

Court No. - 5

Case :- WRIT - A No. - 3700 of 2024

Petitioner :- Suman Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Basic Education Lko. And Another

Counsel for Petitioner :- Onkar Singh

Counsel for Respondent :- C.S.C., Shivam Sharma

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the petitioner as well as Dr. Uday Veer Singh, learned Standing counsel appearing on behalf of the respondent No.1.
2. The counter affidavit dated 18.07.2024 filed on behalf of respondent No.2 by Shri Shivam Sharma, learned counsel for the respondent No.2, has been considered by this Court.
3. Under challenge is the order dated 25.08.2023, a copy of which is annexure 1 to the petition, whereby the respondent No.2, while accepting the voluntary retirement of the petitioner, who retired at the age of 58 years and 1 days, has imposed a rider that she would not be entitled for being paid the gratuity.
4. The contention is that gratuity is payable on the basis of total length of service rendered by an employee and the imposition of such a rider, as has been imposed by the order impugned, would be contrary to the specific rules and law in this regard.
5. Learned counsel for the petitioner also referred to the averments made in paragraphs 3 & 5 of the counter affidavit filed on behalf of the respondent No.2 per which it has been indicated that gratuity could only be admissible to Teachers who have opted for 60 years of service but the same would not be admissible to Teachers who have opted for 62 years of

service. It has further been indicated that as the petitioner, as per 60 years' option, would retire on 31.03.2026 and, as per 62 years' option, would retire on 31.03.2028 but as she has chosen to retire on the basis of voluntary retirement, consequently, she would not be entitled for gratuity.

6. Learned counsel has placed reliance on the judgment of this Court passed in **Writ A No.6402 of 2024 in Re: Sehrun Nisha Vs. State of U.P. and 3 Others** decided on 07.05.2024 to contend that this aspect of the matter has already been considered by this Court which matter also pertained to a Teacher who had sought voluntary retirement at the age of 57 years but was not given gratuity on the aforesaid analogy as has been adopted by the respondent No.2.

7. It is contended that this Court, after considering the relevant rules, has directed the respondents to sanction and calculate the gratuity to the petitioner taking into account the total number of completed years of service rendered by him before premature retirement.

8. Learned counsel for the petitioner also contends that the aforesaid judgment has attained finality.

9. Dr. Uday Veer Singh, learned Standing counsel appearing on behalf of respondent No.1 also does not dispute the aforesaid judgment.

10. Having heard the learned counsel for the parties and perused the record, it emerges that the petitioner has been granted voluntary retirement upon her application at the age of 58 years and 1 day, having rendered 27 years, 8 months and 21 days of service. The voluntary retirement has been accepted vide the order impugned dated 25.08.2023 but with a rider that

she would not be entitled for gratuity.

11. The grounds, as emerge from a perusal of the counter affidavit filed on behalf of the respondent No.2, is that gratuity would only be admissible in case the petitioner retires at the age of 60 years and not at the age of 62 years and as the petitioner has not opted for retiring at 60 years, consequently, she would not be entitled for gratuity.

12. This aspect of the matter has been considered by this Court in the case of **Sehrun Nisha (supra)** wherein this Court has held as under:

"7. Here is a case, where the petitioner has chosen to retire at the age of fifty-seven years, prematurely. The option to retire at the age of sixty years is to be understood in contra-distinction to the option to retire at the unconventional and the higher age of sixty-two; it is not to be understood as an option vesting a teacher with a right to receive gratuity only if he elects to retire at sixty. Retirement at sixty years is not an entitling fact, which leads the employee to acquire a right to receive gratuity, which he otherwise does not have. An employee gets his right to gratuity according to the number of the years that he serves. Rather, if he chooses to serve, as already said, beyond the conventional age of sixty years, he is divested of that right for the extra remuneration of two years in regular service that he receives. The interpretation, based on the relevant Government Orders by the Joint Director (Pension), Prayagraj Division, Prayagraj and the District Minority Welfare Officer, Prayagraj, is the product of what is conventionally called 'treading the beaten path', which shows utter lack of application of mind and non-understanding of principle.

8. In future, the Additional Chief Secretary (Secondary Education), U.P., Lucknow will bear these remarks of ours in mind and pass appropriate orders so that these kind of perverse interpretations are not placed by the officials functioning in the Department of Secondary Education to the prejudice of teachers vis-a-vis their valuable right to receive gratuity to which they are otherwise entitled.

9. The Joint Director (Pension), Prayagraj Division, Prayagraj and the District Minority Welfare Officer, Prayagraj shall also take note of this order and will not repeat this kind of interpretation in future, if a similar set of rights were to arise for consideration.

10. In the result, this petition succeeds and is allowed. The impugned order dated 02.12.2023, passed by the District Minority Welfare Officer, Prayagraj, is hereby quashed. A mandamus is issued to the respondents to sanction and calculate gratuity to the petitioner, of course, taking into account the total number of completed years of service rendered by him before prematurely retiring. The reckoning of the petitioner's entitlement to gratuity shall be done within a period of fifteen days hence and gratuity

determined shall be paid to the petitioner within next fifteen days thereafter."

13. From perusal of the aforesaid judgment, it emerges that this Court has held that calculation of gratuity would be on basis of the total number of completed years of service rendered before premature retirement.

14. Considering the aforesaid judgment as well as discussion made above, the writ petition is **allowed**. The order impugned dated 25.08.2023, a copy of which is annexure 1 to the petition, so far as it stipulates the rider that the petitioner would not be entitled for gratuity, is **quashed**.

15. The respondents are directed to sanction and calculate gratuity to the petitioner taking in account the total number of completed years of service rendered by her before premature retirement. Let such reckoning of the petitioner's entitlement to gratuity be done within a period of two weeks from the date of receipt of certified copy of this order and the gratuity as determined shall be paid to the petitioner within the next two weeks.

16. While paying the gratuity, the respondents would also consider the payment of interest for belated payment of gratuity which would also be considered within the aforesaid period of time.

Order Date :- 4.12.2024
S. Shivhare