

ORIGINAL JURISDICTION

Mr. Justice Gopinath P.

W.P(C) No.28335 of 2024

2025 October 22

Kore Security Services (P) Ltd Petitioner

v.

The Controlling Authority under the Payment of Gratuity Act and others . .
Respondents

The writ petition was filed by the employer challenging the orders passed by the Controlling Authority and the Appellate Authority under the Payment of Gratuity Act, 1972, whereby gratuity payable to the 3rd respondent—employee was computed on a wage amount higher than the wages admittedly last drawn by him. The authorities proceeded to calculate gratuity by substituting the minimum wages notified under the Minimum Wages Act, 1948, in place of the actual wages paid and admitted by both parties. According to the petitioner, both parties had unequivocally admitted that the last drawn wages of the 3rd respondent, inclusive of allowances, was 12,000 per month, and there was no dispute whatsoever regarding the same. It was argued that neither Section 2(s) nor Section 4(2) of the Payment of Gratuity Act authorises the Controlling Authority to enhance or substitute wages by importing the minimum wage notification issued under the Minimum Wages Act. According to the respondent-state, the phrase “paid or payable” in the definition of “wages” under Section 2(s) of the Payment of Gratuity Act, permits the authority to consider wages legally payable under law, and that where an employee is paid less than the notified minimum wage, the law substitutes the statutory minimum wage in place of the unlawful contractual wage. It was further contended that though the Payment of Gratuity Act does not expressly refer to the Minimum Wages Act, the two statutes must be harmoniously construed to give effect to the constitutional mandate under Article 23, which prohibits forced labour and includes payment of wages below the minimum wage. Allowing the Writ Petition, the Court;

Issue for consideration

Whether the Controlling Authority could have directed payment of gratuity on the basis of any amount other than the wages actually drawn including allowances ?.

Payment of Gratuity Act, 1972 (Central Act 39 of 1972)—Sections 2(s) and 4(2)—Computation of Gratuity—Gratuity payable only on the basis of wages actually drawn by the employee—Expression “paid or payable” in Section 2(s) does not incorporate the Minimum Wages Act into the Gratuity Act—Minimum Wages Act, 1948 (Central Act 11 of 1948).

Held:

In **U. Unichoyi** (*supra*), the Supreme Court elaborately explained the procedure for fixing minimum wages, as well as the statutory provisions governing employers who fail to comply with the minimum wage notifications issued by the respective State Governments, and the legal consequences that follow such non-compliance. In **Chandra Bhavan Boarding and Lodging, Bangalore** (*supra*), the Supreme Court referred to the decision of the Constitution Bench in **U. Unichoyi** (*supra*) and held that the State Governments are empowered under the Minimum Wages Act to fix minimum wages for employees in various industries, in accordance with the procedures enumerated therein. In **People's Union for Democratic Rights** (*supra*), the Supreme Court held that payment of wages below the statutory minimum constitutes a violation of Article 23 of the Constitution of India and also observed that since no person would ordinarily agree to work for less than the minimum wage, such employment can be presumed to arise from compulsion whether physical, legal, or economic. Economic necessity caused by hunger, poverty, and the absence of alternative employment deprives a person of real freedom of choice and therefore amounts to "force." Therefore, the Court held that a complaint regarding non-payment of minimum wages is, in essence, a complaint of violation of Article 23. **Sanjit Roy** (*supra*) emphasised the importance of fixing minimum wages for workers engaged in construction activities in famine, drought or scarcity-affected areas of Rajasthan and held that such workers cannot be exempted from the protection of minimum wages under any statute. The learned Additional Advocate General is right in contending that in all these judgments, the Hon'ble Supreme Court has upheld the constitutional safeguard of minimum wages for employees. While the principles laid down in the aforesaid judgments are unexceptionable and are binding on this Court, I am afraid that they do not compel me to take a different view and I hold that the definition of wages under Section 2(s) of the Gratuity Act and the method of calculation of gratuity provided in sub-section (2) of Section 4 of the Gratuity Act do not authorise the calculation of gratuity on a basis other than the actual wages drawn by the employee. (*Paragraph 6*)

Case Law Cited:

(1) 1961 S.C.C. OnLine SC 18; (2) (1969) 3 S.C.C. 84; (3) (1982) 3 S.C.C. 235; (4) (1983) 1 S.C.C. 525; (5) (2004) 1 S.C.C. 755—*Referred to*.

List of Acts:

- (1) Payment of Gratuity Act, 1972.
- (2) Minimum Wages Act, 1948.

List of Keywords:

Computation of gratuity, Wages last drawn, "Paid or payable", Interpretation.

Case Arising From:

Writ Petition Filed Under Article-226 of the Constitution of India.

Appearance of Parties:

Sri. C. Anil Kumar, Smt. A. K. Preetha, Sri. K. Jolly John and Smt. Devika Mohan. .
for petitioner.

Sri. Ashok M. Cherian, Additional Advocate General, Smt. Sabeena P. Ismail,
Government Pleader, Sri. B. Ashok Shenoy, Sri. P. S. Gireesh, Sri. Salih P.A., Sri.
Arjun R. Naik, Smt. Thejalakshmi R.S., Sri. Umasanker U.U. and Sri. Aditya A. Shenoy
. . for respondents

JUDGMENT

This writ petition has been filed challenging Ext.P3 order of the Controlling Authority under the provisions of the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Gratuity Act'), Ext.P6 order of the Appellate Authority confirming Ext.P3 order of the Controlling Authority, and Ext.P8 order of the Appellate Authority refusing to review Ext.P6 order.

2. Smt. A.K. Preetha, the learned counsel appearing for the petitioner submits that the only issue that requires to be considered by this Court is whether the Controlling Authority could have directed the payment of gratuity based on any other amount of wages when the wages actually drawn by the 3rd respondent, including allowances, were found and admitted by both sides to be 12,000/- (Rupees Twelve Thousand Only). It is submitted that the Controlling Authority had calculated the gratuity payable based on the minimum wage notification, and there is no enabling provision in the Gratuity Act for such assessment. It is submitted that a reading of Ext.P3 order of the Controlling Authority will indicate that, though there was absolutely no dispute that the last drawn wages of the 3rd respondent were 12,000/- (Rupees Twelve Thousand Only), including allowances, the Controlling Authority found without any basis that the 3rd respondent was actually entitled to a further sum of 2,160/- (Rupees Two Thousand One Hundred Sixty Only) as wages and directed payment of gratuity on that basis. It is submitted that this finding is not supported by any statutory provision.

3. Sri. B. Ashok Shenoy, the learned counsel appearing for the 3rd respondent, also fairly admits that the last drawn wages of the 3rd respondent were a sum of 12,000/- (Rupees Twelve Thousand Only) and that there was no dispute raised before the Controlling Authority regarding the wages paid to the 3rd respondent.

4. Sri. Ashok M. Cherian, Additional Advocate General, assisted by Smt. Sabeena P. Ismail, Government Pleader, submits that Section 2(s) of the Gratuity Act defines 'wages'. He submits that, though there is no express enabling provision making the Minimum Wages Act, 1948 applicable to the determination of gratuity payable under the Gratuity Act, it is nevertheless expedient to give effect to the legislative intent underlying the Minimum Wages Act while interpreting the Gratuity Act, to achieve a harmonious construction consistent with the constitutional safeguard enshrined under Article 23 of the Constitution of India. In other words, it is his submission that the authority under the Gratuity Act does not fix the minimum wage; it merely recognises the statutory wage payable as the basis for computation of gratuity. He argued that this does not amount to the exercise of powers under the Minimum Wages Act, but is intended to give effect to Section 2(s) of the Gratuity Act in consonance with Section 25 of the Minimum Wages Act and

Article 23 of the Constitution of India. He relied on the judgments of the Supreme Court in **U. Unichoyi v. State of Kerala**, 1961 S.C.C. OnLine SC 18, **Chandra Bhavan Boarding and Lodging, Bangalore v. State of Mysore**, (1969) 3 S.C.C. 84, **People's Union for Democratic Rights v. Union of India**, (1982) 3 S.C.C. 235 and **Sanjit Roy v. State of Rajasthan**, (1983) 1 S.C.C. 525 in support of his contentions and submitted that if an employer pays an employee wages below the notified minimum wage, the law itself substitutes the statutory minimum wage in place of the unlawful contractual wage. Hence, according to him, 'wages' under Section 2(s) of the Gratuity Act must be understood as the minimum wage payable under law when the actual payment falls short of the notified minimum wage.

5. Having heard the learned counsel appearing for the petitioner, the learned Additional Advocate General, and the learned counsel appearing for the 3rd respondent, I am of the view that there is considerable merit in the contention taken by the learned counsel for the petitioner that gratuity could have been calculated only based on actual wages drawn by the 3rd respondent, which was admitted to be a sum of 12,000/- (Rupees Twelve Thousand Only). Though the Controlling Authority does not appear to have specifically referred to the minimum wage notification to justify the direction to pay gratuity (taking the salary of the 3rd respondent to be 14,160/-), it is clear from a reading of Ext.P6 order of the Appellate Authority that the Appellate Authority took the view that the definition of 'wages' in the Gratuity Act indicates that wages include wages that '**are paid or are payable**' to an employee, and therefore, the provisions of the minimum wage notification read with the provisions of the Minimum Wages Act, can be read into the provisions of the Gratuity Act. Section 4(2) of the Gratuity Act reads thus:-

"For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days' wages for each season.

Explanation.—In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen."

Section 2(s) of the Gratuity Act defines wages in the following manner:

" "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash, and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages

and any other allowance.”

The submission of the learned Additional Advocate General, emphasising that the term ‘are paid or are payable’ is an incorporation of the concept of minimum wages into the Gratuity Act, is attractive. But on closer scrutiny, I must reject that contention, as there can be myriad situations that could be conceived of where gratuity should be calculated on wages ‘payable’ rather than on what was actually paid. One that readily comes to mind is the case of an employee who has been illegally terminated and is found entitled to all benefits, such as back wages, continuity in service, promotions, pay revisions, etc., after attaining the age of superannuation. In such a scenario, the gratuity would have to be calculated with reference to wages ‘payable’ and not last drawn wages. However, there is nothing in the definition of wages under Section 2(s) or Section 4(2) of the Gratuity Act which would indicate that even where it is admitted that the last drawn wages was a sum of 12,000/- (Rupees Twelve Thousand Only), gratuity could be calculated on an amount higher than the said amount, taking into consideration the provisions of the minimum wage notification read with the provision of the Minimum Wages Act. If that had been the intention of the legislature, the wording of Section 4(2) of the Gratuity Act would have been different. The Gratuity Act was enacted in 1972, while the Minimum Wages Act was enacted in the year 1948. If the legislature thought it necessary that the concept of minimum wages should be factored for calculating gratuity under the Gratuity Act, the same would have been specifically mentioned in Section 4(2) of the Gratuity Act or in the definition of ‘wages’ in Section 2(s) of the Gratuity Act. This Court cannot read into the provisions of the Gratuity Act words which are clearly not there and hold that the term ‘are paid or are payable’ in Section 2(s) of the Gratuity Act indicates a reference to the Minimum Wages Act.

6. In **U. Unichoyi** (*supra*), the Supreme Court elaborately explained the procedure for fixing minimum wages, as well as the statutory provisions governing employers who fail to comply with the minimum wage notifications issued by the respective State Governments, and the legal consequences that follow such noncompliance. In **Chandra Bhavan Boarding and Lodging, Bangalore** (*supra*), the Supreme Court referred to the decision of the Constitution Bench in **U. Unichoyi** (*supra*) and held that the State Governments are empowered under the Minimum Wages Act to fix minimum wages for employees in various industries, in accordance with the procedures enumerated therein. In **People’s Union for Democratic Rights** (*supra*), the Supreme Court held that payment of wages below the statutory minimum constitutes a violation of Article 23 of the Constitution of India and also observed that since no person would ordinarily agree to work for less than the minimum wage, such employment can be presumed to arise from compulsion whether physical, legal, or economic. Economic necessity caused by hunger, poverty, and the absence of alternative employment deprives a person of real freedom of choice and therefore amounts to “force.” Therefore, the Court held that a complaint regarding non-payment of minimum wages is, in essence, a complaint of violation of Article 23. **Sanjit Roy** (*supra*) emphasised the importance of fixing minimum wages for workers engaged in construction activities in famine, drought or scarcity-affected areas of Rajasthan and held that such workers cannot be exempted from the protection of minimum wages under any statute. The learned Additional Advocate General is right in contending that in all these judgments, the Hon’ble Supreme Court has upheld the constitutional safeguard of minimum wages for employees. While the principles laid down in the aforesaid judgments are

unexceptionable and are binding on this Court, I am afraid that they do not compel me to take a different view and I hold that the definition of wages under Section 2(s) of the Gratuity Act and the method of calculation of gratuity provided in sub-section (2) of Section 4 of the Gratuity Act do not authorise the calculation of gratuity on a basis other than the actual wages drawn by the employee.

7. There is yet another aspect of the matter. The calculation of gratuity with reference to the last drawn wages is only a method of calculation of gratuity payable under the Gratuity Act. In other words, gratuity could have been calculated on some other basis than the last drawn wages, and such a calculation would not have been illegal. It is because the Gratuity Act provides for the calculation of gratuity with reference to last drawn wages that the confusion arises. In **Ahmedabad (P) Primary Teachers' Assn. v. Administrative Officer**, (2004) 1 S.C.C. 755, the Supreme Court explained the concept of gratuity in the following words:-

6. The Act is a piece of social welfare legislation and deals with the payment of gratuity which is a kind of retiral benefit like pension, provident fund etc. As has been explained in the concurring opinion of one of the learned Judges of the High Court "gratuity in its etymological sense is a gift, especially for services rendered, or return for favours received". It has now been universally recognized that all persons in society need protection against loss of income due to unemployment arising out of incapacity to work due to invalidity, old age etc. For the wage-earning population, security of income, when the worker becomes old or infirm, is of consequential importance. The provisions contained in the Act are in the nature of social-security measures like employment insurance, provident fund and pension. The Act accepts, in principle, compulsory payment of gratuity as a social-security measure to wage-earning population in industries, factories and establishments.

7. Thus, the main purpose and concept of gratuity is to help the workman after retirement, whether retirement is a result of rules of superannuation or physical disablement or impairment of vital part of the body. The expression "gratuity" itself suggests that it is a gratuitous payment given to an employee on discharge, superannuation or death. Gratuity is an amount paid unconnected with any consideration and not resting upon it, and has to be considered as something given freely, voluntarily or without recompense. It is a sort of financial assistance to tide over post-retiral hardships and inconveniences."

Viewed in this manner, and when gratuity could have been calculated on some other basis than the last drawn wages, there is nothing to suggest that the gratuity had to be calculated with reference to the notification issued under the Minimum Wages Act.

In light of the above findings, this writ petition is allowed, and Exts. P3, P6, and P8 orders will stand set aside to the extent that they require payment of gratuity, taking the salary of the 3rd respondent to be a sum of 14,160/- (Rupees Fourteen Thousand One Hundred Sixty Only). It is held that gratuity will be payable to the 3rd respondent after calculating his entitlement based on the wages actually drawn by him, which is 12,000/- (Rupees Twelve Thousand Only) per month. The petitioner shall pay the gratuity payable to the 3rd respondent based on the wages actually drawn by him, if not already paid, within a

period of one month from the date of receipt of a certified copy of this judgment, failing which steps shall be taken to recover the said amount from the petitioner.

Result of the Case:

The Writ Petition was allowed.

Headnote prepared by A.A.A.
