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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 13th August, 2014*

+ W.P.(C) 5138/2014

UNIVERSITY OF DELHI

..... Petitioner

Represented by: Mr. G.K. Pathak, Adv.

Versus

SHARWAN KUMAR GUPTA AND ORS.

..... Respondents

Represented by: Mr. Sanjay Jain, ASG with
Mr. Vikram Jetley, CGSC and Ms.
Pallavi Shali, Advs. for R2, R3, R5 and R6.
Mr. Arjun Harkauli, Adv. for UGC.

AND

+ W.P.(C) 5139/2014

UNIVERSITY OF DELHI

..... Petitioner

Represented by: Mr. G.K. Pathak, Adv

versus

RANJIT SINGH & ORS

..... Respondents

Represented by: Mr. Sanjay Jain, ASG with
Mr. Vikram Jetley, CGSC and Ms. Pallavi
Shali, Advs. for R2, R3, R5 and R6.

AND

+ W.P.(C) 5140/2014

UNIVERSITY OF DELHI

..... Petitioner

Represented by: Mr. G.K. Pathak, Adv

versus

LAXMAN DASS & ORS

..... Respondents
Represented by: NEMO.

AND

+ W.P.(C) 5143/2014

UNIVERSITY OF DELHI

..... Petitioner
Represented by: Mr. G.K. Pathak, Adv

versus

SHEEL KUMAR JAIN & ORS

..... Respondents
Represented by: Mr. Arjun Harkauli, Adv.
for UGC.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

+ **W.P.(C) 5138/2014**
+ **W.P.(C) 5139/2014**
+ **W.P.(C) 5140/2014**
+ **W.P.(C) 5143/2014**

1. Issue in all the above-noted petitions is that University of Delhi is constituted under the University Act, 1922, hence, the Gratuity Act is not applicable on the employees of the University. Therefore, this court has decided to dispose of all the petitions by way of a common judgment.

2. Vide the present petitions, the petitioners are seeking setting aside of the impugned order dated 30.09.2013 passed by the Controlling Authority (Respondent no. 2) in ALC-I/36/305/2013 titled as 'Shri Sarwan Kumar Gupta v. Registrar, University of Delhi' and order dated 02.04.2014 passed

in Appeal No. 36 (76) 2013-P.A. by the respondent no. 3, i.e., the Appellate Authority.

3. Ld. Counsel appearing on behalf of the petitioner University of Delhi submits that petitioner University of Delhi is a Central University, which came into force by virtue of Delhi University Act, 1922 and the said Act has specific provisions under its Statute 28-A for payment of gratuity to its employees and the respondent no. 4, i.e., the University Grant Commission (UGC), who with the approval of respondent no. 5, i.e., Ministry of HRD, introduced the provisions of payment of gratuity to the University employees through Central Universities Retirement Benefit Rules, 1967.

4. Ld. Counsel further submits that employees of the petitioner are thus governed by the said provisions under its Statute 28-A for payment of gratuity and accordingly, the employees of the petitioner are being paid gratuity as per the same along with the Rules as aforesaid read with CCS Pension Rules.

5. It is further submitted that respondent no.1 in the above-noted petitions W.P.(C) Nos. 5138/2014, 5139/2014, 5140/2014 and 5143/2014 are the ex-employees of the petitioner, who retired on 30.11.2012, 28.02.2003, 31.08.2003 and 31.10.1999 respectively and was accordingly paid gratuity for a sum of Rs.7,55,192/-, Rs.2,67,899/-, Rs.2,54,480/ and Rs.3,09,237/- respectively under Statute 28-A read with Central University Retirement Benefit Rules, 1967 and CCS Pension Rules, i.e., as per the provisions of payment of gratuity applicable to the petitioner.

6. Respondent No. 2 is the Controlling Authority of Payment of Gratuity Act, 1972, before whom respondent no. 1 of the above-noted petitions have

filed an application in the year 2013 for grant of difference of gratuity amount claiming under the Payment of Gratuity Act, 1972. The said respondent passed an imugned order dated 30.09.2013 holding thereby that the Payment of Gratuity Act is applicable to the petitioners and thus respondent no. 1 in the petitions noted above were found entitled to receive a sum of Rs.2,44,808/-, Rs.59,943/-, Rs.92,537/- and Rs.40,763/- respectively towards the balance gratuity. Accordingly, the petitioner was directed to pay the said amount with simple interest @ 10% *per annum* within 30 days from the date of receipt of the order.

7. Being aggrieved, the petitioner challenged the order passed by the Controlling Authority before the Appellate Authority, which was also dismissed vide order dated 02.04.2014.

8. Ld. Counsel appearing on behalf of the petitioner submits that under Section 2 (E) of the Payment of Gratuity Act, 1972 it is described as under:

“employee” means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.”

9. Ld. Counsel submits that Section 14 of the Payment of Gratuity Act is not applicable on the University of Delhi. Therefore, the order passed by the Controlling Authority and the Appellate Authority as noted above are

contrary to the provisions of Payment of Gratuity Act, 1972 and the Delhi University Act, 1922.

10. Ld. Counsel further submits that ex-employees of the University worked under the University by accepting the Rules and Regulations and provisions of Delhi University Act, 1922. Therefore, at this stage the employees cannot take the ground that the Rules and Regulations are not applicable and the gratuity is their entitlement under the Payment of Gratuity Act, 1972.

11. I note the Controlling Authority vide its order dated 30.09.2013, framed three issues as under:

- “1. *Whether Payment of Gratuity Act, 1972 is applicable to the employees of non-applicant?*
2. *Whether the delay in filing the claim application can be condoned?*
3. *Whether the applicant is entitled for difference of gratuity as claimed? If yes, whether the applicant is entitled for interest on delayed period of payment and at what rate?”*

12. However, to adjudicate the present petitions, issue no. 1 is relevant.

13. The Controlling Authority has relied upon a case of **Jaswant Singh Gill v. Bharat Coking Coal Ltd. (2007) 1 SCC 663** wherein the Apex Court held as under:

“Gratuity becomes payable as soon as the employee retires. The only condition therefore is rendition of five years continuous service”.

14. Also relied upon a case of *Allahabad Bank & Ors. v. All India Allahabad Bank Retired Employees' Association 2010, SCC 44* wherein the Apex Court held as under:

“9. A plain reading of the provisions referred to herein above makes a abundantly clear that there is no escape from payment of gratuity under the provisions of the Act unless the establishment is granted exemption from the operation of the provisions of the Act by the appropriate Government.

18. No establishment can decide for itself that employees in such establishments were in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under the Act.

19. This Court in Municipal Corporation Delhi v. Dharam Prakash Sharma and Ors. : (1998) 7 SCC 221 observed: "the mere fact that the gratuity is provided for under the Pension Rules will not disentitle him to get the payment of gratuity under the Payment of Gratuity Act. In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect.”

15. In a case of *Y.K. Singla v. PNB, 2013, (136) FLR 1087*, the Apex Court held as under:

“19. A perusal of Section 14 leaves no room for any doubt, that a superior status has been vested in the provisions of the Gratuity Act, vis-à-vis, any other enactment including any other instrument or contract inconsistent therewith. Therefore, in so far as the entitlement of an employee to gratuity is concerned, it is apparent that in cases where gratuity of an employee is not regulated under the provisions of the Gratuity Act, the

legislature having vested superiority to the provisions of the Gratuity Act over all other provisions/enactments (including any instrument or contract having the force of law), the provisions of the Gratuity Act cannot be ignored.....”

16. The Payment of Gratuity Act, 1972 is a complete code in itself. It is clear from the law and the judgments mentioned above that Provisions of Payment of Gratuity Act, 1972 shall have overriding effect on all other provisions relating to Gratuity.

17. Section 14 of the Payment of Gratuity Act, 1972 describes as under:

“The provisions of this Act or any rule made there-under shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.”

18. If the contention of the petitioner is accepted that Delhi University Act, 1922 and State ordinances are statutory in nature, however, Section 14 of Payment of Gratuity Act, 1972, has overriding effect over the other Acts, Statutes and Regulations.

19. Admittedly, the petitioner has taken up the case for exemption under Section 5, which is pending with the Central Government, however, not granted to the petitioner till date. Therefore, in my considered opinion, till this exemption is not granted, the petitioner is governed by the provisions of this Act.

20. It is also admitted fact that the petitioner granted gratuity to some of its employees, after the order was passed by the Controlling Authority. If the plea of the petitioner is accepted that the respondent no. 1 in all the

petitions are not entitled for gratuity under the Payment of Gratuity Act, 1972, then it tantamount to discrimination and inequality before Law, which violates Article 14 of the Constitution.

21. The Petitioner is an educational institution and employing more than 10 persons. The exemption under Section 5 of the Payment of Gratuity Act, 1972, has not yet been granted to it. The payment has already been made to some employees of the petitioner under the Payment of Gratuity Act, 1972.

22. In view of the facts recorded above and legal position, I do not find any discrepancy in the orders dated 30.09.2013 and 02.04.2014 passed by the Controlling Authority and the Appellate Authority respectively.

23. Accordingly, the instant petitions are dismissed in *limine* with no order as to costs.

CM. NO. 10234/2014 in W.P.(C) 5138/2014
CM. NO. 10235/2014 in W.P.(C) 5139/2014
CM. NO. 10236/2014 in W.P.(C) 5140/2014
CM. NO. 10246/2014 in W.P.(C) 5143/2014

With the dismissal of the petitions, instant applications have become infructuous and dismissed as such.

SURESH KAIT, J

AUGUST 13, 2014

jg