I am of the considered view that the calculation made by the Controlling Authority i.e. the respondent No. 2 affirmed by the Appellate Authority i.e. the respondent No. 1 as to the entitlement of gratuity of the respondent No. 3 by the impugned judgment and order is not sustainable in law and liable to be interfered with. Consequently, the impugned judgment dated 6.3.1998 and the impugned order dated 26.3.2001 are set aside and quashed.

20. The writ petition is allowed. Without, however, any order as to costs.