



Sections 2(e), 2A(1), 4(1), and 14 of the Act are relevant for the purpose of adjudication of the dispute raised in this writ application. They so far as relevant read as follows:

"2. XX XX XX XX

(e) 'Employee' means any person (other than an apprentice) employed on wages not exceeding one thousand and six hundred rupees per mensem, in any establishment, factory, mine, oil field, 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.

Explanation - In the case of an employee who having been employed for a period of not less than five years, on wages not exceeding one thousand rupees per mensem is employed at any time thereafter on wages exceeding one thousand rupees per mensem, gratuity, in respect of the period during which such employee was employed on wages not exceeding one thousand rupees per mensem, shall be determined on the basis of the wages received by him during that period.

2A. For the purpose of this Act:-

(1) An employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order imposing punishment or penalty or treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act;

XX XX XX

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, or

(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 termination of the employment of any employee is due to death or disablement:

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."

Section 2(e) of the Act excludes an apprentice, but does not exclude a trainee. "Apprentices" and "trainees" stand on different footings and this is also accepted by the Corporation because they have put "apprentice" and "trainee" in Rule 4 separately.

4. Definition of the term 'employee' in Section 2(e) excludes an employee from its scope. The term 'apprentice' has been defined in Section 2(a) of the Apprentices Act, 1961 (in short, 'Apprentices Act') in the following words:

"'Apprentice' means a person who is undergoing apprenticeship training in a designated trade in pursuance of a contract of apprenticeship."

According to Stroud's Judicial Dictionary, "Apprentice" has been described as follows, (with reference to *Clapham v. St. Pancras*, 29 L.J.M.C. 143, per Cockburn C.J.) "In legal acceptance, an apprentice is a person bound to another for the purpose of learning his trade or calling: the contract being of that nature that the master teaches and the other serves the master with the intention of learning".

A trainee employed under a contract of employment is not an apprentice, under the Apprentices Act, unless he is undergoing apprenticeship training in a designated trade in pursuance of a contract of apprenticeship. trainee outside the Apprentices Act is to be distinguished from an apprentice undergoing training in a designated trade in pursuance of a contract of apprenticeship. The former is covered by the definition of the term "employee" while the latter is excluded from the definition. The heart of the matter in apprenticeship is, therefore, the dominant object and intent to impart on the part of the employer and to accept on the part of the person learning under certain agreed terms. (See *Employees' State Insurance Corporation and Anr. v. The Tata Engineering & Locomotive Co. Ltd.*, and Anr. (1976-I-LLJ-81).

5. Section 14 of the Act provides that the provisions of the Act or any rule made thereunder shall have effect, notwithstanding anything inconsistent therewith contained in any enactment other than the Act. Therefore, any inconsistency with the Act has to give way to the provisions specifically made in the Act.

Notwithstanding the prescription in the Corporation Rules, an employee putting in five years continuous service as provided in Section 4(1) would be entitled to the benefits under the Act. It is accepted by learned counsel for Corporation that the employee has rendered more than five years continuous service. Since Rule 4(d) is inconsistent with the Act same has to be altered. Similar direction was given to *Som Prakash Rekhi v. Union of India* and Anr. (1981-I-LLJ-79). The learned

counsel for the Corporation states that necessary alteration shall be made within a month from today. The claimant-employee is entitled to gratuity in view of the analysis made above. Let the payment be made to him within six weeks from today.

The writ application is accordingly disposed of. No cost.

S.K. Mohanty, J.

I agree.