

Haryana State Electricity Board v. Controlling Authority and Deputy
Labour Commissioner, Haryana & others (D. S. Tewatia, J.)

Magistrate with a view to his taking action under the Code. The mere fact that the complainant employed an Advocate to present his complaint to the Court cannot be put to a disadvantage; for the purpose sought to be achieved was the same. The Magistrate should have in the instant case then sent for the complainant from Jail for his examination. That power he undoubtedly had. Thus, in my view, the Magistrate's failure to adopt such procedure reveals an impropriety in his order and has led to miscarriage of justice. I have, therefore, no hesitation in quashing the said order.

(6) For the foregoing reasons, this petition is allowed and the impugned order is quashed. The learned Magistrate is directed to proceed with the complaint in the light of the observations aforesaid and in accordance with law. The complainant through his counsel is directed to put in appearance before the Learned Magistrate on March 1, 1983.

N.K.S.

Before D. S. Tewatia, J.

HARYANA STATE ELECTRICITY BOARD,—Petitioner

versus

CONTROLLING AUTHORITY AND DEPUTY LABOUR COMMISSIONER,
HARYANA and others,—Respondents.

Civil Writ Petition No. 49 of 1976,

February 16, 1983.

Payment of Gratuity Act (XXXIX of 1972)—Section 1(3)(b)—Punjab Shops and Commercial Establishments Act (XV of 1958)—Sections 2(iv), (viii) & (xxv) and 3(b)—Provisions of the Gratuity Act—Whether applicable to Haryana State Electricity Board—Section 3(b) of the Establishments Act—Whether excludes the Board from the said Act.

Held, that section 3 of the Punjab Shops and Commercial Establishments Act, 1958 removes the uncertainty about the fact as to whether an undertaking which supplies power or light to the public is or is not an 'establishment'. If section 3 of this Act had not been there, then it would have involved the interpretation of the definitional clause in question to

decide as to whether the expressions 'shop', 'establishment' or 'commercial establishment' as defined, would cover an undertaking like that of an Electricity Board. But by excluding such undertaking from the application of the provisions of this Act, the legislature impliedly ordains that although these may fall within the definition of 'shop', 'establishment' or 'commercial establishment', even then the provisions of the Act would not be applicable to the same. Section 3 of the Establishments Act cannot be read to mean that the legislature had envisaged that these are not 'shop' or 'establishment' or 'commercial establishment'. In fact, it meant only this that the regulatory and other provisions of the Establishments Act shall not govern such 'shop', 'establishment' or 'commercial establishment' as identified by section 3 of the Establishments Act. It is, therefore, held that the provisions of the Payment of Gratuity Act, 1972 by virtue of the provisions of section 1(3)(b) clearly apply to the Haryana State Electricity Board.

(Paras 4, 5 & 6).

Petition under Articles 226 and 227 of the Constitution of India praying that the records of the case be called for and;

(a) *the order Annexure 'P-5', dated the 7th November, 1975 be set aside.*

(b) *that the respondents be restrained from proceeding with the matter further, to determine the amounts of gratuity which are being claimed by respondents 2, 3 and 4.*

It is further praying that pending the decision of this petition further proceedings pending before the respondent No. 1 be stayed.

It is also praying that the production of certified copies of the annexures be dispensed with.

Bhagirath Dass, Sr. Advocate, Ramesh Kumar, Advocate with him, for the Petitioner.

D. S. Bali, Advocate, for Nos. 2 to 4.

JUDGMENT

D. S. Tewatia, J.—(Oral).

(1) The Haryana State Electricity Board has impugned the order of the Controlling Authority and Deputy Labour Commissioner, Haryana, holding that the provisions of the Payment of Gratuity Act, 1972 (hereinafter called 'the Gratuity Act') were applicable to the petitioner herein, that is, the Haryana State Electricity Board and, therefore, respondents Nos. 2, 3 and 4 herein

Haryana State Electricity Board v. Controlling Authority and Deputy
Labour Commissioner, Haryana & others (D. S. Tewatia, J.)

were entitled to the payment of gratuity; *inter alia* on the ground that the provisions of the Gratuity Act did not cover the petitioner — Haryana State Electricity Board (hereinafter called 'the Board') and, therefore, its employees were not entitled to any gratuity on their retirement.

(2) Mr. Bhagirath Dass, learned counsel appearing for the petitioner has reiterated the above stand and by way of amplification of the point he has urged that Section 1 sub-section (3) clause (b) of the Gratuity Act envisages application of the Act, *inter alia* to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments. The only relevant law dealing with shops and establishments is The Punjab Shops and Commercial Establishments Act; 1958 (hereinafter called 'the Establishments Act'); Section 3 whereof expressly excludes from the application of the said Act *inter alia* the Undertaking which supplies power or light to the public and therefore, the petitioner Electricity Board cannot be treated either as a shop or establishment within the meaning of any law which is the requirement for the application of the Gratuity Act to a shop or establishment.

(3) Before examining the afore-mentioned contention advanced on behalf of the petitioner, the relevant provisions of the two statutes deserve noticing at the very outset:—

Payment of Gratuity Act, 1972.

1. ** **

(3) It shall apply to—

(a) every factory, mine, oil field, 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.

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The Punjab Shops and Commercial Establishments Act, 1958.

2. Definitions;

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(iv) "Commercial establishment" means any premises where-
in any business, trade or profession is carried on for
profit and includes journalistic or printing establishment
and premises in which business of banking, insurance,
stocks and shares, brokerage and produce exchange is
carried on or which is used as hostel, "restaurant boarding
or eating house, theatre, cinema or other place of public
entertainment or any other place which the Govern-
ment may declare, by notification in the official gazette,
to be a commercial establishment for the purposes of this
Act.

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(viii) "establishment" means a shop or a commercial
establishment;

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(xxv) "shop" means any premises where any trade to busi-
ness is carried on or where services are rendered to
customers and includes offices, store-rooms, godowns,
sale-depots, or ware-houses, whether in the same pre-
mises or otherwise used in connection with such trade or
business but does not include a commercial establishment
or a shop attached to a factory where the persons employ-
ed in the shop are allowed the benefits provided for
workers under the Factories Act, 1948.

3. *Act not applicable to certain establishments and persons:—*

(a)

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(b) any railway service, water transport service, tramway,
postal telegraph or telephone service, any system of pub-
lic conservancy or sanitation or any industry business or
undertaking which supplies power, light or water to the
public."

(4) In my opinion, Section 3 of the Establishment Act rather
removes the uncertainty about the fact as to whether an undertaking

Sarup Chand and other *v.* Satish Kumar and others (J. V. Gupta, J.)

which supplies power or light to the public is or is not an 'establishment'. If Section 3 of the Establishment Act had not been there, then it would have involved the interpretation of the definitional clause in question to decide as to whether the expressions 'shop' 'establishment' or 'commercial establishment' as defined, would cover an undertaking like that of the petitioner. But by excluding such undertaking from the application of the provisions of this Act, the legislature impliedly ordains that although these may fall within the definition of 'shop' 'establishment' or 'commercial establishment', even then the provisions of the Act would not be applicable to the same.

(5) Section 3 of the Establishment Act in my opinion cannot be read to mean that the legislature had envisaged that these are not 'shop' or 'establishment' or 'commercial establishment'. In fact, it meant only this that the regulatory and other provisions of the Establishment Act shall not govern such 'shop', 'establishment' or 'commercial establishment' as are identified by Section 3 of the Establishment Act.

(6) For the reasons afore-mentioned I hold that the provisions of the Gratuity Act by virtue of the provisions of Section 1(3)(b) clearly applies to the petitioner-Board. In the light of the above, I hold that the impugned order is legal and there is no merit in this petition and the same is dismissed, but with no order as to costs.

N.K.S.

Before J. V. Gupta, J.

SARUP CHAND and others,—*Appellants.*

versus

SATISH KUMAR and others, *Respondents.*

Regular Second Appeal No. 1830 of 1974.

February 17, 1983.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13—Heirs of a statutory tenant living separately during his life time—Death of the statutory tenant—Such heirs—Whether could claim the right to occupy the demised premises after the death of the tenant only on the ground of being heirs.