

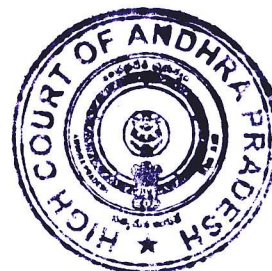
**IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI
(Special Original Jurisdiction)**

**THURSDAY, THE FIFTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

HON'BLE SMT JUSTICE V.SUJATHA

WRIT PETITION NO: 41949 OF 2016



Between:

V.Satyanarayana, S/o.Sri V.Adinarayana, Hindu, aged 62 years,
Occ:Secretary & Correspondent, M.R.K.Polytechnic Veeravasaram,
W.G.District, Andhra Pradesh.

...PETITIONER

AND

1. The State of Andhra Pradesh Rep.by its, Principal Secretary Labour, Employment, Training and Factories Department A.P. Secretariat, Amaravathi
2. The Controlling Authority and the Assistant, Commissioner of Labour, Narsapuram West Godavari District, A.P.
3. Bonam Parthasarathy S/o.Late G.Narasimha Murthy, R/o.H.No.4-188, Veeravasaram, West Godavari District, AP.

...RESPONDENTS

Petition under Article 226 of the Constitution of India is filed praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to call for the records in PG.No.1/2013 on the file of the controlling authority and Assistant Commissioner of Labour, Narsapur, W.G.District and quash the order dt.05-11-2014 in P.G.No.1/2013 by issuing a writ of certiorari or any other appropriate writ, order or direction as the same is illegal, without jurisdiction and contrary to law.

I.A. NO: 1 OF 2016(WPMP. NO: 51719 OF 2016)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings in pursuance of the order in P.G.No. 1/2013 dt.05-11-2014 on the file of the Controlling Authority and Assistant Commissioner of Labour, Narsapuram, W.G.District pending disposal of the above W.P.

Counsel for the Petitioner: SRI KIRTHI TEJA KONDAVEETI

Counsel for the Respondent Nos. 1 & 2: GP FOR LABOUR

Counsel for the Respondent No.3: SRI N BHARAT BABU

The Court made the following: ORDER

APHC010584842016



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3333]

**THURSDAY ,THE FIFTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

WRIT PETITION NO: 41949/2016

Between:

V.satyanarayana,

...PETITIONER

AND

The State Of Andhra Pradesh Rep By Its and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.KIRTHI TEJA KONDAVEETI

Counsel for the Respondent(S):

1.GP FOR LABOUR (AP)

2.N BHARAT BABU

The Court made the following:

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India seeking the following relief:-

"...to call for the records in PG.No.1/2013 on the file of the controlling authority and Assistant Commissioner of Labour, Narsapur, W.G.District and quash the order dt.05-11-2014 in P.G.No.1 /2013 by issuing a writ of certiorari or any other appropriate writ, order or direction as the same is illegal, without jurisdiction and contrary to law..."

2. Brief facts of the case are that the 3rd respondent herein has filed P.G.No.1 of 2013 before the 2nd respondent under Section 7(4) of the Payment of Gratuity Act, 1972 read with Sub-Rule (i) of Rule 10 of the A.P. Payment of Gratuity Rules claiming Rs.11,36,138/- towards gratuity and interest thereon stating that he has worked as a lecturer and principal in M.R.K. Polytechnic, Veeravasaram from 07.12.1981 to 31.12.2012 i.e. for a period of 31 years and that his last drawn salary was Rs.69,569/-; that the institution failed to pay him the amount due towards gratuity at the time of his superannuation and that he is entitled to claim gratuity. The petitioner herein who is the Secretary and Correspondent of M.R.K. Polytechnic college, Veeravasaram has objected the same by filing a counter affidavit therein. While so, vide order dated 05.11.2014, the 2nd respondent has passed an exparte order, challenging which the petitioner herein has filed an appeal before the appellate authority on 25.08.2015, however, the same was returned by the Deputy Commissioner of Labour vide

memo dated 28.07.2016 due to non-submission of the certificate by complying with the statutory requirement of deposit of the amount as per proviso to Section 7(7) of the Act.

3. The case of the petitioner is that M.R.K. Polytechnic is a private unaided educational institution established by a society registered under the Societies Registration Act, vide registration No.95 of 1980 and does not come under the purview of "Employer" as defined under Section 2(f) of the Payment of Gratuity Act, 1972. As such, the 3rd respondent cannot make any claim for payment of gratuity even against the aforesaid college. It is the further case of the petitioner that the 3rd respondent worked as lecturer in M.R.K. Polytechnic and his duty is to teach the students, as such his services as teacher does not come under the purview of "employee" as defined under Section 2(e) of the Payment of Gratuity Act. The Hon'ble Apex Court, while dealing with the provisions of the Gratuity Act in **Ahmedabad Private Primary Teachers Association Vs. Administrative Officers and others**¹, held that the services of teachers does not come under the purview of "Employee" as defined under Section 2(3) of the payment of Gratuity Act. The 3rd respondent, instead of considering the ratio decided in the judgment of the Hon'ble Apex Court (referred supra), observed that the applicant is entitled for claiming gratuity. Challenging the action of the 2nd respondent in passing the order dated 05.11.2014, without

¹ (2004) 1 SCC 755

issuing any notice nor giving an opportunity of hearing to the petitioner, the present writ petition is filed.

4. The 3rd respondent has filed a detailed counter affidavit duly denying the contentions raised by the petitioner herein and has further stated that an educational institution is managed by a managing committee, which is a society in which a secretary is the person who is appointed by the society to sue or to be sued on behalf of the society as per the Societies Registration Act. It is further stated that having received the notice with regard to the case filed by the 3rd respondent, the petitioner now cannot contend that the 2nd respondent has no power or authority to set him exparte and cannot allege that the petitioner was not given further notices intimating the dates of hearing and an opportunity of hearing. Having failed to comply with provisions of Section 7(7) and having got the appeal filed by the petitioner returned for non-compliance of mandatory conditions of depositing gratuity amount before the controlling authority, the petitioner has filed the present writ petition; hence the same is liable to be dismissed.

5. Heard learned counsel for the petitioner, learned Government Pleader for Labour and Sri. N. Bharath Babu, learned counsel for respondent No.3.

6. During the course of arguments, learned counsel for the petitioner has argued that M.R.K. Polytechnic is a private unaided educational institution and as such, it would not come under the purview of the Employer as defined under Section 2(f) of the Payment of Gratuity Act, 1972. He further contends that the services of the Teacher are not included in the definition of Employee under Section 2(e) of Gratuity Act and as such, the 3rd respondent is not entitled to any relief. Further, reliance was placed on a judgment passed by the Hon'ble Supreme Court of India in **Ahmedabad Private Primary Teachers Association Vs. Administrative Officers and others**², which would be referred by this Court at an appropriate stage. Hence, requested this Court to allow the writ petition.

7. Sri. N. Bharath Babu, learned counsel for the respondent No.3, while denying the averments of learned counsel for the petitioner has reiterated the facts stated in the counter affidavit. He further submitted that though the Apex Court in **Ahmedabad Private Primary Teachers Association Vs. Administrative Officers and others**, held that the teachers do not answer the description in the language employed in the then definition under Section 2(e) of the Act, the legislature has enacted 'The Payment of Gratuity (amendment) Act, 2009' specifically to bring teachers within the purview of Payment of Gratuity Act, 1972. In pursuance of the said amendment, many Hon'ble High Courts held that through the amendment act 2009, the teachers and lecturers came within the

² (2004) 1 SCC 755

purview of the Payment of Gratuity Act, 1972 and the same was given retrospective effect with effect from 03.04.1997. Hence, requested to dismiss the writ petition.

8. On a perusal of the impugned order dated 05.11.2014 in P.G.No.01 of 2013 passed by the 2nd respondent, it can be understood that the 3rd respondent has filed the aforesaid applicant under Sub-Rule(i) of Rule 10 of the A.P. Payment of Gratuity Rules, 1972, seeking a direction to the petitioner herein under Section 7(4) of the Payment of Gratuity Act, 1972 for payment of Rs.11,36,138/- towards interest at the rate of 10% per annum from the date on which the gratuity is payable. After due consideration, the 2nd respondent has concluded that the 3rd respondent is entitled to claim the gratuity amount and that the petitioner herein cannot withhold the gratuity amount payable to the 3rd respondent. Accordingly, the 2nd respondent has directed the petitioner herein to deposit an amount of Rs.11,76,164/- in favour of "the Controlling Authority under the Payment of Gratuity Act, 1972 and Assistant Commissioner of Labour, Narasapuram, West Godavari District", towards the unpaid amounts or gratuity due to the 3rd respondent. Though the said order was challenged by the petitioner before the appellate authority, the same was returned by the authority vide memo dated 28.07.2016 on the ground that the petitioner has not submitted

the certificate by complying with the statutory requirement of deposit of the amount as per proviso Section 7(7) of the Act.

9. It can be understood that the main grievance of the petitioner is that the 3rd respondent herein worked as lecturer in M.R.K. Polytechnic for teaching students, as such, his services does not come under the purview "Employee" as defined under Section 2(e) of the Payment of Gratuity Act. Learned counsel for the petitioner relied upon a judgment of the Hon'ble Apex Court in **Ahmedabad Private Primary Teachers Association Vs. Administrative Officers and others'** (referred supra) wherein it was held that the services of teachers does not come under the purview of "Employee" as defined under Section 2(e) of the Payment of Gratuity Act. However, the Hon'ble Apex Court has examined the question in the light of the definition of the word "employee" defined in Section 2(e) of the Act as it stood then, which reads as under:

"2. (e) 'employee' means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity."

10. The definition of "employee" as defined under Section 2(e) was accordingly amended with effect from 03.04.1997 retrospectively vide Payment

of the Gratuity (Amendment) Act, 2009 (No. 47 of 2009) published on 31.12.2009. The amended definition reads as under:

"(e) "employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity."

11. Therefore, the definition of 'employee' as amended, includes the teaching staff of educational institutions. The said benefit is given from 03.04.1997, the day on which the notification was issued by the Central Government by clause (c) of sub-section (3) of Section 1 of the Act, making the Act applicable to educational institutions. As such, the aforesaid judgment rendered by the Hon'ble Apex Court in **Ahmedabad Private Primary Teachers Association Vs. Administrative Officers and others'** (referred supra) in the context of definition of Section 2(e) prior to amendment has no application to the case arising after substitution of new definition of employee under Section 2(e) of the Act. Therefore, based on the specific wording in the amended definition of "employee" under Section 2(e) of the Act, which includes the phrase "in any kind of work, manual or otherwise, in or in connection with the establishment to which

the Act applies," teachers are entitled to receive the benefit of gratuity payment under the Act.

12. In view of the above discussion, this Court is of the opinion that the impugned order of the 2nd respondent dated 05.11.2014 in P.G.No.1 of 2013 warrants no interference by this Court and as such, this petition is liable to be dismissed.

13. Accordingly, this writ petition is dismissed. No costs.

Consequently, miscellaneous applications, pending, if any, shall also stand closed.

//TRUE COPY//

Sd/- A. VENUGOPALA RAO
ASSISTANT REGISTRAR


SECTION OFFICER

To,

1. One CC to Sri Kirthi Teja Kondaveeti Advocate [OPUC]
2. Two CCs to GP for Labour, High Court of Andhra Pradesh. [OUT]
3. One CC to Sri N Bharat Babu Advocate [OPUC]
4. Three CD Copies

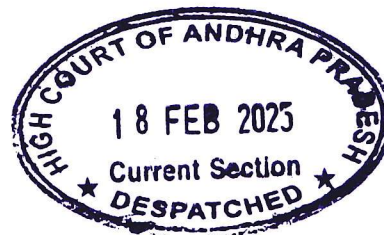
TF

HIGH COURT

DATED:05/12/2024

ORDER

WP.No.41949 of 2016



DISMISSING THE W.P., WITHOUT COSTS