

(1991) 03 MP CK 0004

Madhya Pradesh High Court (Indore Bench)

Case No: M.P. No. 756 of 1982

Panchulal Govindji

APPELLANT

Vs

Manager, Indore Textiles Ltd.
and Another

RESPONDENT

Date of Decision: March 21, 1991

Acts Referred:

- Industries (Development and Regulation) Act, 1951 - Section 18AA
- Payment of Gratuity Act, 1972 - Section 2

Citation: (1992) 37 MPLJ 829 : (1992) MPLJ 829

Hon'ble Judges: V.S. Kokje, J; V.D. Gyani, J

Bench: Division Bench

Advocate: C.M. Mehta, for the Appellant; None, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V.S. Kokje, J.

The petitioner in this case was employed as a Boiler Attendant in the Indore Textiles Limited at Ujjain. The petitioner's services were terminated by an order dated 3-12-1980 on his reaching the age of superannuation in accordance with the standing orders. The petitioner filed an application for payment of gratuity before respondent No. 2, the Controlling Authority, appointed by the State Government under the Payment of Gratuity Act. A preliminary objection was raised by the respondent No. 1 before the respondent No. 2, contending that the appropriate Government in the case of the petitioner was the Central Government and not the State Government and, therefore, the respondent No. 2 who was appointed by the State Government had no jurisdiction to entertain the application of the petitioner. On 31-12-1982 the respondent No. 2 passed a common order in several cases including the case of the petitioner holding that the State Government was not the appropriate Government in the case of the petitioner. It is this order which is under

challenge in this petition.

2-3. We have heard Shri C. M. Mehta, learned counsel for the petitioner and Shri K. S. Sharma, learned counsel for respondent No. 1 as well as the learned Government Advocate. The appropriate Government has been defined in Section 2(a) of the Payment of Gratuity Act, 1972 (hereinafter called "the Act"), which is as under : -

"2(a). Appropriate Government means :

(1) In relation to an establishment

(a) belonging to or under the control of the Central Government;

(b) having branches in more than one State;

(c) of a Factory belonging to or under the control of the Central Government;

(d) of a major port, mine, oil field, a Rly. Co., the Central Government.

(ii) In any other case the State Government."

It is not disputed in this case that the establishment of respondent No. 1 was taken over by the Central Government u/s 18AA of the Industries (Development and Regulation) Act, 1951. It is also not disputed that the Central Government has ordered the management of the Unit to be taken over by, the M. P. Textiles Limited, which is an undertaking of the State of M. P. The point of dispute is whether because of the take over under the Industries (Development and Regulation) Act, 1951, the establishment can be said to belong to or be under the control of the Central Government. On the answer to this question will depend which is the appropriate Government in respect of the establishment of the respondent No. 1. The respondent No. 2 has held that the Central Government has retained controlling power of the management in itself as the authorised person has to continue in office at the will of the Central Government and the appointment of authorised person could be terminated at the will of the Central Government.

To our mind the main question which falls for consideration in this case is as to what is the meaning to be given to the words "belonging to or under the control of the Central Government", appearing in the definition of the term appropriate Government in Payment of Gratuity Act. The M. P. State Textiles Corporation Ltd. is a company having a corporate status. The Central Government does not have a Controlling interest in this company. It is, therefore, an establishment or a legal person apart from the Central Government. It is nobody's case that the establishment of Indore Textiles Corporation belongs to the Central Government. What is being contended is that it is a unit under the control of the Central Government. We have, therefore, to see what type of control is envisaged by the legislature to decide the question as to which Government will be the appropriate Government in a particular case. Whether in deciding the issue, the ultimate control exercised by a Government has to be seen or whether day-to-day Control is

intended. The Payment of Gratuity Act is a social welfare legislation, the aim of the Act is to provide for terminal benefits, to working class. The purpose of defining appropriate Government is also to avoid confusion as to which Government shall take action in the matter. It was not certainly meant to provide an easy tool to an employer to involve an employee who has served him for a number of years in endless litigation quibbling about which is the "appropriate Government." Considering the Scheme of the Payment of Gratuity Act, it is apparent that the purpose of defining "appropriate Government" was to remove any confusion as to which Government shall take action and to provide the speediest remedy possible by a forum which would be easily accessible and available to the employee. In this context, therefore, the words under the control of the Central Government shall have to be read as under the day-to-day control of the Central Government. The words cannot be read to mean that even a remote and peripheral control of the Central Government of a unit would also make it appropriate Government in respect of that unit. In this particular case the unit of respondent No. 1 is being managed by the M. P. Textiles Corporation which is an instrumentality of the State of M. P. under a notification issued by the Central Government under the Industries (Development and Regulation) Act. Only because the Central Government has some control over the company under the Industries (Development and Regulation) Act. It cannot be said that the control for the purpose of Payment of Gratuity Act is that of the Central Government.

"18-A. Power of Central Government to assume management or control of an industrial undertaking in certain cases. - (1) If the Central Government is of opinion that -

(b)

(a)

it may, by a notified order, authorise any person or body of persons (hereafter referred to as the "authorised person") to take over the management of the whole or any part of the industrial undertaking or to exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order.

(2)

(3)

(4)

(5) The provisions of Sections 18B to 18E (both inclusive) shall, as far as may be, apply to, or in relation to, the industrial undertaking in respect of which a notified order has been made under sub-section (1), as they apply to an industrial undertaking in relation to which a notified order has been issued u/s 18A.

18B. Effect of notified order u/s 18A(1) on the issue of a notified order u/s 18A authorising the taking over of the management of an industrial undertaking, -

(a) all persons in charge of the management, including persons holding office as managers or directors of the industrial undertaking immediately before the issue of the notified order shall be deemed to have vacated their office as such;

(b)

(c)

(d)

(e) the persons, if any, authorised u/s 18A to take over the management of an industrial undertaking which is a company shall be for all purposes the directors of the industrial undertaking duly constituted under the Indian Companies Act, 1913, and shall alone be entitled to exercise all the powers of the directors of the industrial undertaking, whether such powers are derived from the said Act or from the memorandum or articles of association of the industrial undertaking or from any other source.

(2) Subject to the other provisions contained in this Act and to the control of the Central Government, the person or body of persons authorised to take over the management of an industrial undertaking shall take such steps as may be necessary for the purpose of efficiently managing the business of the industrial undertaking and shall exercise such other powers and have such other duties as may be prescribed.

(3) Whether any person or body of persons has been authorised to exercise any functions of control in relation to an industrial undertaking, the undertaking shall be

carried on pursuant to any directions given by the authorised person in accordance with the provisions of the notified order, and any person having any functions of management in relation to the undertaking or part thereof shall comply with all such directions.

(4) The person or body of persons authorised u/s 18A shall, notwithstanding anything contained in the memorandum or articles of association of the industrial undertaking, exercise his or their functions in accordance with such directions as may be given by the Central Government so, however, that he or they shall not have any power to give any other person any direction under this section inconsistent with the provisions of any Act or instrument determining the functions of the authority carrying on the undertaking except in so far as may be specifically provided by the notified order."

It may be noticed that Section 18A and Section 18AA empower the Central Government to authorise any person or body of persons to take over Management of the Undertaking or to exercise in respect of it such functions of control as may be specified in the order. Provisions do not speak of taking over Management by or exercise of control by the Central Government itself. Section 18B provides for divesting the existing Management and to instal authorised persons in management. The Industries (Development and Regulation) Act gives power to Central Government to give directions u/s 18B(4). Only on the basis of such power in the Central Government it cannot be said that the unit belongs to or is controlled by the Central Government. We would, therefore, hold that the Central Government would not be the appropriate Government in the case and it would be the State Government which would be the appropriate Government. Therefore, the controlling authority appointed by the State Government shall have the jurisdiction to entertain the claim.

For the aforesaid reasons, the impugned order deserves to be quashed and is hereby quashed. The controlling authority, the respondent No. 2 shall take cognizance of the dispute and decide it within a period of three months from today. We regret that this petition raising the aforesaid jurisdictional point had to wait for over eight years for its disposal in this Court. In the matters like this where terminal benefits of an employee are involved, for delay really defeats the purpose of litigation. We hope now at least the matter will be sorted out finally within a period of three months from today and the petitioner would not be required to litigate for his claim endlessly. The petitioner shall be entitled to costs of this petition which shall be paid by the respondent No. 1. Counsel's fees Rs. 1,000/-. Security deposit, if any, be refunded after verification.