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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.3150 OF 2019
(Arising out of SLP (Civil) 7627 of 2019)

Diary No. 41829 of 2018

Sr. Superintendent of Post Offices ...Appellant

Versus

Gursewak Singh & Ors. ...Respondents

WITH

CIVIL APPEAL NO. 3151 OF 2019
(Arising out of SLP (Civil)No. 7628 of 2019)

Diary No. 41825 of 2018

Sr. Superintendent of Post Offices ...Appellant

Versus

Smt. Swam Kanta ...Respondents

J U D G M E N T

INDU MALHOTRA, J.

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1. Leave granted in both the special leave petitions.

2. A common question of law arises in both the appeals which are being disposed of by a common judgment. The facts in *Sr. Superintendent of Post Offices* v. *Gursewak Singh & Ors.* are being considered as the lead case.

3. The present Civil Appeal has been filed against the Order dated 01.12.2017 passed by a Division Bench of the Punjab & Haryana High Court at Chandigarh in LPA No. 1612 of 2017.

4. The factual matrix of the case, briefly stated, is as under:

   4.1. On 26.06.1991, Respondent No. 1 was engaged as a *Gramin Dak Sewak i.e.* an Extra-Departmental Agent, to work on a part-time basis in the Postal Department at Faridkot, Punjab.

   4.2. In 2014, Respondent No. 1 voluntarily resigned from the said part-time job. On 28.08.2014, the Department accepted the resignation, and Respondent No. 1 was discharged with immediate effect.

   4.3. Respondent No. 1 approached the Controlling Authority-cum-Assistant Labour Commissioner, Central

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Jalandhar, seeking gratuity under the Payment of Gratuity Act, 1972 (herein after referred to as "the 1972 Act").

4.4. The Appellant – Department took the stand that Respondent No. 1 was not entitled to *ex-gratia* gratuity under the *Gramin Dak Sewak* (Conduct & Engagement) Rules, 2011 as he had voluntarily resigned from the job. The Controlling Authority-cum-Assistant Labour Commissioner, Central Jalandhar, *vide* Order dated 21.09.2015, allowed the claim of Respondent No. 1 and directed the Department to pay an amount of Rs. 1,06,021/- along with Interest @ 10% p.a. from 28.08.2014.

4.5. The Department filed an Appeal u/S. 7(7) of the 1972 Act, against the Order dated 21.09.2015 before the Deputy Chief Labour Commissioner (Central) Kendriya Sadan, Chandigarh.

The Appellate Authority *vide* Order dated 17.05.2016 dismissed the Appeal filed by the Appellant – Department, and upheld the Order dated 21.09.2015 passed by the

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Controlling Authority-cum-Assistant Labour Commissioner, Central Jalandhar.

4.6. The Department filed C.W.P. No. 11412 of 2017 before the Punjab & Haryana High Court at Chandigarh under Article 226/227 of the Constitution against the Order dated 17.05.2016.

The learned Single Judge *vide* Oder dated 23.05.2017 dismissed the Writ Petition filed by the Department relying upon earlier judgments passed by the same High Court in *Senior Superintendent of Post Officers, Jalandhar Division, Jalandhar* v. *Darshan Ram (through LRs) & Ors.*[1] and *Senior Superintendent of Post Officers* v. *Smt. Sham Duiari & Ors.*[2]

4.7. The Department challenged the Order dated 23.05.2017 passed by the Single Judge by way of LPA No. 1612 of 2017 before the Punjab & Haryana High Court at Chandigarh.

The division bench of the Punjab & Haryana High Court at Chandigarh on 01.12.2017, dismissed the LPA

1 2014 (9) SCT 120 (DB)
2 2006 (3) SCT 577

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filed by the Department on the ground that SLPs filed against the earlier judgments had been dismissed by this Court. As a consequence, the judgment of the learned Single Judge did not warrant interference.

4.8. The Department has filed the present Appeal to challenge the Judgment and Order dated 01.12.2017 passed by a division bench of the High Court.

5. We have heard the learned ASG Mr. Vikramjit Banerjee for the Appellant – Department. Mr. Bharat Sangal, Advocate was appointed as *Amicus Curiae vide* Order dt. 10.12.2018 to represent the interest of the Respondents who did not appear, despite service being effected on them.

We have perused the pleadings and written submissions filed by both parties.

6. The issues which arise for consideration are as follows:

6.1. Whether a *Gramin Dak Sewak* is an 'employee' as per Section 2(e) of the 1972 Act, and is entitled to payment of Gratuity under this Act?

6.2. Whether a *Gramin Dak Sewak* is eligible for payment of Gratuity under the 2011 Rules upon voluntary resignation?

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7. The learned ASG appearing on behalf of the Department submitted that :

7.1. The *Gramin Dak Sewaks* constitute a unique department of posts. The persons working as *Gramin Dak Sewaks* are not regular departmental employees but "extra-departmental agents", who work on a part-time basis for a few hours every day; and, have an independent source of livelihood. They are permitted to work upto the age of 65 years.

7.2. The *Gramin Dak Sewaks* are governed by the 2011 Rules, which form a complete and separate code providing for the recruitment, gratuity, conduct, and disciplinary proceedings of *Gramin Dak Sewaks*.

The terms and conditions of their engagement are governed by Rule 3-A of the 2011 Rules, which reads as under :

> ***"3-A Terms and Conditions of Engagement***
>
> *(i) A Sevak shall not be required to perform duty beyond a maximum Period of 5 hours in a day;*
>
> *(ii) A Sevak shall not be retained beyond 65 years of age;*
>
> *(iii) A Sevak shall have to give an undertaking that he has other sources of*

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income besides the allowances paid or to be paid by the Government for adequate means of livelihood for himself and his family;

(iv) A Sevak can be transferred from one post/unit to another post/unit in public interest;

(v) A Sevak shall be outside the Civil Service of the Union;

(vi) A Sevak shall not claim to be at par with the Central Government employees;

(vii) Residence in post village/delivery jurisdiction of the Post Office within one month after selection but before engagement shall be mandatory for a Sevak:;

Failure to reside in place of duty for GDS BPM & within delivery jurisdiction of the Post Office for other categories of Gramin Dak Sevaks after engagement shall be treated as violative of conditions of engagement and liable for disciplinary action under Rule 10 of the Conduct rules, requiring removal/dismissal;

(viii) Post Office shall be located in the accommodation to be provided by Gramin Dak Sevak Branch Postmaster suitable for use as Post Office premises;

(ix) Combination of duties of a Sevak shall be permissible;"

(emphasis supplied)

A reading of Rule 3-A(iii) of the 2011 Rules, makes it abundantly clear that a *Gramin Dak Sewaks* must have an independent means of livelihood. The *Gramin Dak Sewaks* are engaged on a part-time basis for a maximum of 3 to 5 hours a day. Rule 3-A(v) and (vi) stipulate that a *Gramin Dak Sewak* shall be outside the Civil Service of the Union,

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and shall not claim to be at par with the servants of the Government.

7.3. It was further submitted on behalf of the Appellant – Department that the part-time employment of *Gramin Dak Sewaks* is governed by a separate scheme, since they do not form part of the regular cadre, and cannot be treated to be in the main service or class of service. Gratuity is payable to them in accordance with the *Gramin Dak Sewak* (Conduct & Engagement) Rules, 2011.

Rule 6(1) of the 2011 Rules provides for payment of *ex-gratia* gratuity to *Gramin Dak Sewaks.* Rule 6(13) of the 2011 Rules provides that no gratuity is payable to a *Gramin Dak Sewak,* if he resigns from the agency on his own, except on medical grounds.

Rule 6(1) and (13) of the 2011 Rules read as under :

> *"**(1) Payment of ex-gratia gratuity.** – The question of grant of some kind of purely ex gratia monetary grant to ED Agents working in the Indian Posts and Telegraphs Department on termination of their services has been under consideration for a long time. It has been decided as follows :-*
>
> *1. ED Agents as defined in P & T Extra Departmental Agents (Conduct and Service) Rules, 1964, whose services are terminated otherwise than (i) for unsatisfactory word or (ii) as a measure of disciplinary action or (iii) in*

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> *consequence of their being appointed in a regular post under the P & T Department, may be sanctioned monetary grants termed as 'Gratuity', provided that they have put in not less than ten years of continuous satisfactory service as Ed Agents."*
>
> *"**(13) No gratuity to ED Agent who quits the agency on his own.** – The question of extending the benefit of grant of ex gratia gratuity to ED Agents who have to resign on account of circumstances beyond their control was taken up with the Ministry of finance. It has been decided that no ex gratia gratuity will be paid to ED Agents in such cases. It is, therefore, clarified that according to the present orders, gratuity is payable only if the services of an ED Agent are terminated in consequence of an action of the department, subject to their fulfillment of the other prescribed conditions and that no gratuity is payable if an ED Agent quits the agency on his own. The services of an ED Agent should not be terminated when he himself quits the job. In such cases, an order permitting the ED Agent to quit the services on his own should be issued so that the order may not be construed as an order of termination of service. "*
>
> (emphasis supplied)

8. Mr. Bharat Sangal, learned *Amicus Curiae*, represented the interest of the Respondents before this Court. The learned Counsel *inter alia* submitted that :

8.1. The Payment of Gratuity Act, 1972 applies to every place defined as an 'establishment' within the meaning of any law for the time being in force in a state.

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To determine the applicability of the Payment of Gratuity Act, 1972 it must be seen whether the place is defined as an establishment under the law applicable to the State. Reliance was placed on the judgment of *State of Punjab* v. *Labour Court Jalandhar*[3] wherein this Court held that an establishment falling within the definition of Section 2(ii)(g) of the Payment of Wages Act, 1936 would be covered by the Payment of Gratuity Act, 1972.

It was contended that the Postal Department is an establishment within the meaning of the term used in Section 2(ii)(g) of the Payment of Wages Act, 1936 and the 1972 Act, would be applicable to its employees.

8.2. Section 1(3) of the 1972 Act, provides for payment of gratuity to employees of every factory, mine, oilfield, plantation, port, railway company, shop or establishment.

Section 1(3) of the 1972 Act reads as under :

> *"**1.Short title, extent, application and commencement.**-*
> *(3) It shall apply to-*
> *(a) every factory, mine, oilfield, 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,*

3 (1980) 1 SCC 4

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> *in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;*
> *(c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf."*
>
> (emphasis supplied)

8.3. It was further submitted that Section 14 of the 1972 Act, specifically provides that the Act would apply "*notwithstanding anything inconsistent therewith contained in any other enactment*".

Section 14 of the 1972 Act reads as under :

> "***14. Act to override other enactments, etc.—***
> *The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."*

8.4. Section 4(1)(b) of the 1972 Act provides that gratuity would be payable to an employee even on his resignation. Thus, any rule barring payment of gratuity to an employee who resigns, would be contrary to Section 14 read with Section 4(1)(b) of the 1972 Act.

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8.5. It was further submitted that the Department of Posts, *Gramin Dak Sewak* (Conduct and Employment) Rules, 2001 were superseded and replaced by the Department of Posts, *Gramin Dak Sewak* (Conduct and Engagement) Rules, 2011.

Under the amended 2011 Rules the term "employment/appointment" has been replaced by "engagement". The amended Rule 6 pertains to payment of *ex gratia* Gratuity to *Gramin Dak Sewaks*.

9. The first issue to be determined is whether a *Gramin Dak Sewak* is an 'employee' as per Section 2(e) of the 1972 Act, and is entitled to payment of Gratuity under this Act?

9.1. Section 1(3)(b) of the 1972 Act applies to every 'establishment' within the meaning of "any law" for the time being in force.

This Court in *State of Punjab* v. *Labour Court Jalandhar*[4] has held that there is no reason for limiting the meaning of the expression 'law' in Section 1(3)(b) of the 1972 Act.

4 (1980) 1 SCC 4

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The Postal Department is as an establishment under Section 2(k) of the Indian Post Office Act, 1898 which reads as under :

> *"**2. Definitions.**-*
> *(k) the expression "Post Office" means the department, established for the purposes of carrying the provisions of this Act into effect and presided over by the Director General."*
> (emphasis supplied)

The Indian Post Office Act, 1898 would fall under the expression 'law' in Section 1(3)(b). Consequently, the Post & Telegraphs Department would be an establishment under the 1972Act.

9.2. Section 4(1) of the 1972 Act, provides for payment of Gratuity to an employee on the termination of his employment, subject to the condition that he must have rendered a minimum of 5 years' continuous service.

Section 4(1) of the 1972 Act reads as under :

> *"**4. Payment of Gratuity.**-*
> *(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-*
> *(a) on his superannuation, or*
> *(b) on his retirement or resignation,*
> *(c) on his death or disablement due to accident or disease:*
> *Provided that the completion of continuous service of five years shall not be necessary where the*

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termination of the employment of any employee is due to
death or disablement:
Provided further that in case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is minor, the share of such minor, shall be deposited with the Controlling Authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.
Explanation.- For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement."

(emphasis supplied)

9.3. Section 4 of the 1972 Act, states that "*Gratuity shall be payable to an employee*".

The term 'employee' is defined by Section 2(e) of the 1972 Act, as under :

"2. Definitions.- In this Act, unless the context otherwise requires,-
(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, <u>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</u>;"

(emphasis supplied)

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Section 2(e) of the 1972 Act, however specifically excludes persons who are governed by any Act, or Rules providing for payment of Gratuity.

9.4. Section 2(e) of the 1972 Act excludes persons who hold a post with the Central or State Government and are governed by any other Act or rules providing for payment of gratuity.

Gramin Dak Sewaks are engaged as Extra Departmental Agents, a post governed by the 2011 Rules.[5] These Rules have a separate provision for payment of Gratuity to the Extra Departmental Agents.

A *Gramin Dak Sewak* is not an "employee" under the 1972 Act. The first issue is answered accordingly.

10. The second issue is whether a *Gramin Dak Sewak* is eligible for payment of Gratuity upon voluntary resignation under the 2011 Rules?

10.1. The 2011 Rules provide that *Gramin Dak Sewaks* are Extra-Departmental Agents, who are outside the Civil Service of the Union, and shall not claim to be at par with

5 *Superintendent of Post Officers* v. *PK Rajamma*; (1997) 3 SCC 94
See also *Union of India* v. *Kameshwar Prasad*; (1997) 11 SCC 650

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the Central Government Employees. The Extra-Departmental Agents are engaged by the Department of Posts & Telegraphs to cater to the postal requirements in the rural and remote areas. The system avails the services of schoolmasters, shopkeepers, landlords, and such other persons in a village who have a reasonable standard of literacy, and adequate means of livelihood, and can therefore assist the Department on a part-time basis by way of gainful avocation, to provide service to the rural communities for their postal requirements.

Rule 3-A(i) of the 2011 Rules provides that the *Gramin Dak Sewaks* shall not be required to perform duties beyond a maximum period of 5 hours a day. This shows the avocational nature of the service.

Rule 6(1) of the 2011 Rules provides for payment of gratuity to *Gramin Dak Sewaks*. However, Rule 6(13) states that no Gratuity is payable if an Extra-Departmental Agent quits the agency on his own.

10.2. In the present case, Respondent No. 1 tendered his resignation in 2014. The Appellant – Department accepted

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his resignation *vide* letter dated 28.08.2014. The Order dated 28.08.2014 accepting the resignation of Respondent No. 1 reads as under :

> *" The unconditional resignation dated nil submitted by Sh. Gursewak Singh from the post of GDSBPM Assa Butter in a/c with Bariwala SO is hereby accepted with immediate effect.*
> *Usual charge Reports should be sent to all concerned.*
>
> *Sd/-*
> *THE SUPDT OF POST OFFICES*
> *FARIDKOT DIVISION*
> *FARIDKOT – 151203 "*
> (emphasis supplied)

The Order was passed under Rule 6(13) permitting Respondent No. 1 to quit the services of the *Gramin Dak Sewak* as per his voluntary resignation.

As a consequence of his resignation, Respondent No. 1 became disentitled from the payment of Gratuity under the statutory 2011 Rules applicable to *Gramin Dak Sewaks.* The second issue is answered accordingly.

11. The Impugned Orders passed by the High Court in both the Appeals are hereby set-aside.

We acknowledge the valuable assistance provided by the learned *Amicus Curiae* Mr. Bharat Sangal in representing the interest of the Respondents.

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Pending applications in both the Appeals, if any, are dismissed.

The Appeals are allowed accordingly.

.....J.
(UDAY UMESH LALIT)

.....J.
(INDU MALHOTRA)

New Delhi,

March 15, 2019.