THE HIGH COURT OF KARNATAKA AT BENGALURU

R

DATED THIS THE 01ST DAY OF AUGUST, 2019

PRESENT

THE HON'BLE MRS.JUSTICE B.V. NAGARATHNA

THE HON'BLE MR.JUSTICE K.N.PHANEENDRA

AND

THE HON'BLE MR.JUSTICE B.A.PATIL

WRIT APPEAL No.1756 OF 2015 [L-PG]

BETWEEN:

SHRI MOOKAMBIKA TEMPLE, KOLLUR,
KUNDAPURA, UDUPI DISTRICT,
REPRESENTED BY ITS EXECUTIVE OFFICER,
SRI L.S. MARUTHI,
AGED ABOUT 59 YEARS,
S/O. N. SURYANARAYANA RAO,
SHRI MOOKAMBIKA TEMPLE,
KOLLUR, KUNDAPURA – 576 220.

... APPELLANT

(BY SRI ANANDARAMA K., ADVOCATE)

AND:

1. MR. RAVIRAJA SHETTY,
AGED ABOUT 72 YEARS,
S/O. LATE SANJEEVA SHETTY,
YEDADI MATHYADI,
KUNDAPURA TALUK,
UDUPI DISTRICT – 576 227.

2. THE DEPUTY CHIEF LABOUR COMMISSIONER,
AND APPELLATE AUTHORITY UNDER
PAYMENT OF GRATUITY ACT,
HASSAN REGION,
HASSAN – 573 116.

3. THE ASSISTANT LABOUR COMMISSIONER
AND CONTROLLING AUTHORITY UNDER
PAYMENT OF GRATUITY ACT,
MANGALORE DIVISION,
MANGALORE – 575 001.

... RESPONDENTS

(BY SRI T. MOHANDAS SHETTY, ADVOCATE FOR R-1;
SRI S.S. MAHENDRA, AGA FOR R-2 AND R-3)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION NO.54267 OF 2013 DATED 18.02.2014.

THIS WRIT APPEAL HAVING BEEN RESERVED ON 04/04/2019 AND BEING LISTED FOR *PRONOUNCEMENT OF JUDGMENT,* TODAY, ***NAGARATHNA J.,*** PRONOUNCED THE FOLLOWING:

J U D G M E N T

This Full Bench has been constituted by Hon'ble the Chief Justice pursuant to an order of reference dated 20th July 2018 made by a Division Bench headed by Hon'ble the Chief Justice to consider and determine the following questions:

(i) "As to whether the appellant, being a 'temple' as defined in clause (27) of Section 2 of the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997, answers to the description of 'commercial establishment' within the meaning of clause (e) of

Section 2 of the Karnataka Shops and Commercial Establishments Act, 1961 and thereby, is an 'establishment' within the meaning of the said Act of 1961; and hence, the Payment of Gratuity Act, 1972 is in applicable to it by virtue of clause (b) of sub-section (3) of Section 1 thereof?

(ii) As to whether the law declared by the Division Bench of this Court in the case of *Management of Venkataramana Swamy Temple* (*supra*), that a clerk in a temple is entitled to claim the benefit of gratuity on attaining the age of superannuation under the Payment of Gratuity Act, 1972, stands in conformity with the provisions of law applicable in the State of Karnataka?"

2. The aforesaid questions follow an order of reference made on the aforesaid date. The order of reference is extracted as under:

"1. Delay of 445 days in filing this appeal has not been opposed, and rightly so, by the learned counsel for the respondents. Having examined the record, we are satisfied that delay in filing the appeal has not been

intentional and has been for bona fide reasons and in the overall circumstances, it is appropriate to examine the matter on merits.

2. Accordingly, delay of 445 days in filing the appeal is condoned. I.A. No.1 of 2015 stands disposed of.

3. This intra-court appeal is directed against the order dated 18.02.2014 passed in W.P. No.54267 of 2013 (L-PG), whereby a learned Single Judge of this Court has rejected the writ petition filed by the present appellant against the order dated 26.04.2012 passed by the Deputy Chief Labour Commissioner and Appellate Authority under the Payment of Gratuity Act.

4. The relevant background aspects of the matter are as follows: The appellant is said to be a temple at Kollur, governed by the provisions of the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997, ('the Act of 1997'). The respondent no.1 herein had been an employee of the appellant temple since 31.07.1972. He was relieved from duties, allegedly on attaining the age of superannuation on 29.11.2005. This order was challenged by the respondent No.1 in W.P. No.27385 of 2005 wherein an

interim order was granted in his favour on 20.01.2006. However, the said writ petition was ultimately disposed of on 04.01.2008 with liberty to the respondent No.1 to seek the relief at the appropriate stage, if the age of superannuation was held to be 65 years in other pending litigation; and if he could establish having not attained the age of 65 years as on the date of relieving. Thereafter, the respondent No.1 was finally relieved from duties with effect from 31.12.2008.

5. The respondent No.1, later on, approached the Assistant Commissioner and Controlling Authority under the Payment of Gratuity Act, claiming gratuity under the Payment of Gratuity Act, 1972, ('the Act of 1972'). Such a claim of the respondent No.1 was resisted, essentially on the ground that the provisions of the Act of 1972 were not applicable to the appellant temple, who is governed by the Act of 1997 and the Rules framed thereunder. The said Controlling Authority, by its order dated 30.03.2011, accepted the claim of the respondent No.1 and directed the appellant to pay him a sum of Rs.2,91,351/- towards gratuity together with interest at the rate of 10% p.a.

6. Being aggrieved by the aforesaid order dated 30.03.2011, the appellant preferred an appeal before the Deputy Chief Labour Commissioner and Appellate Authority under the Payment of Gratuity Act, Hassan, being Appeal No.08/2011-12, while depositing the principal sum of Rs.2,91,351/-. After having heard the parties, the Appellate Authority, by its order dated 26.04.2012, dismissed the appeal and thereby, confirmed the order dated 30.03.2011 passed by the Controlling Authority.

7. Aggrieved by the order so passed by the Appellate Authority, the appellant preferred a writ petition in this Court (W.P. No.54267 of 2013) which has been considered and rejected by a learned Single Judge at the threshold, holding that the issue as to whether the petitioner temple would fall within the meaning of the term 'establishment' under the Act of 1972 was 'no more *res intergra'* in view of the decision of a learned Single Judge in the case of *Management of Venkataramana Swamy Temple and Sri Hale Mariyamma Temple, Kapu, Udupi District v. Deputy Labour Commissioner* and Appellate Authority under the Payment of Gratuity Act, Hassan, as

approved by the Division Bench in W.A. No.1375 of 2007 decided on 10.07.2012.

8. Learned counsel for the appellant has strenuously argued that the decisions relied upon by the learned Single Judge essentially proceed on the basis of a decision of the Orissa High Court in the case of *Administrator, Shree Jagannath Temple, Puri v. Jagannath Padhi & others: 1992 (65) FLR 946,* but the said decision was rendered in a different fact situation and therein, interpretation of the term 'establishment' was under a different enactment. It is submitted that no such ratio is discernible in the said decision of the Orissa High Court that every temple is an 'establishment' for the purpose of the Act of 1972; and in any case, the said decision cannot be considered binding on this Court. The learned counsel would submit that the question as to whether a 'temple', as defined in the Act of 1997 in the State of Karnataka, would be an establishment within the meaning of the Karnataka Shops and Commercial Establishments Act, 1961 ('the Act of 1961'), has not been gone into by the Courts and the provisions of the Act of 1997 and Rules thereunder have not been considered.

9. Learned counsel has also referred to a decision of the Kerala High Court in the case of *Narayanan Namboodiri v. Cochin Devaswom Board & Another: (1979) II LLJ 446* holding that the Act of 1972 is not applicable to the employees of Cochin Devaswom Board; and a decision of the Madras High Court in the case of *Arulmigu Dhandayuthapaniswamy v. The Appellate Authority: W.P. No. 17569/2000* decided on 13.03.2003 wherein it is held, with reference to Article 254(2) of the Constitution of India, that the provisions of the Act of 1972 shall have no application to the employees who are employed in temples governed by the concerned Endowments Act. Learned counsel has further relied upon a decision in the case of P.Rajan Sandhi v. Union of India & Another : (2010) 10 SCC 338 and a Division Bench decision of this Court in the case of *The Management of Indian Express (Madurai) Private Limited v. J.M. Jeswant & others: 2001 (I) LLJ 1526,* wherein it is held that the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1956, being a special law, would well prevail over the Payment of Gratuity Act, 1972.

10. Having given thoughtful consideration to the submissions made, we are *prima facie* satisfied that arguable questions of law do arise in this appeal; and the decision of the Division Bench of this Court in the case of *Management of Venkataramana Swamy Temple* (supra) cannot be said to be free from doubt.

11. In the aforesaid view of the matter, we are inclined to admit this appeal, but at the same time, deem it appropriate to propose a reference to a Larger Bench to consider the questions arising in this matter as also the correctness of the decision of Division Bench of this Court in the aforesaid case of *Management of Venkataramana Swamy Temple,* for the reasons indicated infra.

12. The applicability of Payment of Gratuity Act of 1972 is specified in sub-section (3) of Section 1 thereof. Section 1 of the Act of 1972 reads as under:

> ***"1. Short title, extent, application and commencement:***
>
> *(1) This Act may be called the Payment of Gratuity Act, 1972.*
>
> *(2) It extends to the whole of India:*

Provided that insofar as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir.

(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, 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."

13. The appellant is admittedly a temple and, therefore, is not covered under clause (a) of sub-section (3) of Section 1 *ibid*. for being not a factory, or a mine, or an oil field, or a plantation, or a port or a railway company. Admittedly, it is not an establishment covered by any notification in that behalf. Thus, the appellant is not covered under clause (c) of sub-section (3) of Section 1 either. Then, the question remains, if the appellant temple is

covered under clause (b) of sub-section (3) of Section 1 of the Act of 1972.

14. For the purposes of applicability of clause (b) of sub-section (3) of Section 1, the appellant has to be a 'shop' or an 'establishment' within the meaning of any law which is in force in the State of Karnataka in relation to the shops and commercial establishments.

15. As regards shops and commercial establishments, the law in force in the State of Karnataka is the Karnataka Shops and Commercial Establishments Act, 1961. The definition of 'establishment' in clause (i) of Section 2 of the Act of 1961 is as under:

> *"(i) '**Establishment'** means a shop or a commercial establishment"*

16. Indisputably, the appellant is not a shop. Then, the question is if the appellant could be a 'commercial establishment' within the meaning of the Act of 1961? In clause (e) of Section 2 of the Act of 1961, a 'commercial establishment' is defined as under:

> *"(e) '**commercial establishment'** means a commercial or trading or banking or insurance establishment, an establishment or administrative service in which persons employed*

are mainly engaged in office work, a hotel restaurant, boarding or eating house, a café or any other refreshment house, a theatre or any other place of public amusement or entertainment and includes such establishments as the State Government may by notification declare to be a commercial establishment for the purposes of this Act."

17. It is not the case of the respondent that the appellant temple has been declared by the State Government to be a commercial establishment for the purpose of the Act of 1961. As noticed, the concept of a 'commercial establishment' under the Act of 1961 is essentially of a commercial or trading establishment. However, this concept as per clause (e) of Section 2 of the Act of 1961 also includes a shop or administrative service in which the persons employed are mainly engaged in office work, as also a hotel, a restaurant, a boarding or eating house, a café, or any other refreshment house, a theatre, or any other place of public amusement or entertainment.

18. It remains seriously questionable if the aforesaid concept of 'commercial establishment' under the Act of 1961 would take within its sweep and ambit a temple like the appellant too. A 'temple' has been

defined under clause (27) of Section 2 of the Act of 1997 as under:

> *"'Temple' means a place by whatever name called, used as a place of public religious worship having separate existence and dedicated to or for the benefit of or used as of right by the Hindu Community or any section thereof as a place of public religious worship and includes a Mandira, Samadhi, Brindavana, Gadduge, Shrine, Utsav Mantapa, Tank, Paduka Peetha, Daivasthana, Gudi, Garodi or other necessary appurtenances, structures and land."*

19. As noticed in the present case, the learned Single Judge has rejected the writ petition at the threshold while observing that the question as to whether the appellant was covered under the Act of 1972 was 'no more *res integra'* in view of the Division Bench decision of this Court. Obviously, the learned Single Judge was bound by the decision of the Division Bench of this Court. However, a perusal of the said decision in W.A. No.1375/2007 shows that the Division Bench of this Court proceeded on the assumption that the question was 'no more *res integra'* in view of the Division Bench decision of the High Court of Orissa in the case of *Administrator, Shree Jagannath Temple, Puri (supra)*. The entire of the aforesaid

judgment dated 10.07.2012 of the Division Bench of this Court reads as under:

> *"The short question that arises for the consideration of this court in this appeal is:*
>
> *"Whether a retired clerk in a temple is entitled to claim benefit of gratuity on attaining the age of superannuation under the Payment of Gratuity Act, 1972?"*
>
> *2. R-3 was an employee of the appellant- temple. There are two temples known as Venkataramana Temple and Hale Mariyamma Temple situated at Kapu in Udupi Taluk managed by Gowda Saraswatha Brahmin community. R-3 having served the temple as a Manager for several years, tendered resignation on 4.9.1994. Resignation of R-3 was accepted by the appellant. Later he raised a dispute before the Labour Court and during the pendency of the case he filed an application claiming gratuity. Asst. Labour Commissioner and Controlling Authority under the Payment of Gratuity Act, 1972 directed the appellant to pay the gratuity payable to R-3. Aggrieved by the same, the appellant filed an appeal before R-1 which appeal came to be rejected, challenging the concurrent findings writ petition was filed which was also ended in dismissal. Aggrieved by the concurrent findings, present appeal is filed.*
>
> *3. The main contention of the counsel for the appellant that a Hindu Temple cannot be considered as an*

establishment in order to grant gratuity payable under the provisions of the Payment of Gratuity Act, 1972. According to them, it is a place of worship and it is neither a commercial nor non-commercial establishment as no trade or business is done by the appellant. Therefore, he contends that the learned Single Judge has committed an error in not holding that the definition of temple does not come under the purview of establishment, therefore he requests the court to dismiss the claim of R-3 by allowing the appeal. But we are unable to accept the arguments of the counsel appearing for the appellant because the question in this appeal is no more res integra in view of the Division Bench judgment of Orissa High Court in the matter of ADMINISTRATOR SHREE JAGANNATH TEMPLE, PURI. Vs. JAGGANATH PADHI & OTHERS (1992) [65] FLR 946) wherein their Lordships have ruled that whole temple would come under the purview of the establishment, therefore it was held that the clerk or a manager who was working in a temple is entitled for payment of gratuity. In view of the same, we do not see any merits in this appeal.

4. Accordingly, the appeal is dismissed."

20. With great respect, we are unable to find any reasoning and any basis in the aforesaid decision of the Division Bench of this Court except that the Division Bench judgment of the High Court of Orissa is followed as if of binding precedent.

21. In the case of Administrator, Shree Jagannath Temple, Puri (*supra*), the submission had been that the Temple was a body corporate under Sri Jagannath Temple Act, 1954 and was not a Trust as held by the authorities and even otherwise, the said Act provided for payment of gratuity and the claimant had been paid his dues under the said Act, disentitling him from making further claim for benefit of gratuity under the Act of 1972. In the said decision, the Court referred to the observations of the authorities that the Industrial Disputes Act and the statute relating to Shops and Commercial Establishments include "Temple Trust" and, therefore, the temple would be included therein. However, it is difficult to find the inclusion of any Temple or the Temple Trust in the definition of 'commercial establishment' under the Act of 1961.

22. In *Narayanan Namboodiri* (*supra*), the question for consideration before the Kerala High Court was as to whether the Act of 1972 was applicable to the employees of Cochin Devaswom Board; and, with reference to the provisions of the enactments applicable in the State of Kerala, the Court observed that it had not been shown as to how the Devaswom

was a shop or a commercial establishment and hence, the claim of gratuity under the Act of 1972 was declined.

23. In *Arulmigu Dhandayuthapaniswamy* (*supra*), the Madras High Court held that the Act of 1972 will have no application to the employees employed in a temple governed by the provisions of the States Endowments Act, particularly with reference to clause (2) of Article 254 of the Constitution of India.

24. At this juncture, it does not appear necessary to dilate on all the decisions cited at the Bar. Suffice it to observe for the present purpose that it is not free from doubt if a temple, like the appellant, is an establishment within the meaning of the Karnataka Shops and Commercial Establishments Act, 1961 so that the Payment of Gratuity Act, 1972 may be applicable to it by virtue of clause (b) of sub-section (3) of Section 1 thereof. It is, therefore, difficult to accept that the matter stands concluded by the Division Bench decision of this Court, that itself does not remain free from doubt.

25. In view of the above, this appeal is admitted for hearing.

> 26. For what has been observed hereinabove, it is also considered appropriate to propose a reference to the Larger Bench of this Court, to consider the questions arising in this matter, including the question relating to the correctness of the aforesaid judgment dated 10.07.2012 of the Division Bench of this Court in the case of ***Management of Venkataramana Swamy Temple*** (supra).***"***

3. The aforesaid order of reference has been made in the Writ Appeal filed against the order dated 18/02/2014 passed in W.P. No.54267 of 2013 (L-PG) whereby the learned Single Judge of this Court rejected the writ petition filed by the present appellant (Shri.Mookambika Temple Kollur, Kundapura—"Temple" for short) against an order dated 26/04/2012 passed by the Deputy Chief Labour Commissioner and Appellate Authority under the Payment of Gratuity Act, 1972 ('the Act of 1972').

4. The facts have been succinctly stated in the order of reference extracted above. The controversy before this Full Bench revolves around the

right of the first respondent to claim gratuity under the provisions of the Act of 1972.

5. It is not in dispute that the first respondent was an employee of the appellant-Temple and retired on attaining the age of superannuation on 29/11/2005. The appellant-Temple is governed under the provisions of the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 ('the Act of 1997').

6. We have heard Sri.K.Anandarama, learned counsel for the appellant, Sri.T.Mohandas Shetty, learned counsel for respondent No.1 and Sri.S.S.Mahendra, learned Additional Government Advocate for respondent Nos.2 and 3 at length and perused the material on record.

Legal Framework:

7. Prior to adverting to the submissions made by the respective counsel, it would be useful to refer

to the relevant provisions of law under the respective Acts.

Act of 1972:

8. As already noted, the question herein is, as to, whether, respondent No.1 is entitled to payment under the provisions of the Act of 1972. The said Act is a parliamentary legislation enacted to provide for a scheme for the payment of gratuity to an employee who comes under the factories, mines, oil fields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto. Section 1(3) of the Act of 1972 reads as under:

> "**1. Short title, extent, application and commencement**.
>
> x x x x
>
> (1) xxx
>
> (2) xxx
>
> (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, 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."

9. Section 1(3)(b) of the aforesaid Act states that the Act applies to every shop or establishment within the meaning of any law for time being in force in relation to shops and establishments in a State, in which, ten or more persons are employed or were employed, on any day of the preceding twelve months.

Act of 1961:

10. The expression "shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a

State" in Section 1(3)(b) of the Act of 1972 would draw our attention to the Karnataka Shops and Commercial Establishments Act, 1961 ('the Act of 1961' for the sake of brevity). The said Act provides for the regulation of conditions of work and employment in shops and commercial establishments and other incidental matters. Section 2 is the definition clause which defines a commercial establishment, establishment and shop under clauses (e), (i) and (u) as under:

> **"2. Definitions.–**In this Act, unless the context otherwise, requires.–
>
> x x x
>
> 2(e) "**Commercial establishment**" means a commercial or trading or banking or insurance establishment, an establishment or administrative service in which persons employed are mainly engaged in office work, a hotel, restaurant, boarding or eating house, a café or any other refreshment house, a theatre or any other place of public amusement or entertainment and includes such establishments as the

State Government may by notification declare to be a commercial establishment for the purposes of this Act;"

x x x

"2(i) "**Establishment**" means a shop or a commercial establishment:"

x x x

2(u) **"shop"** means any premises where any trade or business is carried on or where services are rendered to customers, and includes offices, storerooms, godowns, or warehouses, whether in the same premises or otherwise, used in connection with such trade or business, but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop fall within the scope of the Factories Act, 1948;"

Act of 1997:

11. Since the appellant is a Temple governed under the Act of 1997, it would be useful to refer to the said Act also. The Act of 1997 was enacted by the

Karnataka Legislature to make better provisions for the management and administration of the Hindu religious institutions and charitable endowments in the State of Karnataka. The said Act received the assent of the President on 25th October 2001.

12. Section 2 of the Act of 1997 is the definition clause. The relevant definitions are extracted as under:

> **"2. Definitions.–**In this Act, unless the context otherwise requires–
>
> x x x
>
> **2(17)-** "**Religious Institution**" means a temple or an endowment and includes a brindavana, Samadhi, peetha, paduka or any other institution established or maintained for a religious purpose.
>
> x x x
>
> **2(23)-** **"Religious Endowment" or** "**Endowment**" means all property belonging to or given or endowed for the support of a Hindu religious institution or given or endowed for the performance of any service or charity

of a public nature connected therewith or of any other religious charity, and includes the institution concerned and also the premises thereof but does not include gifts of property made as personal gifts to the archaka, service-holder or other employee of a Hindu religious institution.

2(24)- "**Religious purpose**"- includes:-

(a) worship of deities or worship in temples, mandiras, shrines, samadhis, brindavanas, gaddiges or similar places;

(b) installing shrines, samadhis, brindavanas, gaddiges or similar places;

(c) fostering spiritual fraternity;

(d) imparting spiritual, moral and religious education and teaching of philosophy;

(e) observance of religious festivals;

(f) any other public religious purpose;

x x x

2(27)- **"Temple**:" means a place by whatever name called, used as a

> place of public religious worship having separate existence and dedicated to or for the benefit of or used as of right by the Hindu Community or any section thereof as a place of public religious worship and includes a Mandira, Samadhi, Brindavana, Gadduge, Shrine, Sub-shrine, Utsav Mantapa, tank, Paduka-peetha, Daivasthana, Gudi, Garodi or other necessary appurtenances, structures and land."

13. Section 9 of the Act of 1997 deals with the appointment of *Archakas* and Temple Servants. Section 10 and 10A prescribe qualifications and disqualification of *Archakas*, while Section 11 speaks about *Archakas* to be on the Committee of Management. The emoluments and service conditions of *Archakas* are prescribed in Section 12. The same reads as under:

> "**12. Emoluments and Service Conditions of Archakas.-** (1) The State Government may by rules regulate the emoluments, hours of work and other

conditions of service of the archakas. Such rules may provide for appointment and termination of employment, leave and working hours, rotation of work, terminal benefits, misconduct and disciplinary action.

(2) The emoluments and other monitory benefits payable to archakas shall be prescribed taking into account the income of the temple and for this purpose the State Government may classify the temples into two or more categories based on their resources.

(3) In determining the emoluments payable to archakas in all category of temples, the State Government shall take into account:

(i) entitlement of the Archakas to appropriate the thattekasu and other offerings by the devotees at the time of pooja or other seva;

(ii) Any amount receivable by the archaka as a percentage of the fees fixed by the committee of management for the various sevas offered at the temples.

(iii) Avocation other than the temple service which the archakas may be free to undertake during the term of employment.

(iv) Timing if any specified by the committee of management or the State Government, to keep the temple open to public for performing poojas or other sevas, in a day.

(v) Accommodation and other benefits in kind offered by the committee of management for the residence and livelihood of the archakas.

(4) The emoluments so determined shall be not less than the minimum rate and not more than the maximum rate as may be prescribed in the rules in keeping with the class of the temple.

Explanation: For the purpose of this section the word 'Archaka' shall include an Agamika, a Tanthri or a Pradhana Archaka wherever appointed."

The Register of temple servants to be maintained in each temple is as per the details prescribed in Section 13, while Section 14 speaks of

the pattern of temple servants to be determined by rules; the salary and service conditions of temple servants are dealt with in Section 15; the misconduct and penalty to be imposed on temple servants and other persons is dealt with in Section 16 of the Act.

Sections 13, 14, 15 and 16 of the Act of 1997 are extracted as under for immediate purpose:

> **"13. Register of temple servants**-As soon as may be after the commencement of this Act, the Commissioner shall cause to be maintained in each temple a register of temple servants, which shall contain the name, parentage, date of birth, date of joining service, qualification and experience, address and such other particulars as may be prescribed in respect of such temple servants.
>
> **14. Pattern of temple servants to be determined by rules**. – the State Government may in consultation with the Committee of Management make rules prescribing a pattern of temple servants for any class of temples, so

however that the existing strength in any temple, immediately before the commencement of this Act, is not altered except by way of superannuation or dismissal for misconduct.

15. Salary and service conditions of temple servants-

(1) The salary and service conditions of temple servants shall be as prescribed by the State Government . Such rules may provide for appointment and termination of employment, pay or other terminal benefits, leave and working hours, misconduct and disciplinary action.

(2) For the purpose of determining salaries payable to the temple servants the State Government shall follow the same classification of temples as under sub-section (2) of Section 12.

(3) Provisions of sub-section (3) of Section 12 shall apply mutatis mutandis for determining the salaries payable to temple servants.

> **16. Misconduct and Penalty.-** (1) The Committee of management shall be competent to initiate action and hold enquiry for misconduct, either suo-moto or on complaint received against an archaka, including an Agamika, Tanthri or Pradhana Archaka and against the temple servants and to impose appropriate penalty for proven misconduct. No order imposing any penalty under this section shall be made except after giving such person a reasonable opportunity of being heard against the charge. (2) An appeal shall lie to the Commissioner against every order imposing penalty under this section. Such appeal shall be made within thirty days from the date of the order imposing the penalty.**"**

14. Rule – 5 of the Karnataka Hindu Religious Institutions and Charitable Endowments Rules, 2002 (hereinafter referred to as "the Rules of 2002") *inter alia*, deals with classification of temple servants. Rule 5 reads as under:

"**5- Classification of Temple servants-** (1) Temple servants are classified into two categories, namely.-

(a) indoor temple servants;

(b) outdoor temple servants.

(2) The Archaka, Agamika, paricharaks, upadivantha, paachaka, sthanika, joisa, sripada, srigandha, kattige and sevakaries and also the persons appointed for recitation of Mantras, Vedas, Prabhandas, Puranas and Jyothishyas whose duties are mainly for the performance of rendering assistance in the performance of pooja and rituals shall be indoor temple servants.

(3) The parupathegar, peshkar, bill collector, clerk, typist and other persons employed to perform various duties in the temple excluding the Government Servants deputed from the State Government shall be outdoor temple servants."

Rule 6 of the Rules of 2002 deals with the age limit for appointment and retirement of *Archakas* and indoor temple servants, while the emoluments of

Archakas and temple servants is dealt with in Rule 8. Rule 11 deals with salary and service conditions of temple servants. The same read as under:

> **"6- Age limit for appointment and retirement of Archakas and Indoor Temple Servants-**
>
> (1) "Every candidate for appointment as an Archaka or indoor temple servant must have attained the age of eighteen years but has not attained the age of forty years, except in the case of hereditary Archakas:
>
> Provided that if no eligible candidate is available for any particular category of post the Commissioner may relax upper age limit in favour of any person for being appointed as indoor temple servant.
>
> (2) Retirement age of Archakas and indoor temple servants shall be sixty-five years."
>
> x x x
>
> **8- Emoluments of Archakas and Temple Servants-**
>
> (1) for the purpose of salary and emoluments of the Archaks and temple

servants, classifications of the notified institutions under sub-rule (1) of Rule 3 shall mutatis mutandis is applicable.

(2)(i) The salary and emoluments of the full time Archaks and temple servants working in the notified institutions may be fixed in the following rates; namely.-

Designation of the post		Scale of pay		
		Institutions		Expansion of pay scale
		Category I	Category II	
1.	Parupathedata/Peshkar/Manager/Bill Collector/Receptionist/ Shanbhog/Clerk/Typist, etc.	6050-13000	5500-12200	6050-150-6650-175-7350-200-8350-250-9600-300-10800-350-12200-400-13000
2.	Pradhan Archak			The emoluments may be determined by the Management Committee of the Notified Institution/declared institution subject to the approval of the prescribed authority considering the tatte kasu and seva rusum (commission) received by the Archaka.
3.	Archak			
4.	Assistant Archak			
5.	Driver/Electricians/Plumber	5500-12200		5500-125-5750-150-6650-175-7350-200-8350-250-9600-300-10800-350-12200
6.	Full time Agamic/Tantri	5500-12200	5000-10200	
7.	Upadhivantha/Tantri/Mantra Pushpa/Veda parayana/Prabandha Jyothishya Havana	4050-8850	3600-7750	5000-125-5750-150-6650-175-7350-200-8350-250-9600-300-10200
8.	Upadhivantha (non-vaidic) Paricharaka, Pachaka, Sthanika, Sripada, Joisa, Srigandha, Kattige, Sevakare	4050-8850	3600-7750	4050-75-4200-100-5000-725-5750-150-6650-175-7350-200-8350-250-8850

9.	Attendant/watchman/Peon/Roomboy	4050-8850	3600-7750	3600-75-4200-100-5000-125-5000-125-5750-150-6050
10.	Sweeper/Scavenger/ Gardener/Dobhi/Deevatige/Bhjajantri	3600-7750	3000-6050	3000-50-3600-75-4200-100-5000-125-5750-150-6050

(ii) The pay of full time temple servants who are drawing consolidated salary shall be fixed in the respective pay scales after the commencement of the Karnataka Hindu Religious Institutions and Charitable Endowments (Amendment) Rules, 2012:

Provided, while sanctioning the above pay scales the proviso under sub-section (2) of Section 36 shall be kept in mind that, the salaries of Archaks and temple servants shall not exceed 35% of the gross income of the institution:

Provided further that the Archaks and temple servants may continue to draw the salary and emoluments they were drawing as on the date of commencement of these rules, if it is advantageous to them:

Provide further that the emoluments of the part time workers may be given

according their workload and the hours of work.

(3) The pay and emoluments of the Archaks and temple servants of Category 'C' institution may be paid in lump sum depending on the income of the temple. The pay and emoluments may be increased upto 10% of the existing emoluments once in three years, subject to the condition that the salaries of the Archaks and temple servants shall not exceed 35% of gross income of the institution.

(4) The Committee of management as far as possible provide rent free accommodation to Archaks within the temple premises or near by the temple.

x x x

11. Salary and service conditions of temple servants –

(1) The minimum age for appointment of an outdoor temple servant shall be eighteen years and the maximum age limit shall be thirty-five years.

(2) Retirement age of an outdoor temple savant shall be sixty-five years.

(3) Minimum qualification for the posts of temple servants specified in column (2) of the Table below shall be as specified n column (3) thereof.-

Sl. No.	**Name of the post of temple servant**	**Qualification**
(1)	(2)	(3)
(1)	Tantries and Agamika	Pass in Praveen Exam in the concerned Agama from any recognized Sanskrit Patashala.
(2) (i)	Upadivantha (Vaidhika) (Manthra, Veda, Prabhanda, Purana, Jyothishya, Havana)	Pass in Veda Pravesha exam from any recognized Sanskrit Patashala.
(ii)	Upadivantha (Non-Vaidhika) (Paricharika, PAchaka, Sthanika, Joisha, Sripadama, Srigandha, Kattige, Sevakari)	Qualification not required
(3)	Parupathedar/Peshka/Manager/Bill Collector/ Receptionist/ Shanibog etc., Clerks/ Typist	Pass in S.S.L.C. or equivalent examination
(4)	Attendar/Watchmen/Peon/ Room Boy	Pass in 7th standard
(5)	Driver/Electrician/Plumber	(a) Pass in 7th Standard and hold a valid driving licence for Driver Pass in Diploma or equivalent examination in the concerned subject for Electrician and Plumber
* [(6)	Skilled employee like lecturers/teachers (where the institution running school or college)	Minimum qualification as prescribed by the Education Department]*
(7)	Sweeper/Scavenger/Gardener/Dhobi/Divatige/Bajantri etc.	Qualification not required

***Omitted by Notification No.RD 66Musev 2017, dated 24.12.18 wef.17.01.19.**

Rule 16 speaks of terminal benefits. The said rule is pertinent to the present controversy and it reads as under:

> **"16- Terminal benefits-**The Archakas and other temple servants of notified institutions are entitled for the following retirement benefits, namely.-
>
> (1) Fifteen days salary for every completed year of service, subject to a maximum of rupees fifty thousand where there is no provident fund or insurance fund benefit or both are extended by the notified institution and subject to a maximum of rupees thirty-five thousand where provident fund and insurance fund benefits are extended by the notified institution.
>
> Note: For the purposes of this sub-rule 'Salary' means only pay excluding allowance.
>
> (2) The minimum service for the retirement benefit under these rules shall be ten years.

(3) In case of death of archaks and temple servants after completion of three years but before the completion of ten years, rupees thirty thousand or the amount calculated s at sub-rule (1), whichever is more shall be paid as terminal benefit;

Provided that sufficient fund at the credit of the credit of the institution, are not available, the terminal benefits shall be paid from common pool fund. However, the terminal benefit paid out of the common pool fund shall not exceed rupees fifteen per cent of the fund collected during the years.

(4) Subject to the availability of funds at the disposal of the institution contributory provident fund may be extended to Archakas and temple servants under the provision of the Employees Provident Fund and Miscellaneous Provisions Act, 1952."

Submissions:

15. Learned counsel appearing for the appellant-Temple, Sri.Anandarama contended that the

appellant being a temple as defined under Section 2(27) of the Act of 1997 is not a commercial establishment within the meaning of Section 2(e) of the Act of 1961 (State Act). That the service conditions of the employees of a religious institution including a temple is covered under the Act of 1997 and hence, the said Act being a special enactment would apply to them. Hence, it cannot be read within the scope and ambit of Section 1(3) of the Act of 1972. He submitted that Section 1(3)(b) of the Act of 1972 states that the said Act is applicable to 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, in which ten or more persons are employed or were employed, on any day of the preceding twelve months. The Act of 1961 is the Act which is in force in the State of Karnataka which deals with shops and commercial establishments. That the expression establishment in Section 2(i) of the said Act means a shop or a commercial establishment. The phrase commercial

establishment has been defined in Section 2(e) to mean a commercial or trading or banking or insurance establishment, an establishment or administrative service in which persons employed are mainly engaged in office work, a hotel, restaurant, boarding or eating house, a café or any other refreshment house, a theatre or any other place of public amusement or entertainment and includes such establishments as the State Government may by notification declare to be a commercial establishment for the purpose of this Act. He contended that the expression establishment under the said Act can only mean a commercial establishment which has been specifically defined and hence any establishment which is not a commercial establishment does not come within the scope and ambit of Section 1(3)(b) of the Act of 1972. He submitted that the definition of commercial establishment, although is not a comprehensive definition, it is nevertheless an exhaustive one. The appellant is a Temple, which cannot be covered under the definition of commercial

establishment as the nature of activities in the Temple are totally distinct from the activities of a commercial establishment which are specified therein.

16. He further submitted that the expression commercial establishment can also include establishments, which the State Government may by notification declare to be commercial establishment for the purpose of the said Act. There has been no notification issued by the State Government to include a temple as a commercial establishment for the purpose of the Act of 1961. He therefore contended that a temple being a place of public religious worship is a religious institution within the meaning of Section 2(27) read with Section 2(17) of the Act of 1997. That in the absence of any notification being issued under the provisions of the Act of 1961, a temple cannot be construed to be a commercial establishment under the provisions of the Act of 1961.

17. He next contended that Section 1(3)(c) of the Act of 1972 states that any 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 could be notified by the Central Government. That if such notification is issued in respect of temples, then temples would be covered under the provisions of the Act of 1972. But the Central Government has not issued any notification under Section 1(3)(c) to cover a temple as an establishment for the purpose of the Act of 1972. In the circumstances, in the absence of any such notification issued by the Central Government, the employees of the appellant-Temple are not entitled to the payment of gratuity under the Act of 1972.

18. He further submitted that a Division Bench of this Court in the case of ***The Management of Sri Venkatramana Temple and Sri.Hale Mariyamma Temple, Kapu, Udupi District vs. The Deputy Labour Commissioner and the Appellate Authority under the Payment of Gratuity Act, 1972, Hassan Region, Hassan*** in Writ Appeal

No.1375 of 2007 disposed of on 10/07/2012 ***(Sri Venkatramana Temple)*** was not right in placing reliance on a decision of Orissa High Court in the case of ***Administrator, Shri Jagannath Temple, Puri and vs. Jagannath Padhi and Others, [1992 (65) FLR 946] (Sri Jagannath Temple)*** to hold that employees in the State of Karnataka who are employed in temples can claim benefit of gratuity on attaining the age of superannuation under the Act of 1972. Learned counsel for the appellant submitted that the Division Bench could not have placed reliance on the judgment of the Orissa High Court in the case of ***Shri Jagannath Temple***, as the said judgment turns on its own facts. But, in the State of Karnataka, the Act of 1961 (State Act) has to be considered for the purpose of discerning the meaning of the expression 'establishment'.

19. He submitted that the judgment in the case of ***Sri Venkatramana Temple*** may be set aside

and the questions raised in the order of reference be answered in favour of the appellant.

20. During the course of submissions, learned counsel for the appellant has cited other decisions which will be referred to during the course of this order.

21. *Per contra*, learned counsel for respondent No.1 contended that the learned Single Judge dismissed the writ petition filed by the appellant herein by placing reliance on the Division Bench judgment in the case of ***Sri Venkatramana Temple*** and therefore the order of reference may not arise in the instant case as the said judgment is correct and proper.

22. Learned AGA appearing for respondent Nos.2 and 3 - State drew our attention to the provisions of Sections 12 and 15 of the Act of 1997 which deal with emoluments and service conditions of *Archakas*, and salary and service conditions of the

temple servants and contended that the expression employee is defined under Section 2(e) of the Act of 1972.

23. By way of reply, learned counsel for the appellant reiterated his submissions and pointed to Rule 16 of the Rules of 2002 to contend that, the said Rule, being a part of a special legislation namely, under the Act of 1997 which deals with Hindu Religious institutions and charitable endowments in the State of Karnataka, the said special legislation would prevail over the Payment of Gratuity Act, 1972 (Act of 1972) which is a general legislation.

24. The detailed order of reference has raised two questions for consideration of this Bench which are extracted above in paragraph No.1 of this judgment.

25. To that, a third question, namely, whether the Act of 1997 and Rules of 2002, particularly Rule 16 dealing with terminal benefits of the *Archakas* and

other temple servants of notified institutions, would prevail over the provisions of the Act of 1972, is also raised by us.

26. It is not in dispute that the appellant-Temple is a Notified Institution under Section 2(23) of the Act of 1997. It is also not in dispute that the appellant is a temple coming within the scope and ambit of the definition of temple under Section 2(27) of the Act of 1997. A temple is a religious institution as per Section 2(17) of the said Act.

First Question:

27. The first question to be answered is, whether, the appellant temple is covered within the scope and ambit of Section 1(3) of the Act of 1972.

28. Section 1(3) of the Act of 1972 contains three parts. Part (a) deals with factory, mine, oil field, plantation, port and railway company, which is not relevant for the purpose of the case. Part (b) deals with shop or establishment within the meaning of any

law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed or were employed, on any day of the preceding twelve months. Part (c) deals with such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of preceding twelve months, as the Central Government may by notification, specify in this behalf.

29. The controversy in this case is whether the appellant-Temple falls under either Part (b) or Part (c) or Section 1(3) of the Act, as it obviously does not fall within Part (a).

30. At this stage itself, it may be stated that the Central Government has not notified a temple as an establishment or a class of establishment and neither has the appellant-Temple by itself been notified for the purpose of the applicability of Section 1(3)(c) of the Act of 1972. Hence, it may be categorically inferred that the temple does not fall

within the expression (such other establishments or class of establishments) which has been notified by the Central Government as per Part(c) of Section 1(3) of the Act of 1972. It is needless to observe that it is left to the discretion of the Central Government to notify any establishment or class of establishments under Section 1(3)(c) of the Act of 1972 for the purpose of extending the provisions of the Act to the employees of such a notified establishments. But, as of now, since the Central Government has neither notified either the appellant-Temple nor any temple as such, as an establishment under Section 1(3)(c) of the Act, the provisions of Section 1(3)(c) of the Act of 1972 also does not apply to the Temple in question.

31. The next aspect to be considered is as to whether the appellant-Temple comes within the scope of the expression "every shop or establishment within the meaning of any law for the time being in force in relation to shops or establishments in a State" in Part (b) of Section 1(3) of the Act of 1972.

This is the first question referred by the Division Bench.

32. In the State of Karnataka, the Karnataka Shops and Commercial Establishments Act, 1961 (the Act of 1961) (State Act) is the Act which applies to shops and establishments. The expression establishment means a shop or a commercial establishment as per Section 2(i) of the said Act. The definition of establishment is exhaustive and not inclusive, it means a shop or a commercial establishment. The expression shop is defined under Section 2(u) of the said Act to mean any premises where any trade or business is carried on or where services are rendered to customers, and includes offices, storerooms, godowns, or warehouses, whether in the same premises or otherwise, used in connection with such trade or business, but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop fall within the scope of the Factories Act, 1948. Having

regard to the aforesaid definition of shop, it is apparent that, it does not extend to a temple. In other words, a temple is not a shop.

33. But, the further question is whether a temple is an establishment under Section 2(i) of the Act of 1961? In other words, whether a temple comes within the definition of a commercial establishment has to be considered. The expression commercial establishment is also defined in Section 2(e) of the Act of 1961. It means a commercial or trading or banking or insurance establishment, an establishment or administrative service in which persons employed or mainly engaged in office work or a hotel, restaurant, boarding or eating house, a café or any other refreshment house, a theatre or any other place of public amusement or entertainment and includes such establishment as the State Government may by notification declare to be a commercial establishment for the purposes of this Act.

34. On a reading of the definition of commercial establishment, it is noted that the said definition is exhaustive insofar as what has been expressly mentioned to be a commercial establishment therein. But, the definition is also inclusive in as much as the State Government may by notification declare an establishment to be a commercial establishment for the purpose of the Act of 1961.

35. But, the State Government has till date not declared a temple in general and neither the appellant-Temple in particular as a commercial establishment for the purpose of the Act of 1961 under Section 2(e) thereof. Hence, a temple is excluded from the definition of commercial establishment, as it is not notified by the State Government and hence, is not included within the latter portion of the definition as of now.

36. Then the question is, whether, it comes within the ambit of what is meant to be a commercial

establishment in the former portion of the definition. The former portion of the definition of commercial establishment speaks of, (i) a commercial or trading or banking or insurance establishment; (ii) an establishment or administrative service in which persons employed are mainly engaged in office work or a hotel, restaurant, boarding or eating house, a café or any other refreshment house; (iii) a theatre or any other place of public amusement or entertainment. Having regard to the categories expressly mentioned above, in our view, the appellant-Temple does not fall within any of the aforesaid categories of commercial establishment. Therefore, the appellant-Temple and temples in general are not commercial establishments under Section 2(e) of the Act of 1961 and therefore, it does not come within the ambit of the expression establishment under Section 2(i) of the Act of 1961.

37. In this context, we approve the judgment of *Venkataramaiah J.,* as he then was in this Court, in

the case of ***National Institute of Engineering (Society) vs. Labour Inspector, Mysore Circle*** reported in ***[(1975) 1 Kant LJ 239]*** wherein, the learned Judge was considering the case of National Institute of Engineering (Society) which was running an engineering college at Mysuru and as to whether the hostel run by the society was to be registered as an establishment under the provisions of the Act of 1972. While considering the said question, it was observed as under:

> "4. The expression 'establishment' is defined in Cl.(i) of S.2 of the Act as a shop or a commercial establishment. The expression 'shop' is defined in Col.(u) of S.2 of the Act as any premises where any trade or business is carried on or where services are rendered to customers and includes offices, storerooms, godowns, or warehouses, whether in the same premises or otherwise, used in connection with such trade or business, but does not include a commercial establishment or a shop

attached to a factory where the persons employed in the shop fall within the scope of the Factories Act, 1948. The expression 'commercial establishment' is defined in Cl.(e) of S.2 of the Act as a commercial or trading or banking or insurance establishment, an establishment, or administrative service in which persons employed are mainly engaged in office work, a hotel, restaurant, boarding or eating house, a café or any other refreshment house, a theatre or any other place of public amusement or entertainment and includes such establishments as the State Govt. may by notification declare to be a commercial establishment for the purposes of the Act. There is no notification issued by the State Govt. declaring hostel attached to an educational institution as a commercial establishment.

5. A reading of the definitions of the expressions 'shop' and 'commercial establishment' would show that unless the premises is used for trade or business purposes or there is an element

of commerce it cannot be considered either as a shop or as a commercial establishment. The members of the public cannot resort to the hostel to buy foodstuffs. It cannot be called a public place of amusement or entertainment. It is intended only for the benefit of the students of the Engineering College. There is no allegation made by the respondents, in this case that the petitioner has been running the hostel with a view to make profit. In these circumstances, it is difficult to hold that the hostel is either a shop or a commercial establishment as defined by Cls. (u) and (e) of S.2 of the Act. It cannot, therefore, be an establishment as defined under Cl.(i) of S.2 of the Act. The above view receives support from the decision of the High Court of Madras in ***Mrs***. ***Rajam Krishnan and Another V. Director of Employment & Training, Madras [1973 II LLJ 604]***. The impugned notices are, therefore, quashed."

38. The aforesaid judgment can be squarely applied to the present case to hold that temple would not come within the expression of commercial establishment. A temple is a religious institution used as a place of public religious worship dedicated to or for the benefit of or used as of right by the Hindu community or any section thereof as a place of public religious worship and includes a Mandira, Samadhi, Brindavana, Gadduge, Shrine, Sub-shrine, Utsav Mantapa, tank, Paduka-peetha, Daivasthana, Gudi, Garodi or other necessary appurtenances, structures and land.

39. A temple is a place of religious worship, or meant for a religious purpose which includes worship of deities or worship in temples, mandiras, shrines, samadhis, brindavanas, gadduges or similar places, installing shrines, samadhis, brindavanas, gaddies or similar places, fostering spiritual fraternity, imparting spiritual, moral and religious education and teaching of philosophy, observance of religious festivals and

any other public religious purpose. Therefore, the appellant being a temple cannot by any stretch of imagination be construed as an establishment under the provisions of the Act of 1961. No other enactment is brought to our notice which deals with shops and commercial establishment for beneficial consideration.

40. A Division Bench of Bombay High court in ***B.N.Sarda (Pvt.) Ltd. vs. Kisan K.Borade [1981 (1) LLJ 190],*** has observed that Section 1(3)(b) of the Gratuity Act, 1972 refers to "any law for the time being in force" and there is no justification whatsoever to qualify those words by introducing a qualification that the law should be either a Central law or a State law. A State enactment is as much a law for the time being in force at a given point of time as a Central enactment. It will, therefore, be enough for the purposes of Section 1(3)(b) of the Act of 1972 that there is a law in force in the State in relation to shops and establishments and it is immaterial whether the law is a State Law or a Central Law.

41. In the said case, the question was whether a Beedi worker preparing beedis at home with raw material of the employer is an employee within the meaning of Beedi and Cigar Workers (Conditions of Employment) Act, 1966. The Controlling Authority held that the employee was entitled to gratuity. In the appeal before the appellate authority by the petitioner therein, the appellate authority held that the petitioner's concern was a factory as defined by the Factories Act and, therefore, the provisions of the Gratuity Act would be applicable in the case of the respondent. The question before a Division Bench of the Bombay High Court was whether the expression "law for the time being in force" in Section 1(3)(b) of the Gratuity Act, 1972 could also include a State enactment as well as Central enactment. In that context, the Bombay High court held that the Bombay Shops and Establishment Act, 1948, is primarily a law relating to the shops and establishments in the State of Maharashtra. But, the Beedi and Cigar Workers

(Conditions of Employment) Act, 1966 which is a law that provides for the welfare of the workers in beedi and cigar establishments and to regulate the conditions of their work and for matters connected therewith and it also deals with the establishment where the manufacture of beedis is carried on. Under Section 2(h) of the said Act, the expression Establishment was defined to mean any place or premises including the precincts thereof in which or in any part of which any manufacturing process connected with the making of beedi or cigar or both is being, or is ordinarily, carried on and includes an industrial premises. Giving a liberal interpretation to the Act of 1972 in the context of the beneficial provision of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, the Bombay High court held that the establishment where the employee was working in the village was clearly an establishment under the provisions of the Beedi and Cigar Workers Act and consequently, by virtue of the provisions of

Section 1(3)(b), the provisions of Gratuity Act, 1972 was attracted.

42. In the said judgment, reliance was also placed on the decision of Hon'ble Supreme Court in ***State of Punjab vs. The Labour Court, Jullundur, [AIR 1979 SC 81] (State of Punjab vs. The Labour Court, Jullundur)***, wherein it has been held that the expression establishment in Section 1(3)(b) of the Act of 1972 would also take within its meaning an industrial establishment within the meaning of Section 2(ii)(g) of the Payment of Wages Act.

43. In the case of ***E. Gopal and Others vs. Arulmigu Dhandayuthapaniswamy Temple and Others, [2013 (3) SCT 789 (Madras)]*** (***Arulmigu Dhandayuthapaniswamy Temple***), the question considered was whether a religious institution or a temple would come within the purview of Section 1(3)(b) of the Act of 1972 in light of the law laid down by the Hon'ble Supreme Court in the case of ***State of Punjab vs. Labour Court, Jullundur.*** After

discussing the Act of 1972 in juxtaposition with the Tamil Nadu Shops and Establishments Act, 1947 and Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 and in light of the decisions cited therein including ***Sri Venkatramana Temple, Shri Jagannath Temple, Puri*** and ***Narayanan Naboodiri and others,*** it was observed that under the purview of power conferred under Section 116 of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the Tamil Nadu State Government had framed the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964. Rules 26 to 30 relate to payment of gratuity. The said rule came into existence prior to the Central Act, the Act of 1972. It was noted that the prior Act fell under Entry 28, List–II Schedule – VII, whereas the latter was under Entry 24 of List – III of the concurrent list, Schedule – VII of the constitution. It was further noted that both parliamentary as well as the state legislation were empowered to frame Rules under the respective Acts.

But, if there was conflict, then the Rules under the Central Act (the Act of 1972) would prevail over the State Act to the extent of repugnancy. Therefore, one had to see whether the Act of 1972 would prevail over the Rules framed under Section 116 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

44. The Madras High Court considering the judgment in ***State of Punjab vs. Labour Court, Jullundur*** observed that, the Hon'ble Supreme Court held that Section 1(3)(b) of the Act of 1972 cannot be given a restricted meaning so as to only refer to Shops and Commercial Establishment Act enacted by the State Legislature, but the expression establishment must be given a wider meaning to include Payment of Wages Act, 1936 ('Act of 1936' for short) also. According to Hon'ble Supreme Court, had the intention of Parliament been, when enacting Section 1(3)(b) of the Act of 1972, to refer to a law relating to commercial establishments, it would not

have left the expression 'establishments' unqualified. According to the Hon'ble Supreme Court the Act of 1972 applies to an establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on. It was held in the said case that the *Hydel Upper Bari Doab* construction project was such an establishment and that the Act of 1972 applied.

45. The Act of 1936 is a parliamentary legislation applicable to certain classes of employed persons. Section 1(4) of the said Act states that it applies in the first instance to the payment of wages to persons employed in any factory, to persons employed (otherwise than in a factory) upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling a

contract with a railway administration and to persons employed in an industrial or other establishment specified in sub-clauses (a) to (g) of clause (ii) of Section 2. All of the above deal with industries or other establishments, but definitely does not include a temple. Further, Section 1(5) of the Act of 1936 states that the appropriate Government may, after giving three months notice of its intention of so doing, by notification in the official gazette, extend the provisions of this Act or any of them to the payment of wages to any class of persons employed in any establishment or class of establishments specified by the appropriate Government under sub-clause (h) of clause (ii) of Section 2. Section 2(ii)(h) states that the appropriate Government may, having regard to the nature thereof, the need for protection of persons employed therein and other relevant circumstances, specify, by notification in the Official Gazette any establishment or class of establishments to see that the said Act would apply. It has not been brought to our notice that either the Central Government or the

State Government has issued any notification under the Act of 1936. At any rate, the said Act applies essentially to a factory, industrial or other establishment, tramway service, air transport service, dock, wharf or jetty, inland vessel, mechanically propelled, mine, quarry or oil-field, plantation or establishment in which any work relating to the construction, development or maintenance of buildings etc., is carried on. In light of the said provisions, the Hon'ble Supreme Court held that the Act of 1936 is also one of the Acts to be considered under Section 1(3)(b) of the Act of 1972.

46. But, while applying the aforesaid law to the facts of the present case, in our view, a temple is not an establishment which would come within the scope and ambit of the Act of 1936. Hence, the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab vs. Labour Court, Jullundur*** is not applicable to the present case.

47. The Full Bench of the Madras High Court also considered the case of ***Shri Jagannath Temple, Puri*** and ***Sri Venkatramana Temple*** with reference to what had been observed by the learned Single Judge by this Court in the said case, as the judgment of the Division Bench of this Court in ***Sri Venkatramana Temple*** **may not have been brought to the notice of the Full Bench of the Madras High Court.**

48. However, with respect, we observe that the Full Bench of the Madras High Court was not right in placing reliance on the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab vs. Labour Court, Jullundur*** in relation to a Temple.

49. Subsequently, in ***Tamil Nadu Temples Retired Employees Association, Rep. by its President C.Kandasamy vs. The State of Tamil Nadu, Rep. by its Secretary to Government and others***, ***[2014 SCC Online Mad 875],*** [WP No.33936/2013, disposed of on 07/04/2014], a

learned Single Judge of the Madras High Court has referred to an interim order passed by the Hon'ble Supreme Court in ***Arulmigu Dhandayuthapaniswamy Temple Palani and two others*** and permitted the petitioner Association therein to make a representation with regard to release of gratuity amount by religious institutions. With the above direction, the writ petition was disposed of.

50. In the case of ***Nagar Ayukt Nagar Nigam, Kanpur vs. Mujib Ullah Khan and Another, [2019 SCC Online SC 462]*** the question was whether an employee of Municipal Corporation, Kanpur governed by the Uttar Pradesh Municipal Corporation Act, 1959 was entitled to Payment of Gratuity under the Act of 1972. The Hon'ble Supreme Court held that the Municipal Corporation, Kanpur was not covered under the clauses (a) and (b) of Section 1(3) of the Act of 1972. But, the Central Government had published the Notification on 08/01/1982

specifying local bodies in which ten or more persons are employed or were employed, on any day preceding twelve months, as a class of establishments to which the said Act applies. The said Notification was issued under Section 1(3)(c) of the Act of 1972. Hence, it was held that the Act of 1972 was applicable to Municipalities. The Hon'ble Supreme Court also referred to Section 14 of the Act of 1972 which states that the provisions of the said 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 the Act of 1972. It was held therein that in view of the Notification issued under Section 1(3)(c) of the Act of 1972, the State Act contemplating payment of gratuity was not applicable in respect of the employees of the local bodies, but it was the Act of 1972 that was applicable. But, as already noted, in the instant case, the Central Government has not notified a "temple" to be an establishment under

Section 1(3)(c) of the Act of 1972. Moreover, the Act of 1997 read with Rules of 2002 which is a State Legislation has been assented to by the President and therefore they would prevail over the Act of 1972.

51. In the case of ***Birla Institute of Technology vs. The State of Jharkhand and others, [(2019) 4 SCC 513]***, the Hon'ble Supreme Court referring to the amendment made to the expression employee as defined under Section 2(e) of the Act of 1972 by Amending Act No.47 of 2009 with retrospective effect from 03/04/1997 held that teachers were entitled to payment of gratuity under the Act of 1972 from their employers with effect from 03/04/1997. This is because the amending Act No.47 of 2009 is with retrospective effect from 03/04/1997.

52. However, in the case of ***Sr. Superintendent of Post Offices vs. Gursewak Singh and Others, [(2019) SCC Online SC 399]***, the Hon'ble Supreme Court by its judgment dated 15/03/2019 held that a Gramin Dak Sewaks are not

employees; they are extra-departmental agents engaged by the Department of Posts and Telegraphs, they are not entitled to payment of gratuity under the Act of 1972 having regard to the definition of employee under Section 2(e) of the Act of 1972 thereof. Further having regard to Rule 6(13) of the 2011 Rules applicable to Gramin Dak Sewak, it was held that the Gramin Dak Sewak is not entitled to payment of Gratuity if he quits on his own. It was observed that in the said case, the respondent therein had resigned and his resignation was accepted. Therefore, his voluntary resignation disentitled him from the benefit of gratuity.

53. Further, in the case of ***Narayanan Namboodiri and others vs. Cochin Devaswom Board and Another*** a judgment of the High Court of Kerala reported in ***1979 II L.L.J. 446 (Narayanan Namboodiri),*** it was held that Devaswom employees were not covered by the Act of 1972 and payment was only as per Service Rules of employees of Devaswom

Board. The Kerala High Court, after referring to Section 1(3) of the Act of 1972, held that no notification had been issued by the Central Government under Section 1(3)(c) thereof and hence, the Cochin Devaswom Board could not be construed to be an establishment within the meaning of Shops and Establishments Act of that State and therefore, Section 1(3)(b) also does not apply. It was further observed that Kerala Industrial Employees Payment of Gratuity Act, 1970 applies to industrial employees and not to Devaswom employees. Further, no notification was also issued as per Kerala Shops and Commercial Establishments Act, 1960 so as to bring a Devaswom within the meaning of commercial establishment. Hence, it was held that payment of gratuity under the Act of 1972 did not apply to employees of Cochin Devaswom Board.

54. Under the circumstances, it is held that a temple does not come within the definition of Section 1(3)(b) of the Act of 1972. Therefore, question No.1

is answered by holding that the appellant-Temple being a temple, does not answer to the description "commercial establishment" under Section 2(e) of the Act of 1961 and hence, the Act of 1972 is not applicable to it. It is accordingly answered.

Second Question:

55. The next question is whether the law declared by the Division Bench of this Court in the case of ***Sri Venkatramana Temple*** to the effect that a clerk in a temple is entitled to claim benefit of gratuity on attaining the age of superannuation under the provisions of the Act of 1972 is in conformity with the provisions of law applicable in the State of Karnataka.

56. Before answering the same, it would be relevant to refer to the judgment of the Division Bench in the case of ***Sri Venkatramana Temple*** in W.A. No.1375/2007 disposed of on 10th July 2012. In the said matter the contention was that the said temple, being a Hindu temple, could not be considered

as an establishment under the provisions of the Act of 1972 as it was a place of worship and not a commercial establishment. The said contention was not accepted by the Division Bench of this Court by observing that the said question was no longer *res-integra* in view of the judgment of the Orissa High Court in the case of ***Shri Jagannath Temple***.

57. The question is whether the Division Bench in ***Sri Venkatramana Temple*** was right in placing reliance on the judgment in the case of ***Shri Jagannath Temple, Puri*** while considering the case of ***Sri Venkatramana Temple***. In ***Shri Jagannath Temple, Puri,*** the pertinent question was whether the provisions of the Act of 1972 were applicable to the employees of Sri. Jagannath temple. In the said case also, an employee of the temple of Lord Jagannath at Puri had sought Payment of Gratuity under the Act of 1972. The Division Bench of the Orissa High Court after referring to the expression establishment under Section 1(3)(b) of the Act of

1972 observed that the said provision is not restricted to only commercial establishments, but to establishments within the meaning of any law for the time being in force in relation to establishments in a State. The pertinent question was whether the term establishment as defined in the State law or a Central law, which is in force in the particular State, included a temple? The Orissa High Court found that the expression "Temple Trust" was included under the Shops and Commercial Establishments Act (State enactment) operating in the State of Orissa.

58. What is pertinent to note is under Section 1(3)(b) of the Act of 1972, the establishment must be one within the meaning of any law for the time being in force in relation to shops and establishments in a State. Therefore, it is not necessary to consider the relevant State enactment alone. It could also include a central law provided it is enforced in the particular State. The Orissa High Court found that a Temple Trust came within the scope and ambit of the statute

of that State relating to shops and commercial establishments in the said State and therefore, a Temple came within the ambit of Section 1(3)(b) of the Act of 1972. But, in the State of Karnataka, the expression 'Temple' or 'Temple Trust' does not find a place under Section 2(i) of the Act of 1961 which refers to only a shop or a commercial establishment. The expression establishment has been given restrictive meaning to mean a commercial establishment. Further, if any establishment is declared to be commercial establishment by the State Government for the purpose of the State enactment (the Act of 1961), then it would have to be commercial in nature and then under Section 1(3)(b) of the Act of 1972, it would be considered for the purpose of payment of gratuity or, such an establishment must come within the meaning of commercial establishment under Section 2(e) of the Act of 1961, i.e., within the former portion of the said definition. As already noted, the expression temple is conspicuous by its absence in the definition of

commercial establishment under the Act of 1961 (State Act). The Division Bench of the Orissa High Court decided the case of the ***Employees of Sri. Jagannath Temple, Puri,*** on the basis of the State enactment in Orissa as a Temple Trust is an establishment covered under the said Act of Orissa State. In our view, the said judgment could not have been relied upon by the Division Bench of this Court in ***Sri Venkatramana Temple.*** The Division Bench did not consider in detail the scope and ambit of Section 1(3)(b) of the Act of 1972 in the light of the Act of 1961, which is a Karnataka State enactment but simply applied the Orissa High Court's Judgment to the Temple in question therein. The relevant portion of the judgment of Orissa High Court in ***Shri Jagannath Temple, Puri*** reads as under:

> "3. …….. The question that falls for determination, therefore, is whether the term "establishment" as defined in any law operating in the State includes within its ambit a "Temple". The authorities under the Act have observed that the Industrial

> Disputes Act and the statue relating to shops and commercial establishments include "Temple Trust" and therefore, the Temple is included therein. It would be relevant at this stage to refer to a decision of this Court reported in *1980 (49) CLT 252, Gopichand Agarwala v. State of Orissa,* wherein the question whether deity is an establishment or an undertaking under the Orissa Prevention of Land Encroachment Act came up for consideration and it was held that deity is neither an establishment nor an undertaking within the meaning of that Act. It was observed that the word "establishment" was not defined in the concerned statute and therefore to be assigned the commonsense meaning; it is difficult to conceive that a religious institution like a Hindu temple can constitute an establishment in the sense the words have been used in Section 2(e) of the Orissa Prevention of Land Encroachment Act, 1972."

59. The judgment of the Orissa High Court turns on its own facts and its State Law and the same could not have become a precedent to be simply followed insofar as the temples in Karnataka are

concerned, in view of the specific definition of the expression establishment and more specifically, commercial establishment under the provisions of the Act of 1961 are concerned.

60. Further, a temple cannot also come within the definition of 'industry' under the provisions of Industrial Disputes Act, 1947 (the Act of 1947) which is a parliamentary legislation and which is applicable in the State. Section 2(j) of the Act of 1947 defines an industry to mean any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. A temple is not an industry within the meaning of the expression industry under the aforesaid Act. Neither does it come within the expression 'industrial establishment' or 'undertaking' under Section 2(ka) of the aforesaid Act.

61. Hence, the judgment of the Division Bench in the case of ***Sri Venkatramana Temple*** is *per*

incuriam for the reasons referred to above and hence it is set aside. Accordingly point No.2 is answered.

Third Question:

62. This takes us to the next question which we have raised namely, whether the Act of 1972 being a parliamentary legislation, a central enactment dealing with Payment of Gratuity Act, could be made applicable to a Temple under Section 1(3) of the Act of 1972, as the Act of 1997 deals with Hindu religious institutions and charitable endowments including a Temple in the State, which are covered under the Act of 1997 and which has received the assent of the President on 25th October 2001, in the matter of payment of gratuity.

63. The Act of 1997 has been enacted by the State Legislature for better provision for the management and administration of Hindu religious institutions and charitable endowments in the State of Karnataka. While doing so, the Act as well as the Rules of 2002 have made specific provisions with

regard to the emoluments and service conditions of *Archakas* as well as other temple servants. Chapter – IV of the Rules of 2002 deals with appointment of *Archakas* and temple servants. The said chapter delineates classification of temple servants in Rule–5; age limit for appointment and retirement of *Archakas* and indoor temple servants in Rule-6; disqualification for appointment of *Archakas* and temple servants in Rule-7; emoluments of *Archakas* and temple servants in Rule-8; salary etc., of temple servants who are in service on the date of commencement of the Act in Rule-9; prescribing pattern of temple servants in Rule-10; salary and service conditions of temple servants in Rule–11; procedure of appointment of temple servants and *Archakas* in Rule-12; period of probation of temple servants or *Archakas* in Rule-13; duties and responsibilities of *Archakas* and other temple servants is in Rule-14 while Rule-15 pertains to leave Rules applicable to *Archakas* and other temple servants.

64. Further, Rule 16 deals with terminal benefits. It states that *Archakas* and other temple servants of Notified Institutions are entitled to retirement benefits as stated therein, namely fifteen days salary for every completed year of service, subject to a maximum of Rs.50,000/- where there is no provident fund or insurance fund benefit or both are extended by the notified institution and subject to a maximum of Rs.35,000/- where provident fund and insurance fund benefits are extended by the notified institutions. Salary means only pay excluding allowance. The minimum service for the retirement benefit under the Rule is ten years. In case of death of *Archaks* and temple servants, after completion of three years but before the completion of ten years, Rs.30,000/- or the amount calculated as at sub-rule (1), whichever is more shall be paid as terminal benefit. Provided that, if sufficient fund at the credit of the institution is not available, terminal benefits shall be paid from common pool fund. In any such situation, the terminal benefit shall not exceed 15% of

the fund collected during the year. However, subject to the availability of funds at the disposal of the institution, contributory provident fund may be extended to *Archakas* and temple servants under the provision of Employees Provident Fund and Miscellaneous Provisions Act, 1952.

65. Thus, it is seen that the Act of 1997 and the Rules of 2002 form a complete code and a special enactment and they deal with the service conditions as well as the terminal benefits of the *Archakas* and temple servants, whereas the Act of 1972 is a general enactment dealing with gratuity, which would apply in the absence of a specific enactment to the contrary.

66. Having regard to the principles of statutory interpretation, the special enactment would prevail over the general enactment. This is expressed by way of two legal maxims namely, *"Generalia specialibus non derogant"* and *"Generalibus specialia derogant".* The former means the general things do not derogate from special things and the latter maxim means the

special things derogate from general things. In other words, if a special provision is made on a certain matter, the same gets excluded from the general provision. The said principle can be applied in the event there is a conflict between two different Acts. Applying the said maxims, in ***Jogendar Lal Saha vs. State of Bihar, [AIR 1991 SC 1148],*** it was held that Sections 83 and 34 of the Forest Act, 1927 were special provisions which would prevail over the provisions of Sale of Goods Act. Similarly, in ***Jasbir Singh vs. Vipin Kumar Jaggi, [(2001) 8 SCC 289]***, it was held that Section 64 of the Narcotic Drugs and Psychotropic Substances Act, 1985 would prevail over Section 307 of the Criminal Procedure Code, 1973, as it is a provision in special Act.

67. Hence, it is held that the provision of the Act of 1997 and Rule 16 of the Rules of 2002 made thereunder, which is a special enactment would prevail over the provisions of the Act of 1972, which is a general enactment, in the matter of payment of

gratuity to the employees of a temple. Further, the Act of 1997 has received the presidential assent.

68. Further, welfare of labour includes conditions of work, provident funds, employer's liability, workmen's compensation, invalidity and old-age pensions and maternity benefits are subjects coming within the scope of Entry – 24 of List-III (Concurrent List of VII Schedule of the Constitution) which means that both the Parliament as well as the State Legislature have the competence to make laws. Under Clause (1) of Article 254 of the Constitution, if any provision of law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and

the law made by the Legislature of the State shall, to the extent of the repugnancy, be void. Under Clause (2) thereof, where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in the State. The proviso thereof states that nothing in this Clause (2) shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

69. In the instant case, the Act of 1997 though it deals with religious and charitable endowments, temples–being religious institutions, are covered under the said Act, which is a State enactment. Since

it has received Presidential assent under Clause (2) of Article 254 of the Constitution, it would prevail over the Act of 1972, even though the latter is a parliamentary legislation.

70. Section 14 of the Act of 1972 states that the provisions of the said Act or any Rule made thereunder shall have the effect notwithstanding anything inconsistent therewith contained in any enactment other than the said Act or in any instrument or contract having effect by virtue of any enactment other than this Act. But we do not find anything inconsistent between the Act of 1972 and the Act of 1997. Also the same would have to be construed in light of the fact that the Act of 1972 is general enactment, whereas, the Act of 1997 is a special enactment, a Code by itself, which would prevail over that general enactment, as it has been a specific provision with regard to the payment of terminal benefits, which also includes gratuity. Further, under Article 254 of the Constitution, the Act

of 1997 which is a State enactment has received Presidential assent. Hence, the same would prevail over the Act of 1972.

71. We do not wish to venture into any debate as to what would be the position if a temple is notified by the Central Government as an establishment under Section 1(3)(c) of the Act of 1972, when the same is juxtaposed with the provisions of the Act of 1997. The answer to question No.3 is limited to the position of law as it exists at present.

72. Further, a Co-ordinate Bench of this Court in the case of ***Management of Indian Express (Madurai) (Pvt.) Ltd., vs. J.M. Jeswant and Others, [2000-I-LLJ-132]*** held that Section 14 of the Act of 1972 does not override the provision of Section 16 of Working Journalists and other News paper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (Working Journalists Act, 1955). Under the Working Journalists Act, 1955, Section 16 states that the provisions of the

said Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of the Act. It is further stated that where under any such award, agreement, contract of service or otherwise, a newspaper employee is entitled to benefits in respect of any matter which are more than favourable to him than those to which he would be entitled under the Working Journalists Act, 1955, the news paper employee shall continue to be entitled to more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under the Working Journalists Act, 1955.

73. Comparing the provisions of Working Journalists Act, 1955 with the Act of 1972, the Division Bench of this Court noted that both the Working Journalists Act, 1955, as well as the Act of 1972 contain *non-obstante* clause which means that

despite the provisions of the Act mentioned in the *non-obstante* clause, the law following it was to have full operation or that the provision referred to in the *non-obstante* clause would not be an impediment for the operation of the document. While referring to the principles governing the interpretation of the statute, when there are two *non-obstante* clauses, generally a later enactment would prevail upon the earlier one if both deal specifically with the same subject. Further, the position would be different if the earlier statute is a special statute and the later, though with a *non-obstante* clause, a general one.

74. It was thus held that the Working Journalists Act, 1955, was applicable to the respondent therein. Since under the said Act, the respondent was admittedly not eligible for the grant of payment of gratuity under the aforesaid enactment, the question of conferring the beneficial provisions under the Act of 1972 did not arise. Therefore, it was held that the Working Journalists Act, 1955, being a

special enactment had to be applied to working journalists and not the Act of 1972, which is a general enactment.

75. In the case of ***P. Rajan Sandhi vs. Union of India and Another, [(2010) 10 SCC 338] (Rajan Sandhi)***, it has been held by the Hon'ble Supreme Court that Section 5 of the Working Journalists Act, 1955, which deals with payment of gratuity, being a special law would prevail over Section 4(6) of the Act of 1972 which is a general law. Section 5 of the Working Journalists Act, 1955, is applicable only for working journalists whereas, the Payment of Gratuity Act is applicable to all employees who are covered by that Act and not limited to working journalists. Hence, Working Journalists Act, 1955, is a special law whereas the Payment of Gratuity Act is a general law.

76. It is held that the Act of 1997, which deals with Hindu religious institutions and charitable endowments, including temple, is a special law made

under List III, whereas the Payment of Gratuity Act, 1972 is a general law also made under List III of the Seventh Schedule of the Constitution. Also, the State enactment has received the assent of the President and hence is applicable in the State of Karnataka *vis-à-vis* Hindu religious institutions and charitable endowments including temples and it only incidentally touches upon payment of gratuity, which is a central subject.

77. In the result, the questions for reference are answered as under:

(i) That the appellant being a 'Temple' as defined in Clause (27) of Section 2 of the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997, does not answer the description of "commercial establishment" within the meaning of Clause (e) of Section 2 of the Karnataka Shops and Commercial Establishments Act, 1961 and hence, the Payment of Gratuity Act, 1972 is inapplicable to it by virtue of Clause

(b) of sub-section (3) of Section 1 thereof;

(ii) That the law declared by the Division Bench of this Court in the case of ***Sri Venkatramana Temple*** (*supra*), that a clerk in a temple is entitled to claim the benefit of gratuity on attaining the age of superannuation under the Payment of Gratuity Act, 1972, is not in conformity with the provisions of law applicable in the State of Karnataka. Consequently, the judgment of the Division Bench in ***Sri Venkatramana Temple*** (*supra*) is held to be no longer good law and hence, is over-ruled;

(iii) That the provisions of the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 and the Rules of 2002 made thereunder would apply to the respondent-employee as per the position of law as it exists at present.

(iv) The appellant-Temple to pay gratuity to the first respondent employee in accordance with the Act of 1997 and the Rules made thereunder within a period of four weeks from the date of receipt of certified copy of this judgment, if not already paid.

In view of the above, the judgment of the learned Single Judge dated 18/02/2014 passed in Writ Petition No.54267 of 2013 is set aside. The appeal filed by the appellant ***succeeds in part***.

Parties to bear their respective costs.

Sd/-
JUDGE

Sd/-
JUDGE

Sd/-
JUDGE

VBS/ RK/-