

Reserved on 17.05.2023
Delivered on 18.10.2023

In Chamber

Case :- SPECIAL APPEAL No. - 545 of 2022

Appellant :- Kedar Ram

Respondent :- State Of U.P. And 4 Others

Counsel for Appellant :- V.K.Singh

Counsel for Respondent :- C.S.C.,Bhanu Pratap Singh

Hon'ble Anjani Kumar Mishra,J.

Hon'ble Mohd. Azhar Husain Idrisi,J.

1. Heard Shri J. P. Singh, for the appellant, learned Standing counsel and learned counsel appearing for the Basic Siksha Parishad.
2. The instant appeal is directed against the judgment passed by the Single Judge dated 11.07.2022 passed in Writ A No. 30536 of 2014 (Kedar Ram v. State of U.P.).
3. The appellant, a Head-Clerk in the office of Sub-Deputy Basic Education Officer, retired from service on 31.03.2006 on attaining the age of superannuation, namely 60 years.
4. The appellant had filed the writ petition, challenging the order dated 17.02.2014 passed by the Finance Controller, respondent no.3, which was passed on representation filed by the petitioner on 21.03.2013 for being paid gratuity on his retirement.
5. In the representation, the appellant-petitioner had claimed gratuity in the light of Government order No. 1754/79-5-09-02/2009 dated 16.09.2009.
6. This representation was rejected holding that the alleged Government Order is an Office Memorandum which merely revised the rates of pension/gratuity/family pension to be paid. The order rejecting the representation also suggests that Government Order No. 2272/95,200/51/2008 dated 30.07.2007 which provides that non-teaching employees of the Basic Siksha Parishad who had opted to retire at the age of 60 years would be entitled to gratuity with immediate effect. Therefore, gratuity under this order was payable with effect from 30.07.2007 while the petitioner-appellant

retired earlier in time on 31.03.2006. The Office Memorandum dated 16.09.2009 merely provides the manner of calculating the gratuity payable to one governed by the Government Order of 30.07.2007 as also others. The Government Order dated 30.07.2007 governed the field as regards who was eligible for payment of gratuity.

7. Yet another Government Order dated 16.09.2009 was relied upon by the petitioner-appellant but the same was held to apply to employees who had been left out from being granted the benefit of gratuity.

8. The order of the Finance Controller has been affirmed by learned Single Judge while dismissing the writ petition and hence this Special Appeal.

9. Under the circumstances, the issue which arises for consideration in this Special Appeal is whether any benefit of gratuity is liable to be extended to the petitioner on the basis of the alleged Government Order dated 16.09.2009. This alleged Government Order was part of the writ petition and the same is to be found on page 74 of the paper book. Perusal of this document shows that it has been titled as an office memorandum and it talks of revision of pension, gratuity, family pension and encashment of pension and modifies the rates at which the same is to be calculated with regards to the employees of institutions run by the Basic Siksha Parishad and who attained the age of superannuation on 01.01.2006 or thereafter.

10. It also emerges from a careful perusal of this office memorandum that it only provides the manner in which pension, gratuity, death-cum-retirement gratuity or encashment of pension is to be calculated.

11. The order of the Finance Controller as also of the learned Single Judge has held the same. The learned Single Judge has rightly held that the judgment cited on behalf of the petitioner-appellant in the writ petition do not apply to the facts and circumstances of the case at hand.

12. We do not find any illegality in the judgment of the learned Single Judge which would necessitate interference. It would also be relevant to note that it has been held by the learned Single Judge that question of entitlement of payment of gratuity, insofar as the petitioner is concerned, would be governed by the Government Order of 2007. For this reason, liberty had been

granted to the petitioner to challenge the Government Order separately, in case so advised. Therefore, the interest of the petitioner-appellant has been taken care of, while rejecting his claim based upon the alleged Government Order dated 16.09.2009 which is actually an office memorandum.

13. Accordingly and in view of the foregoing the Special Appeal is found to be without merit and is dismissed.

Order Date :- 18.10.2023

Aditya Tripathi