

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.

- 1)

CWP No.23204 of 2011
Date of decision: July 24, 2015

Saroj Balram

... Petitioner

Versus

The State of Punjab and others

... Respondents
- 2)

CWP No.14473 of 2012

Satnam Singh

... Petitioner

Versus

The State of Punjab and others

... Respondents
- 3)

CWP No.6159 of 2013

Guru Nanak College, Sukh Chainana Sahib

... Petitioner

Versus

The State of Punjab and others

... Respondents
- 4)

CWP No.6210 of 2013

Kamla Nehru College for Women

... Petitioner

Versus

The State of Punjab and others

... Respondents
- 5)

CWP No.19782 of 2013

Guru Nanak Nav Bharat College

... Petitioner

Versus

The State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. Whether Reporters of local papers may be allowed to see the

- judgment?
2. To be referred to the Reporters or not?
 3. Whether the judgment should be reported in the Digest?

Present: Mr. Puneet Jindal, Senior Advocate
with Ms.Sakshi, Advocate for the petitioner in CWP
No.14473 of 2012.

Mr. Pawan Kumar, Advocate
for the petitioner in CWP No.23204 of 2011.

Mr. Rahul Sharma, Advocate
for the petitioners in CWPs No.6159 of 2013, 6210 and
19782 of 2013 and for respondent no.3 in CWP No.14473 of
2012.

Ms. Puneet Kaur Sekhon, Addl. Advocate General, Punjab.

Mr. Amrit Paul, Advocate
for respondent no.4 in CWPs No.14473 of 2012, 6210 of
2013 and 23204 of 2011.

AMOL RATTAN SINGH, J.

These five petitions mainly raise a common question as to whether the employees of the colleges which are either petitioners before this Court or respondents, are liable to pay enhanced gratuity to the tune of Rs.10,00,000/-, to their employees who retired between 01.01.2006 and May 2010, w.e.f. 01.01.2006.

The petitions filed by two retired employees of two Government Aided Private Colleges. (CWPs 23204 of 2011 and 14473 of 2012), also seek release of arrears of pay to those petitioners, in terms of the pay revision of all employees, which came into effect from 01.01.2006.

In CWP No.23204 of 2011, the petitioner-employee also seeks the benefit of enhanced leave encashment.

2. The colleges that are either petitioners or respondents in

these cases, are private colleges receiving grant-in-aid to the extent of 95% deficit, annually, from the Government.

All the colleges are affiliated to the Guru Nanak Dev University, Amritsar, which has also been impleaded as a respondent by both, the retired employees, as also the colleges, who are petitioners before this Court.

3. The claim of the employees, as regards gratuity, is primarily based on the notification of the Punjab Government dated 02.09.2009, the circular dated 17.08.2009 and its subsequent letter dated 13.08.2010, granting the benefit of the enhanced amount of gratuity, alongwith the arrears, to all employees of the Government. The relevant Statute and Ordinances issued by the University, have also been referred to, to support the claim of the petitioner employees, as has a letter dated 24.02.2010, issued by the respondent University.

Other than the above mentioned notification, letter Statutes and Ordinances respectively, the employees have also based their claims on the judgments of a co-ordinate Bench in **Subhash Chander Lekhi and others v. State of Punjab and others (CWP No.23315 of 2010)**, decided on 23.08.2011 and of a Division Bench, passed in a bunch of cases on 01.10.2012, the lead case being **Arya College, Ludhiana v. State of Punjab and others (LPA No.920 of 2012)**.

Admittedly, the judgment of the Division Bench has become final qua parties, with the Special Leave Petitions filed by the private colleges, against the aforesaid judgment, having been dismissed by the Supreme Court on 24.09.2014 (order passed in **SLP (C) No.351 of 2013, Arya College and another v. State of Punjab and others**). However,

the petitioners in all the SLPs were permitted to seek re-imbursement from the State, if permissible.

4. In the above background, CWPs No.23204 of 2011 and 14473 of 2012 have been filed by retired employees (one in each case), of the Kamla Nehru College for Women, Phagwara and the Guru Nanak College, Sukh Chainana Sahib, Phagwara, against the orders by which their claim has been rejected; whereas CWPs No.6210 of 2013 and 6159 of 2013 have been filed by these two colleges respectively, wherein they have challenged the letter dated 17.05.2011 (Annexure P-4 in both the petitions), addressed by the Guru Nanak Dev University, Amritsar, to the Principal, Kanya Maha Vidyalaya, Jalandhar (non-petitioner), by which it was directed that revised gratuity would be payable to the retired employees of that college, w.e.f. 01.01.2006, in terms of the Punjab Governments' notification dated 17.08.2009.

Similarly, CWP No.19782 of 2013 has been filed by the Guru Nanak Nav Bharat College, Kapurthala, also impugning the same letter, on the basis of which the petitioner-colleges are also, allegedly, being pressurised by the respondents, including the State and the University, to pay enhanced gratuity to the employees who retired between 01.01.2006 and 24.05.2010. The significance of the latter date is that The Payment of Gratuity Act, 1972, was amended on that date, to enhance the amount of gratuity payable to an employee, on his retirement, to a maximum amount of Rs.10,00,000/-, from the existing maximum amount of Rs.3,50,000/-.

It is the common case of all parties that with effect from the date that the Act of 1972 was amended, gratuity is payable to all

employees who retired thereafter, as per the terms of the amendment. Thus, the controversy is only in respect of those employees who retired between 01.01.2006 and May 2010.

5. The facts of the two cases filed by the retired employees are being given first.

CWP No.23204 of 2011

6. In this case, the petitioner, other than seeking the enhanced amount of gratuity, is also seeking additional leave encashment, calculable as per the revision of pay scales w.e.f. 01.01.2006.

The petitioner was appointed as a Lecturer in the Kamla Nehru College for Women, Phagwara (respondent no.4), on 01.10.1968 and retired as such on 31.01.2007, on attaining the age of superannuation. She was paid a gratuity amount of Rs.3,50,000/-

7. It is contended in the writ petition that the respondent-University issues Ordinances, which are maintained in the form of a University Calendar (for each year), which governs the administration of the University in all its aspects. Reliance is placed on Section 20 of the Guru Nanak Dev University Act 1969, which would be reproduced later in this judgment.

8. It is further contended that Clause-17 of Chapter-V of the University Statute postulates as follows:-

“17. Non-Government Colleges shall comply with the requirements laid down in the Ordinances governing service and the conduct of teachers/non-teaching staff in Non-Government Colleges as may be framed by the University.”

Still further, Ordinance 18 of the Guru Nanak Dev

Aided Private Colleges and the Directorate of Colleges only. A Committee has been constituted to consider the other recommendations/ benefits/ allowances mentioned in Notification of 6th Pay Commission issued by Government of India, Ministry of Human Resource Development vide No.I-32/2006FUII/UI(i) dated 31.12.08. The necessary action will be taken as and when the recommendations of this committee will be received.

3. XXXXXX XXXXXX XXXXXX

4. The allowances admissible to Punjab Govt. employees as applicable to the personnel covered under this notification will be payable at rates notified by Punjab Govt. from time to time and with effect from the dates applicable to the other Punjab Govt. employees.

5. The revised pay scales are applicable to the teachers and equivalent cadres of the Universities (including Panjab University, Chandigarh), Government Colleges, Government Aided Private Colleges and the Directorate of Colleges only.

6 to 12. xxxxxx xxxxxx xxxxxx

13. All other service conditions of University and College teachers and equivalent cadres will continue to be governed by the existing rules/instructions of the State Govt.

The notification is issued with the concurrence of the Department of Finance conveyed vide their I.D. No.2/4/09-1FE2/946, dated 22.4.09, I.D.No.2/4/09-1FE2/1946, dated 20.8.09 and 1.9.09.

Dated Chandigarh the
2.9.09

Karan Bir Singh Sidhu
Principal Secy. To Govt. of Punjab
Deptt. of Higher Education.

No.10/3/09-3Edu.1/3322 Dated, Chandigarh the 2.9.09”

The contention, therefore, is that as revised pay scales have been

made applicable to private, aided colleges also, by clauses 2 & 5 of the above notification; and by clause 13 thereof, other service conditions would continue to be governed by existing rules and instructions of the Government, therefore, the benefit of enhanced gratuity and leave encashment would follow, consequentially.

Further, it is contended that, as the Government, vide its notification dated 17.08.2009, had already revised the gratuity limit to Rs.10,00,000/-, for its all employees, the same parameters would also apply to teachers in Universities and all colleges affiliated thereto, especially as the notification dated 02.09.2009 is based upon the recommendations made by the UGC. (Though it has been referred to as a notification, the document dated 17.08.2009, as annexed with the petition, appears to be a circular issued).

The letter of the Punjab Government, Department of Finance, dated 17.08.2009 has been annexed as Annexure P-2 with the petition, the relevant part of which is reproduced hereinbelow:-

“Copy of Pb. Govt. Deptt. of Finance (FPPCB) No.3/23/09-3FPPC/879, dated 17.8.2009)

I am directed to address you on the subject cited above and to say that after careful consideration of the recommendations of the Fifth Punjab Pay Commission, the Governor of Punjab is pleased to revise/modify/grant various benefits to the pensioners of the State as indicated in the succeeding paragraphs

Date of effect:-

(1) The revised provisions as per these orders shall apply to Govt. employees who retire/die in harness on or after 1st January, 2006 (separate orders are being issued in respect of employees who retired/died before 1st January, 2006). Where

pension/family pension/gratuity/commutation of pension etc. has already been sanctioned in cases occurring on or after 1.1.2006, the same shall be revised in terms of these orders. In cases where pension has been finally sanctioned on the pre-revised orders and if it happens to be more beneficial than the pension becoming due under these orders the pension already sanctioned shall not be revised to the disadvantage of the pensioner in view of proviso to rule 9.15 (1) of Punjab Civil Services Rules, Volume-I.

XXXXXX XXXXXX XXXXXX

4). Rates of Retirement-cum-death gratuity/DCRG.

The maximum limit of Retirement-cum-Gratuity is raised from the present Rs.350 lacs to 10.00 lacs.

XXXXXX XXXXXX XXXXXX

12. All proposed increases in allowances and other benefits (such as old age allowance, medical allowance, constant attendant allowance, exgratia payment) shall take effect from the date of issue of these orders by the Government whereas the revised pensionary benefits (such as basic pension, commutation of pension, gratuity) shall be from 1.1.2006. Decision about the payment of arrears of pensioners from 1.1.2006 to 31.7.2009 shall be taken in due course of time and with effect from 1.8.2009 enhanced pension in cash shall become payable.

13. Punjabi version of these orders will follow in due course of time.”

10. Thus, as existing rules and instructions of the State Government were, according to the petitioner, made applicable to teachers of Universities and colleges, by Clause-13 of the notification, dated 02.09.2009, reproduced hereinabove, therefore, the instructions/circular of the Punjab Government dated 13.08.2010 (Annexure P-3), directing payment of arrears on account of the enhanced

amount of gratuity from 01.01.2006 to 31.07.2009, would also be applicable.

The circular reads as under:-

“No.3/10/10-3FPPC/965
Government of Punjab
Department of Finance
(Finance, Pension Policy and Coordination Branch).

Dated Chandigarh the 13.8.2010

To

All Heads of Departments,
Commissioners of Divisions
Registrar High Court of Punjab and Haryana
District and Sessions Judges and
Deputy Commissioners in the State.

Subject:- Implementation of the recommendations of the Fifth Punjab Pay Commission regarding pension and other retirement benefits.

Sir,

I am directed to invite a reference to Govt. letter No.3/23/09-3FPPC/879, dated 17th August, 2009 and subsequent clarification issued vide No.3/10/10-3FPPC/635, dated 26th May, 2010 on the subject cited above and to say that the Government of Punjab is pleased to decide that the payment of arrears on account of enhanced amount of gratuity on the basis of revised basic pay under the Punjab Civil Services (Revised Pay) rules, 2009 to those employees who retired during the period from 1.1.2006 to 31.7.2009 shall be paid immediately.

Yours faithfully,
Sd/-
Om Parkash Bhatia
Under Secretary Finance (B).”

11. The petitioner is stated to have represented to respondent no.4 in respect of her grievance, on 29.10.2010, 06.05.2011 and 01.07.2011, but to no effect.

12. In the meanwhile, the letter of the University to the Principal of Kanya Maha Vidyalaya, Jalandhar, dated 17.05.2011 was also issued which reads as follows:-

“Principal
Kanya Maha Vidyalaya
Jalandhar.

Madam,

A complaint has been received from Asstt. Prof. Smt.Kiran Parbhakar retired from Psychology Deptt. of your College that after her retirement a period of one year has elapsed, but she has not been paid gratuity in accordance with revision by the Punjab Govt.

A notification dated 17.8.2009 for revision of gratuity has been issued by the Punjab Govt. and it has been made clear revised gratuity will be effect from 1.1.2006 (copy of notification is attached). You are requested to take action as per the notification issued by the Punjab Govt.

Yours faithfully,

Sd/-

Asstt. Registrar (Colleges)
For Dean, College Develop. council

Encl/As above

Endst. No.3931-32

Dated:17.5.2011”

13. The petition has thus been filed relying upon the above, as also on the judgments already referred to earlier, as well as another judgment in **Dr.Madhav Swarup Behl v. State of Punjab (1999 (3) SCT 25)**, wherein directions were issued that teachers working in private, aided institutions, are entitled to full amount of gratuity. Reliance has also been placed on another Division Bench judgment in **Hindu College Governing Council v. N.D.Malhotra and another (1993 (1) SCT 183)**.

14. The respondent-State has filed a short reply simply stating that the payment of all dues, including the retirement dues of the petitioner, are the sole responsibility of the college (respondent no.4) and as such, the petitioner has no right to claim any dues from the State directly. No reply has been filed in this case on behalf of the University (respondent no.3), though it has been filed in the petitions filed by the private colleges.

15. In the reply filed by the private aided college (respondent no.4), it has been stated that the petitioner has been paid due amount of gratuity and the enhanced amount of gratuity, of Rs.10,00,000/-, would only come into effect from May, 2010, i.e. the date of the Payment of Gratuity (Amendment) Act, 2010 coming into force.

As regards the notification of the Punjab Government dated 02.09.2009, clause-13 of which directs that service conditions of University and college teachers and equivalent cadres will continue to be governed by the existing rules/instructions of the State Government, the reply of the college states that the said clause is not applicable to the petitioner, especially in view of the fact that the circular dated 17.08.2009 providing for implementation of the recommendations of the 5th Punjab Pay Commission, is only applicable to Punjab Government employees as is stated in the first clause of the said circular itself.

The same stand has been taken with regard to the letter dated 13.08.2010 (supra) which again is addressed by the Government to its Heads of Departments etc., to the effect that the benefit of payment of arrears on account of enhanced amount of gratuity would be paid to those employees who retired between 01.01.2006 to 31.07.2009.

16. As regards leave encashment, it has been stated that nothing is due to the petitioner, as there was no condition in the service rules governing her service under which leave encashment was payable.

With regard to payment of the arrears of pay on account of revision of pay scales w.e.f. 01.01.2006, it has been stated that the said arrears have not been paid to any employee, in view of the fact that no grant has been given by the State Government for the release of arrears on account of such revision.

All in all, the stand of the college, in the reply, is that the petitioner is not entitled to any of the reliefs claimed by her.

CWP No.14473 of 2012

17. As regards the main issue with regard to payment of enhanced gratuity and leave encashment, the stand taken in this petition is also substantially the same as that taken in CWP No.23204 of 2011.

18. The facts specific to this petition are that the petitioner joined as a Lecturer in the year 1973 and retired on attaining the age of 60 years, from the Guru Nanak College, Sukh Chainana Sahib, on 31.07.2007.

19. During his career, a criminal case was registered against him, due to which his services were terminated; but upon being “acquitted honourably” by the Court, he was reinstated with continuity and full back wages.

Though the details of the criminal case are not given, either in the petition or in the reply of the respondent-college, it is further stated in the petition that the Managing Committee continued to bear a grudge against the petitioner.

Upon his retirement, the petitioner is stated to have not been

paid his gratuity, due to which he is stated to have written letters to the college on 16.01.2008 and 05.02.2008.

Thereafter, he also made representations to the Director of Public Instructions (Colleges) Punjab, seeking that the college be directed to release the gratuity to him, especially in view of the fact that, pursuant to directions of this Court passed in CWP No.16887 of 2007, the Director of Public Instructions had written to the Principals of all aided colleges in the State, on 02.01.2008, that the Principals of the colleges would submit a certificate counter signed by a Chartered Accountant, to the effect that retirement benefits of all employees have been paid. The letter dated 02.01.2008, further stated that unless such certificate was furnished, the amount of grant to the college would not be released.

In the last reminder, the petitioner also made a query to the effect that, since the grant for the last quarter of the year 2007-08 had been received by the college (from the Government), what undertaking/assurance the Principal had given to the office of Director of Public Instructions for getting the grant released.

The petitioner thereafter obtained information under the Right to Information Act that the respondent-college had submitted a certificate on 07.08.2009, to the effect that retirement benefits of all employees, covered under the 95% deficit grant-in-aid scheme, as had retired upto 31.05.2009, had been paid. A copy of the said certificate has also been annexed with the petition as Annexure P-8.

Thus, the contention of the petitioner is that the college had actually submitted a false certificate, in order to obtain grant-in-aid from the Government.

20. It is further stated in the petition that the petitioner thereafter received a letter dated 01.01.2009, from the respondent-college, asking him to collect his cheque for the amount of gratuity to be paid to him, on 06.01.2009. However, when the petitioner reached the college on 08.01.2009, he was allegedly harassed and insulted by the Acting Principal and the amount was not paid to him.

Consequently, the petitioner is stated to have addressed another letter to the Director of Public Instructions on 09.01.2009, voicing his grievance with regard to non-payment of gratuity.

21. It has also been stated that the petitioner had earlier instituted civil suit No.53 of 23.05.2008 seeking mandatory injunction against the respondent-college, to pay wages for five months from 17.07.2007 to 31.12.2007 and arrears of enhanced dearness allowance of 50%, as also for grant of leave encashment of earned leave of 104 days.

During the pendency of the suit, the enhanced dearness allowance w.e.f. 01.04.2004 was granted to the petitioner but the remaining relief was declined by the civil Court.

It has been stated that the relief claimed in the present petition is not the same as was sought in the said civil suit.

22. The petitioner is also stated to have filed CWP No.3764 of 2012 in this Court, which was disposed of on 29.02.2012 with a direction to the respondents to consider the claim of the petitioner in accordance with the law laid down in *Subhash Chander Lekhis' case* (supra) and if the relief was found due, the same be released to the petitioner within a stipulated period, failing which a speaking order be passed.

Pursuant to the above directions, an order dated 20.06.2012

was passed by the respondent-college (the quashing of which has been sought), rejecting the petitioners' claim on various grounds, the first being that the petitioners' pay has not been fixed and verified under the pay scale revision scheme, by the Director of Public Instructions (Colleges), despite reminders.

Consequently, it is stated in the impugned order, that the petitioner having already earlier filed civil suit No.53 aforesaid, with regard to the date of his retirement, payment of gratuity, leave encashment and arrears and the said civil suit already having been decided, there was no question of claiming any payment of gratuity and arrears. The order further states that the filing of the civil suit was not mentioned by the petitioner in CWP No.3764 of 2012 and as such, it is contended that the order of this Court for decision of the petitioners' representation, was on account of the Court being mis-led.

As regards *Subhash Chander Lekhis' case*, on the touchstone of which the petitioners' case was directed to be decided, the impugned order is silent. However, the reply of the college states that the said case does not cover the case of the petitioner.

23. Otherwise, on the issue of payment of enhanced gratuity, the stand taken is the same as that of the Kamla Nehru College, in CWP No.23204 of 2011, i.e. that the letters of the Government of Punjab are not applicable to the employees of private colleges and as a matter of fact, the State and the University have no authority to issue such a direction to the private colleges.

Further, it is stated in this reply also, that gratuity having been enhanced to Rs.10,00,000/- only w.e.f. May 2010, by amendment of

the Act of 1972, no employee who retired prior to that date was entitled to the same.

As regards the gratuity of Rs.3,50,000/-, it is stated that the same was paid to the petitioner on 20.03.2012, i.e. before filing of the writ petition.

24. On the issue of grant of arrears of salary on account of revision of pay scale w.e.f. 01.01.2006, the reply of respondent no.4 is that a writ petition had been filed earlier, titled as **Ramgarhia College and others v. State of Punjab and others** (CWP No.10265 of 2011), which was disposed of with a direction to the Punjab Government to take a policy decision as to whether it would reimburse 95% grant-in-aid to the private, aided colleges, in respect of the arrears of revised pay scales w.e.f. 01.01.2006. It is further stated that the Government has still not taken a decision in that regard. The said decision, of a co-ordinate Bench, is dated 21.10.2011.

25. Thus, in this case also, the respondent college has denied that nothing other than what has already been paid, is payable to the petitioner qua gratuity and leave encashment and, as regards arrears of revised pay w.e.f. 01.01.2006, the stand is that the same have not been paid to any other employee due to non-release of arrears of such revised pay by the State Government.

No reply to this petition has been filed by the respondent-State.

26. In the replication filed by the petitioner, to the reply of respondent no.4, it is admitted that arrears of revised salary were paid to the petitioner on 12.04.2013, during the pendency of the present petition,

but no interest on the delayed payment of the revised arrears of salary has been paid and that the remaining amount of gratuity of Rs.6,50,000/- is still to be paid (taking the amount to be Rs.10,00,000/-).

The replication also annexes alongwith it, the judgment of the Division Bench in *Arya College v. State of Punjab* (supra), wherein it was held as follows:-

“i) As far as gratuity is concerned, as per the Division Bench judgment of this Court in Hindu College Governing Council (supra), liability is that of these non-Government colleges because of the reason that gratuity is not a part of salary and, therefore, is not reimbursable under the Grant-in-Aid Scheme. The learned counsel for these appellants had argued that the legal provisions qua payment of gratuity had undergone a change and it had become obligation of the State to make contribution qua this as well. However, that is not the controversy before us. It is an *inter se* dispute between the non-Government colleges and the State of Punjab. These appeals arise out of the writ petitions filed by the teachers/staff claiming enhanced dues of gratuity which have become payable on enhancing the limit of gratuity from Rs.3.5 lakhs to Rs.10 lakhs. Insofar as these private respondents are concerned, there is no quarrel that this gratuity is payable. *Prima-facie*, as per the judgment of Division Bench in the case of Hindu College Governing Council (supra), the liability is of these appellants. Therefore, insofar as arrears on account of gratuity payable to these private respondents are concerned, it has to be paid by the appellants. We, thus, direct the appellants to pay the amount of enhanced gratuity to the private respondents and uphold the order of the learned Single Judge on this aspect.

(Emphasis applied)

ii) As far as leave encashment is concerned, again amount is payable to the private respondents on this account.

Whether it is a part of salary or not is an issue which now is in the lap of the Apex Court. Though this Court has held it to be a part of salary of which grant-in-aid is payable by the State Government, that direction has virtually been stayed by the Apex Court, by staying the contempt proceedings. This dispute between the non-Government colleges and the State Government cannot be allowed as a shield for denying the payment to the private respondents, which is admittedly, due to them. Whether it comes from the pocket of the appellants or from the coffers of the State Government is not their concern. Having regard to the dicta of Shri Anandi Murti's case (*supra*), we are of the opinion that the appellants should meet this liability as well by making payment to the private respondents without any further ado inasmuch as, the private respondents were the employees of these appellant-colleges and, therefore, having regard to the relation of master and servant between them, the appellants cannot shy away from their primary responsibility to pay this amount. It would, however, be open to these non-Government colleges to claim reimbursement from the State of Punjab in case Division Bench judgment of this Court dated 5.4.2011 in LPA No.519 of 2011 [*Anglo Sanskrit High School Khanna Trust and Management Society (Regd.), Khanna and Anr. Vs. State of Punjab and others*] is ultimately upheld by the Supreme Court.

iii) Insofar as arrears of pay and allowances are concerned, 95% of these arrears are payable by the State Government. To that extent, this liability could not be denied by the State Government. It is not in dispute that the amount payable under this head is very substantial. The appellants are not supposed to run educational institutions with profit motives as education is treated as a benevolent activity/noble profession and not commerce or industry. (See Modern School v. Union of India and others, (2004) 5 Supreme

Court Cases 583). No doubt, it is the primary obligation of the appellants to make this payment to their teachers and staff and State Government is supposed to reimburse the same, as held by the Division Bench of this Hon'ble Court on earlier occasions. In K.C.Sharma vs. State of Punjab, (CWP No.3583 of 2007).”

After holding as above, the following directions were given by the Division Bench:

- “(A) Within fifteen days from today, the appellants shall make the calculations of the arrears of salary payable to the private respondents and ascertain the share of the State Government. Details of these calculation shall be forwarded by the appellants to the State Government.
- (B) The State Government shall examine veracity of those calculation and ascertain its share as per Grant-in-Aid Scheme and release it by making payment to the educational institutions within two months from the receipt of calculations from the appellants.
- (C) Within ten days of the receipt of grant-in-aid from the State of Punjab, the amount under this head shall be released to the private respondents.

It is made clear that this period is prescribed for making the payment on account of arrears of pay. Insofar as payment of gratuity and 'leave encashment' is concerned, that shall be paid by the appellants to the private respondents within one month from today.

Subject to the aforesaid modifications, order of the learned Single Judge is upheld and appeals are disposed of on the aforesaid terms.”

27. It needs mention that the judgment of the learned Single Judge, as was upheld by the Division Bench, subject to the above reproduced directions, was in the case of *Subhash Chander Lekhi v. State*

of *Punjab and others* (supra), decided on 23.08.2011; wherein, the respondent-college in that case (Arya College-appellant in LPA 920 of 2012), had not opposed the claim of the petitioners for grant of enhanced gratuity and leave encashment, but had only stated that the amount was to be paid by the State Government and that the management could not be forced to make payment at the first instance. This stand was not accepted by the learned Single Judge (in *Lekhis'* case) and it was held that since the college is the principal employer, the benefits were first payable by it to the employee, which could then be got reimbursed from the State. This would be seen from what has been observed by the Division Bench, in *Arya Colleges'* case:-

“It is not in dispute that so far as these teaching and non-teaching staff members are concerned, they are entitled to these benefits. Therefore, insofar as relief claimed by the private respondents in those writ petitions was concerned, there was hardly any contest by the appellants-non-Government colleges, which are supposed to contribute 5% of the salary and other allowances except House Rent Allowance. The controversy, however, took a curious turn, - *Pehle Aap, Pehle Aap* (you first). Whereas, the plea of non-Government colleges was that it is the State of Punjab which should pay its share of grant-in-aid to enable these colleges to give the aforesaid benefits to the private respondents, plea of the State of Punjab was that in the first instance it was the obligation of these non-Government colleges, to pay to their staff and thereafter claim it from the state as that could be claimed only in the event of 'deficit'.”

As such, directions were given that the benefits be released to the petitioners, in *Lekhis'* case, within two months, alongwith interest @

9% and, thereafter, the State was directed to reimburse the amount to the college.

However, as can be seen from clause (i) of what was held by the Division Bench, the controversy with regard to whether or not the State was liable to reimburse the gratuity payable to the private colleges, was not gone into by the Division Bench.

As regards whether leave encashment is a part of salary or not (and therefore, reimbursable as grant-in-aid by the State Government), that issue, though actually held in favour of the colleges and against the State Government, as can be seen from the clause(ii) reproduced hereinabove, no directions in that regard were given, as that issue was sub-judice before the Supreme Court.

With regard to arrears of pay allowances, it was held that the said liability could not be denied by the Government and hence, the directions reproduced above, were given.

CWP No.6159 of 2013

28. This petition has been filed by the Guru Nanak College, Sukh Chainana Sahib, Phagwara, i.e. respondent no.4 in CWP 14473 of 2012, the facts of which have been detailed immediately hereinabove.

As already noticed at the outset, this college also challenges the letter dated 17.05.2011 addressed by the University (respondent no.4 in this petition), to the Principal of the Kanya Maha Vidyalaya, Jalandhar, directing her to pay one Smt.Kiran Parbhakar, Assistant Professor, the revised amount of gratuity in terms of the Punjab Government notification dated 17.08.2009.

29. The petition, naturally, raises the same grounds to challenge

the contents of the letter, as have been raised to repel the claim of the petitioner-employee in CWP 14473 of 2012.

Also annexed alongwith the petition, is a letter dated 24.02.2010, addressed by the University to all Principals of all non-government colleges affiliated to the University, informing them that the recommendations of the 5th Pay Commission were accepted by the Government of Punjab on 17.08.2009 and “on that basis the limit of retirement and death gratuity has been enhanced from 3.50 lacs to 10 lacs”.

Though this letter has not specifically been challenged, the tenor and implication of the contents of the petition are that the enhanced gratuity is being made applicable to all private colleges w.e.f. 01.01.2006, in terms of this letter and the impugned letter addressed to the Principal of Kanya Maha Vidyalaya, Jalandhar.

30. Further, reference has been made to Vol.-IV of the Guru Nanak Dev University Calendar, 2007, which contains the Ordinances issued, the relevant part of which runs as under:-

“(iii) Service and Conduct of College Teachers

The following ordinances to govern the service and conduct of teachers shall apply to all the teachers employed in non-government affiliated colleges including those already in service unless otherwise specified.”

Clause-18 of the “Service Ordinances” has also been reproduced, which is the same as has been referred to as Ordinance 18, in CWP No.23204 of 2011 (already reproduced earlier, while referring to the facts of that petition).

31. However, the contention of the college is that, since in the Statutes and the Regulations/Ordinances, provision has been made for payment of gratuity to employees, and the amount is being paid by the college from its own resources, it is an “illegality” on the part of the State not to reimburse it as part of the grant-in-aid.

32. It is further stated that the Act of 1972 has not been amended with retrospective effect and, as regards the increase in gratuity limit ordered by the Government of Punjab, that too cannot be given retrospective effect and made applicable to the aided colleges, especially when the notification and circular, in any case, pertain only to Government employees.

Still further, it is contended in the petition that the University having issued the letter dated 24.02.2010, informing the colleges of the increase in the gratuity amount from Rs.3.5 lacs to Rs.10 lacs, the enhancement can be effective only from that date onwards, i.e. 24.02.2010.

33. In the counter affidavit to the petition, filed by the Director of Public Instructions (Colleges), Punjab, on behalf of respondents no.1 to 3, it has been stated that the impugned letter has not been issued by the Government but by the University and further, that payment of gratuity is not covered under the 95% deficit grant-in-aid scheme and as such, the Government has nothing to do in that matter.

This has been so stated in the preliminary objections but thereafter, in para 14 of the writ petition, it has been stated that the University has “opted the Punjab Government letter dated, 17-8-2009 (Annexure P1), which is applicable w.e.f. 1.1.2006. Therefore, the

employees of Petitioner-college who retired on or after 1.1.2006 are entitled to the enhanced amount of gratuity”.

34. The reply further relies upon the Division Bench judgment in the case of *Arya College* (supra) (LPA No.920 of 2012), stating that even as per the said judgment, gratuity and leave encashment is to be paid by the college management.

Hence, tacitly, the Government has endorsed the stand of the employees.

35. Though no written statement had been filed on behalf of Guru Nanak Dev University (respondent no.4), however, upon this Court directing the University to place on record the source of power by which it had directed the private colleges to pay the enhanced amount of gratuity to the employees w.e.f. 01.01.2006, an affidavit dated 11.11.2014, of the Registrar of the University, was placed on record.

The affidavit reproduces Statute No.17 of the Statutes of the GNDU, stated therein to have been framed under Section 19 of the GNDU Act, 1969. The said Statute No.17 has already been reproduced earlier in this judgment.

Importantly, Ordinance no.18 (supra), of the Ordinances of the GNDU, (again stated to have been issued under the provisions of the Act of 1969), pertaining to service and conduct of teachers of affiliated colleges, has also been reproduced in the affidavit of the University.

The said Ordinance is shown to be part of the GNDU Calendar of 2007, Volume-IV.

Similarly, Ordinance no.39(4) of the Ordinances of the GNDU, pertaining to service and conduct of non-teaching staff in non-government, affiliated colleges, has also been reproduced as follows:-

“39(4) Every member of the non-teaching staff shall be entitled to benefits of Provident Fund and **gratuity** on the same basis as admissible to the teaching staff in the college.”

Thus, the directions to the colleges for payment of enhanced gratuity w.e.f. 01.01.2006, have been justified in terms of the above provisions.

36. It has been further stated that Ordinance no.18 does not prescribe any upper limit for payment of gratuity and as such, even prior to 01.01.2006, if the amount of gratuity payable to a teacher came to be Rs.5,00,000/- (upon calculation in terms of Ordinance no.18), it was liable to be paid by the colleges but the colleges chose to limit the gratuity to Rs.3.50 lacs, as was prescribed by the Punjab Government from time to time. Hence, when the Punjab Government raised the limit from Rs.3.5 lacs to Rs.10 lacs, vide para 4 of the letter dated 17.8.2009, such enhanced amount was communicated by the University to its affiliated colleges in the letter dated 24.2.2010, to be paid by them.

37. This affidavit, again, also relies upon the judgment of the Division Bench in the *Arya College case* (supra).

38. The stand of the University, thus, is that the contention of the colleges that they were paying a maximum amount of Rs.3.5 lacs by way of gratuity under the Payment of Gratuity Act, 1972 and not as per the rules of Punjab Government, is not a legally tenable contention, as the affiliated colleges are bound by “Statutory Ordinance No.18” (as stated in

the affidavit).

39. The rest of the affidavit runs in response to a query made to learned counsel for the University, by this Court, with regard to the pension scheme and Provident Fund paid to University employees, which is not actually germane to the present issue, in view of the fact that as per the affidavit, the pension scheme and Contributory Provident Fund are applicable to the employees of the University only.

40. Hence, the stand of the University, as also the State of Punjab, is in favour of the employees and against the stand of the affiliated colleges, with the State of Punjab basing its stand on the fact that the University has directed the colleges to pay the enhanced amount of gratuity w.e.f. 01.01.2006 and the University basing its stand on clause-17 of Volume-I of the University Calendar 2007 and Ordinance no.18 of Volume-IV thereof. As per the University, these provisions are within the domain of the University in view of the provisions of the GNDU Act of 1969, with the issuance of the Statutes being governed by Section 19 thereof.

Actually, upon a perusal of the Act, it is seen that the Statutes to be issued are governed by both, Sections 18 and 19. Both the Sections are, therefore, reproduced here:-

“18. Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely:-

- a) The constitution, powers and duties of the Academic Council and such other bodies as may be deemed necessary to constitute from time to time.
- b) The appointment, powers and duties of the officers of the University;
- c) The constitution of a pension or provident fund and the

establishment of an insurance scheme for the benefit of the officers, teachers and other employees of the University.

- d) The conferment of Honorary degrees.
- e) The withdrawal of degrees, diplomas, certificates and other academic distinctions.
- f) The establishment and abolition of faculties, departments, halls, hostels, colleges and institutions.
- g) The conditions under which college and other institutions may be admitted to the privileges of the University and the withdrawal of such privileges.
- h) The institution of fellowships, scholarships, studentships, exhibitions, medals and prizes. And
- i) All other matters which by this Act are or may be provided for by the Statutes.

- 19.(1)The first Statute of the University shall be made by the State Government and notified in the official Gazette.
- (2) The Syndicate may, from time to time, make new or additional Statutes or may amend or repeal the Statutes.
- (3) xxxxx xxxxx xxxxx } Omitted by
- (4) xxxxx xxxxx xxxxx } Amendment Act
- (5) xxxxx xxxxx xxxxx } of 1975.
- (6) Every new Statute or addition to the Statutes or any amendment or repeal of a Statute shall require the approval of the Chancellor who may sanction, disallow or remit it for further consideration.”

Thus Section 18(g) provides that Statutes may be issued laying down the conditions for colleges to be admitted to the privileges of the University.

41. The affidavit of the Registrar does not specifically give the provision which governs issuance of Ordinances; however, a perusal of

the Act of 1969 shows that the Ordinances have been made subordinate to Statutes and the issuance thereof is governed by Sections 20 and 21. The said provisions are reproduced hereinbelow:-

“20. Subject to the provision of this Act and the Statutes, the Ordinances may provide for all or any of the following matters, namely:

- a) The admission of students to the University and their enrolment as such.
- b) The courses of study to be laid down for all degrees, diplomas and certificates of the University.
- c) The degrees, diplomas, certificates and other academic distinctions to be awarded by the University, the qualifications for the same and the means to be taken relating to the granting and obtaining of the same.
- d) The fees to be charges for courses of study in the University and for admission to the examinations, degrees and diplomas of the University.
- e) The conditions for the award of fellowships, scholarships, studentships, exhibitions, medals and prizes.
- f) The conduct of examinations including the terms of office and manner of appointment and the duties of examining bodies, examiners and moderators.
- g) The maintenance of discipline among the students of the University.
- h) The conditions of residence of students at the University.
- i) The emoluments and terms and conditions of service of teachers of the University.
- j) The management of colleges and other institutions founded or maintained by the University.
- k) The supervision and inspection of Colleges and other institutions admitted to the privileges of the University. And

- 1) All other matters which by this Act or the Statutes are to be or may be provided for by the Ordinances.

21.(1) Ordinances shall be made, amended, repealed or added to by the Syndicate.

Provided that no Ordinance shall be made:

- a) Affecting the admission or enrolment of students or prescribing examinations to be recognised as equivalent to the University examinations; or
- b) affecting the conditions, mode of appointment or duties of examiners or the conduct or standard of examinations or any course of study.

Unless a draft of such Ordinances has been proposed by the Academic Council.

- 2) The Syndicate shall not have the power to amend any draft Ordinance proposed by the Academic Council but may return it to the Academic Council for reconsideration, either in whole or in part, together with any amendments which the Syndicate may suggest, or reject it after it has been submitted for the second time.”

42. Other than the Statutes and Ordinances, the University Act of 1969 also postulates the framing of Regulations in Section 22, which provides as under:-

“22(1) The authorities of the University may make Regulations consistent with this Act, the Statutes and the Ordinances:

- a) laying down the procedure to be observed at their meetings and the number of members required to form a quorum; and
- b) providing for all matters which by this Act, the Statutes or the Ordinances, are to be prescribed by Regulations.

2) Every authority of the University shall make Regulations providing for the giving of notice to the members of such authority of the dates of meetings, and of the business to be considered at meetings, and for the keeping of a record of the proceedings of the meetings.”

Obviously, the Regulations, though referred to during the course of arguments, are not relatable to the present controversy.

CWPs No.6210 & 19782 of 2013

43. These petitions filed by the Kamla Nehru College for Women, Phagwara and the Guru Nanak Nav Bharat College, Kapurthala respectively, are almost identical to the petitions filed by the Guru Nanak College, Sukh Chainana Sahib, Phagwara (CWP No.6159 of 2013) and as such the contents of the petitions need no separate reference to.

In response to CWP No.19782 of 2013 a short affidavit has been filed on behalf of the Director Public Instructions, Punjab (respondent no.3 in the petition), reiterating that in terms of the decision in Arya Colleges' case, gratuity is to be paid by the college. It also states that the said emolument is not covered in the grant-in-aid scheme.

The University has filed a written statement through its Registrar, stating that the decision of the Punjab Government would be applicable to all affiliated colleges, vide its letter dated 24.02.2010 and as such, the petitioners' college is also bound by the same.

In reply to CWP No.6210 of 2013, two counter affidavits have been filed by the Director of Public Instructions, dated 29.05.2013 and 30.07.2013, a composite reading of which shows that, in fact, the stand is the same as is taken in reply to all the other petitions.

No reply, in this case, has been filed by the University.

44. Mr. Puneet Jindal, learned Senior Counsel appearing for the petitioner in CWP No.14473 of 2012, i.e. an employee of a private college, submitted that the matter has already been well settled by the Division Bench in the bunch of cases decided with LPA No.920 of 2012 (Arya College case (supra) and payment of both, gratuity and leave encashment to the employees, has been upheld by the hon'ble Supreme Court in **Arya College and another v. State of Punjab** (SLP © No.351 of 2013), decided vide order dated 01.10.2012. The said order is as follows:-

“The Special Leave Petitions are dismissed. However, the dismissal of these special leave petitions will not come in the way of petitioners to get the amount reimbursed from the state, if permissible under the law, and is ordered by the High Court.”

Thus, as per learned Senior counsel, as regards payment to employees of the colleges, including the two petitioners in CWPs No.14473 of 2012 and 23204 of 2011, the colleges are bound to make the payment in the first instance and thereafter, whether or not they get the amounts paid reimbursed from the respondent-State, is not a matter which the employees are concerned with and is between the colleges and the State.

Hence, Mr.Jindal, as also Mr. Pawan Kumar, learned counsel for the petitioner in CWP No.23204 of 2011, submitted that the matter having been finally decided by the Supreme Court, nothing more need be cited, other than the judgments already cited in the body of the writ petitions filed by the petitioner-employees.

45. Mr. Amrit Paul, learned counsel appearing for the respondent-University, supported the stand taken by the University in the written statement, as also in the affidavit filed by the Registrar, dated 11.11.2014.

He specifically referred to clause 18 of the Service Ordinances, as has already been reproduced earlier, to support the stand that once the University had issued directions in terms of the said Ordinance, vide letter dated 24.02.2010, which was to the effect that the Punjab Government vide its letter dated 17.08.2009 had implemented the recommendations of the 5th Pay Commission, including increasing the upper limit on the amount of gratuity, which had been enhanced to Rs.10 lacs, then, in terms of clause (i) of that letter of 17.08.2009, the cap on the enhanced amount of gratuity would be effective from 01.01.2006. (The relevant part of said letter dated 17.08.2009 has also already been reproduced earlier, in para no.9 of this judgment).

Mr. Paul further submitted that, as a matter of fact, the letter dated 24.02.2010 limits the total amount of gratuity to be paid, even in terms of Ordinance 18, to Rs.10 lacs; because the amount arrived at by the method of calculation that is provided in the said Ordinance, may come out to be higher than Rs.10 lacs in some cases.

Learned counsel also pointed to clause 17 of the University Statutes, which lays down that non-government colleges shall comply with the requirements laid down in the Ordinances governing the service and the conduct of teachers in such colleges.

Therefore, the University being within its jurisdiction to regulate the payment of gratuity and other service conditions, as a condition for continued affiliation of such colleges to the University, the

non-government colleges cannot refuse to follow such conditions, if they wish to remain so affiliated.

46. Dr. Puneet Kaur Sekhon, learned Additional Advocate General, Punjab, submitted that though payment of gratuity to the employees of private Government aided colleges is not a matter which is the concern of the State Government, it not being covered as any component of the grant-in-aid scheme, however, once the University has also adopted the decision of the Punjab Government to enhance the maximum amount of gratuity payable to its employees, to Rs.10 lacs, w.e.f. 01.01.2006, then obviously, the colleges cannot refuse to pay the same.

However, she reiterated that by no provision whatsoever, either referred to or reproduced in the pleadings, or even produced in Court, have the colleges been able to point out as to on what basis they can claim reimbursement of such gratuity and leave encashment payable by them to their employees, as part of grant-in-aid payable by the State Government.

Hence, learned State counsel, as also counsel for the University, both prayed that the writ petitions filed by the colleges be dismissed.

47. Mr. Rahul Sharma, learned counsel appearing for the private colleges, both, in the writ petitions filed by the colleges and where they are respondents, reiterated their stand already noticed above, to the effect that, firstly, the Punjab Government notifications and letters relied upon, or even the letter dated 17.05.2011 of the Guru Nanak Dev University, addressed to the Principal of the Jalandhar College, do not make it

mandatory for the colleges to pay enhanced amount of gratuity to their employees.

As regards the letter of the University dated 24.02.2010, he submitted that other than the fact that neither the University, nor the Government, is empowered to direct the colleges to pay a particular amount of gratuity, however, even if shelter is being taken under the ordinance, the same cannot be with retrospective effect.

In this regard, he relied upon a judgment of the Supreme Court in Vice Chancellor, M.D. University Vs. Jahan Singh, and another judgment of a Division Bench of this Court, in Harish Kumar Vs. State of Haryana, 2001 (4) SCT 667.

48. Learned counsel further reiterated that in *Subhash Chander Lekhis'* case, as also in the LPAs preferred against it, i.e. *Arya College etc.*, the colleges that were impleaded therein, had conceded that gratuity and leave encashment are payable; but the colleges concerned in the present petition are not conceding the same. Hence, the ratio of the judgments, cannot be made to apply to all private colleges.

49. Mr. Sharma further submitted that reliance placed by the two petitioner-employees in CWP No.23204 of 2011 and 14473 of 2012, on Ordinance 18, is an after thought, as that is not the stand taken in either of the writ petitions and has only been added at the time of arguments. He further submitted that even if the claim is taken to be based on Ordinance 18 of the GNDU Calendar, then the cause of action arose to the petitioners on 31.01.2007, whereas the first petition was filed only on 12.12.2011. He, therefore, submitted that the petitions suffer from delay which has not been explained.

He next reiterated the stand taken in the petitions, by the colleges, that the enhanced ceiling on gratuity would only be with effect from the date that it was so enhanced by amendment of the Payment of Gratuity Act, 1972, i.e. 24.05.2010. He, therefore, prayed that the petitions filed by the employees be dismissed and those filed by the colleges be allowed.

50. Learned counsel appearing for the private colleges, as an alternative argument, further submitted, that even if this Court were to hold to the contrary, then the amount is still reimbursable by the State as part of 95% grant-in-aid to the colleges. He stressed on the fact that this would especially be so, in view of the fact that it is the notification of the State which is being relied upon by the petitioners, as also the University, to insist upon payment of enhanced gratuity with retrospective effect from 01.01.2006.

51. It is also necessary to notice that after judgment was reserved in this case, this Court had called upon Mr. Sameer Sachdeva, Advocate, to assist it in a similar matter, upon an application for modification of orders having been moved in that case. Upon the application for modification having been withdrawn, that matter was transferred, as per roster, to a co-ordinate Bench.

However, while appearing before the Court, Mr. Sachdeva had brought to my notice a Division Bench judgment in LPA No.285 of 1968, decided on 13.01.1971, i.e. **The Punjab University vs. The Khalsa College Amritsar etc.** Vide the said judgment, the Division Bench, while upholding the judgment of a learned Single Judge, had held that Rule 17 of Chapter-III(A) of Part-E of the Panjab University

Calendar, Vol.-I, was beyond the powers conferred upon the University by the Punjab University Act 1947 (hereinafter, to be referred to as the Act of 1947).

The said rule, as reproduced from the judgment of the learned Single Judge in **CWP No.1829 of 1964** (The Khalsa College, Amritsar v. The State of Punjab and others) decided on 29.03.1968, is further reproduced hereinunder:-

“17. In addition to the benefits given under the Provident Fund Rules, the management shall grant at the time of retirement of a teacher or on his death to his nominee or nominees, for efficient and faithful service, a gratuity equal to his half month's average pay (pay means an employee's full substantive pay and includes a personal allowance but no other allowance) for every year of service. The average pay will be calculated on the basis of pay drawn by him during the total period of his service in that institution provided that no gratuity shall be given to a teacher who has not completed at least twenty years' continuous service in that institution.”

Thus, the said Rule provided for payment of gratuity by private colleges also, calculable in the manner provided in the Rule.

The Division Bench, while agreeing with the learned Single Judge, held that the said Rule is beyond the scope of the Rule making power of the Panjab University, as conferred upon it by Section 31 of the Act of 1947, which provided as under:-

“S. 31. *Regulations* :

- 1) The Senate, with the sanction of the Government, may, from time to time, make regulations consistent with

the Act to provide for all matters relating to the University.

2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for-

* * * * *

- t) adequate arrangement to ensure security of service for teachers of the college affiliated to the University; and
- u) adequate arrangement for proper administration of the colleges other than Government Colleges affiliated to the University.”

Reference was also made, in the judgment, to Section 27 of the Act of 1947, in terms of which a college could apply for affiliation of the University. The said Section is reproduced as follows, from the judgment of the learned Single Judge:-

“S. 27. Affiliation :

1) A college applying for affiliation to the University shall send a letter of application to the Registrar and shall satisfy the Syndicate-

a) * * * * *

b) that the qualifications of teaching staff, their grades of pay and the conditions governing their tenure of office are such as to make due provision for the courses of instruction to be undertaken by the college;

c) * * * * *

It was held by the Division Bench, in Panjab University's case, that Section 27 does not make any mention of pension or gratuity for teaching staff of colleges seeking affiliation, nor of the terms and

conditions of their employment.

As regards Section 31, i.e. the power to make regulations/rules, it was held that despite the generality of the power to make rules/regulations governing various aspects, as stipulated in Section 31(2), such power still did not include the power to make a rule providing for pension or gratuity as a compulsory condition of employment for teachers in non-affiliated colleges. It was held that the term “adequate arrangement to ensure security of service” for such teachers could not include special grant of gratuity, as it was not a condition of service, because security of service was in relation to a tenure of office and not the conditions of such office.

Hence, that judgment having been brought to the notice of this Court, would also need to be referred to, before adjudicating upon the controversy.

Thus, having heard learned counsel for the parties and having gone through the pleadings in detail, the same are discussed as follows.

52. In the arguments addressed, it obviously could not be denied that the decision of the Division Bench in LPA No.920 of 2012 and connected matters, directing the colleges that were parties in that case, to pay gratuity and leave encashment to the employees, have been upheld by the Supreme Court in **Arya College and another v. State of Punjab and others** (SLP (C) No.351 of 2013) and connected matters, vide an order dated 01.10.2012.

The only liberty granted to the colleges was to get the amount reimbursed from the State, if permissible under the law and ordered by this Court.

However, the contention of learned counsel appearing for the private colleges, as already noted, is that the said judgment of the Division Bench, as has been upheld by the hon'ble Supreme Court, cannot be held to be binding on the private, Government aided colleges, who are now petitioners in CWPs No.6159 of 2013, 6210 of 2013 and 19782 of 2013, as the said judgment was based upon an admission by the colleges that were parties to the bunch of petitions decided alongwith the LPA No.920 of 2012, that they were bound to pay the gratuity and leave encashment, but the same was to be first paid by the respondent-State as part of grant-in-aid.

53. The Division Bench judgment in LPA No.920 of 2012 (Arya College), as already noticed, substantially upheld the view of the learned Single Judge in CWP No.23315 of 2010 (Lekhis' case) that gratuity is payable to an employee, by a private college. Thus, the LPA Bench essentially agreed with an earlier judgment of a Division Bench in *Hindu College Governing Councils' case* (supra). In the *Hindu Colleges' case* (supra), the Division Bench had cited from **Shri Anadi Mukta Sadguru S.M. V.S.I. M.S Trust v. V.R. Rudani (AIR 1989 SC 1607)** as follows:-

“Under the relationship of master and servant the management is primarily responsible to pay salary and other benefits to the employees. The management cannot say that unless and until the state compensates it will not made full payment to the staff.

The only point canvassed by the counsel for the appellants was with regard to directions to Government as sought in the writ petition that 95% aid be provided to privately managed government aided colleges also towards

meeting their liability for payment of gratuity to their employees. In support counsel sought to contend that the words 'salary' in this context deserve to be construed as inclusive of fringes following from salary like gratuity, dearness allowance and interim relief. No such construction is warranted. The expressions 'salary' and 'gratuity' have a well established different and distinct meaning and they cannot therefore, be treated as being part of the same i.e. within the expression 'salary' alone.”

The above observation of the Supreme Court is obviously in the context of reimbursement by Government to private colleges, of the amount of gratuity paid to its employees, with the Apex Court holding that gratuity not being a part of salary, was not reimbursable by the State.

That aspect, in any case therefore, in the context of the present petitions, and the arguments addressed in that regard, is put at rest in view of the authoritative pronouncement on that issue, that gratuity is not a part of salary and such, is not reimbursable from Government as part of the 95% grant-in-aid.

54. Coming then to, as to whether the colleges are bound to pay gratuity or not, obviously, such liability is not denied by the colleges even now, but as per their stand, it is to be in terms of the Payment of Gratuity Act, 1972.

The stand of the respondent-University, as also of the State, is that gratuity, is in fact, payable in terms of what is stipulated in the Guru Nanak Dev University Calendar, issued from time to time. Mr. Amrit Pauls' arguments based on clause-18 of the Chapter-IV of Vol.-IV of the Calendar of the University, therefore, needs to be looked at in the

context of what was held by the Division Bench in 1971, in the case of *Punjab University v. Khalsa College* (supra).

55. Clause-18/Ordinance 18, already reproduced earlier, simply provides that in addition to the benefits of Provident Fund, the college would grant to every teacher, at the time of retirement, gratuity calculated at the rate of half the pay last drawn for each completed year of service. Thus, if the amount of gratuity calculated on the basis of the above, comes to more than Rs.3.5 lacs, or even Rs.10 lacs, it would be so payable, in terms of the said clause-18.

The said clause is a part of the Ordinances issued by the University under Sections 20 and 21 of the Act of 1969. By Section 20(i) of the Act, the University is empowered to issue Ordinances to provide for the emoluments and terms and conditions of service of teachers of the University.

Mr. Sharma had pointed to clause-j of the said Section, which postulates that Ordinances can (only) be issued to the management of colleges and other institutions founded or maintained by the University.

However, clauses-k and l of Section 20 provide for issuance of Ordinances with regard to “the supervision and inspection of colleges and other institutions admitted to the privileges of the University” and “All other matters which by this Act or the Statutes are to be or may be provided for by the Ordinances”, respectively.

Though there may be again some weight in the argument of learned counsel appearing for the colleges, that supervision of the colleges (Section 20(k)) would not include the kind of emoluments to be

paid to the teachers of the colleges, however, it cannot be denied that clause-1 of Section 20 includes within its ambit “all other matters” in respect of which Ordinances can be issued, as are provided for in the Act or by the Statutes. Undoubtedly, Section 18(g) of the Act of 1969 empowers the University to issue Statutes governing the conditions that it may impose on colleges that seek to be “admitted to the privileges of the University and the withdrawal of such privileges”.

In turn, clause-17 of Chapter-V of the University Statutes, lays down that “Non-Government Colleges shall comply with the requirements laid down in the Ordinances governing service and the conduct of teachers/non-teaching staff as may be framed by the University”.

56. Therefore, in the opinion of this Court, the provisions of the Panjab University Act of 1947 and the regulations framed thereunder, as were considered by the Division Bench in *Khalsa Colleges' case* (supra) are wholly different from what is contained in Sections 18 and 20 of the Guru Nanak Dev University Act of 1969. This is specifically in relation to Section 18(g), which stipulates that it is within the power of the University to lay down all conditions under which any college or institution may be admitted to the privileges of the University and the withdrawal of such privilege.

Hence, in terms of Section 18(g), the University issued clause-17 contained in Chapter-V of the Statutes, requiring non-government colleges to comply with the requirements laid down in the Ordinances governing the service and conduct of teachers and thereafter, in clause-18 of Chapter-IV of the Ordinances, as contained in the

University Calendar, it is laid down that gratuity would be payable by a college, as per the method given in the said clause-18.

Thus, the University, in the affidavit of its Registrar, dated 11.11.2014, has reiterated that it is entitled to ask its colleges to extend the pecuniary benefits stipulated in the Ordinances.

57. Therefore, the stand taken by the University is well founded, being wholly based on Section 18(g) Act of 1969, clause 17 of the Statute issued thereunder, and clause 18 of the Ordinances issued, again under the Act, which are to be complied with in terms of the said Statute (clause 17). Hence, I find the contention of learned counsel for the private colleges in these petitions, that there is no power with the University to issue any direction to the private colleges to pay gratuity to its employees, calculable in a particular manner, to be a contention which runs in the face of the aforesaid provisions.

In fact, for the reason that clause-18 of the Ordinances does not lay down an upper limit to the amount of gratuity to be paid, the University has, as rightly contended by Mr.Amrit Paul and stated by the Registrar in his affidavit, granted a benefit to the colleges, by limiting the amount of gratuity to Rs.10 lacs, in terms of the Punjab Government notification dated 17.08.2009.

Without doubt, learned counsel for the colleges are correct in their submission that the State, when it is not reimbursing the amount of gratuity payable to teachers of the colleges, has no jurisdiction to direct the colleges to make enhanced payment of such gratuity. However, the said argument does not apply to the power of the University to issue directions to the colleges in terms of what has been discussed

hereinabove.

Of course, if the colleges still choose not to pay the same, it is up to the University to consider withdrawal of affiliation or not. However, in view of what has been held hereinabove, the University would obviously be within its right to withdraw privilege from any college not adhering to the condition laid down by the University for grant of such affiliation/privileges.

58. Coming to the contention that since the University has issued a letter only on 24.02.2010, adopting the upper limit on the enhanced amount of gratuity w.e.f 01.01.2006, in accordance with the Punjab Government notified policy, and hence, the said enhancement of limit cannot apply retrospectively. Before coming to the merits of the contention, it is first necessary to refer to the judgment mainly relied upon by learned counsel in this regard, i.e. *Jahan Singhs' case* (supra).

In that case, the hon'ble Supreme Court was concerned with the issue of termination of the services of an employee, during the period of probation, by the M.D. University, Rohtak. While dealing with Regulation 26 of the Regulations issued under the M.D. University Act, 1975, it was held that the Act did not confer any power on the Executive Council of the University to amend the Regulations retrospectively, so as to change the conditions of extra ordinary leave.

Similarly, the other judgment relied upon by Mr.Sharma in this regard, i.e. *Harish Kumars' case*, supra, (of a Division Bench of this Court), also is a matter relating to termination of the services of an employee retrospectively, which actually has no bearing on the present controversy, other than the fact that it was held that such termination

could not be made with retrospective effect.

Though the analogy drawn by Mr.Sharma with *Jahan Singhs'* case, at first blush, is not entirely dismissible, as has been contended by learned Senior Counsel appearing for the employees, however, in my opinion, the two situations are wholly incomparable. Amendments made with retrospective effect, of Rules/Regulations, being held to be beyond the jurisdiction conferred by the principal Act, is not at all the same, as enhancing the cap of payment of any kind of emoluments which are otherwise governed by an existing ordinance.

Ordinance 18 of the GNDU Calenader has been in existence well before any enhancement in the gratuity limit was adopted by the University. As noticed and discussed threadbare, Ordinance 18 lays down a permanent method of calculating the amount of gratuity payable to an employee. It lays down no limit to the amount payable. It was only because the Government employees, including teachers and staff of Government colleges, were governed by the Punjab Government policy of putting a cap of Rs.3.5 lacs on the amount of gratuity payable, that the private colleges were also adopting the same, with no protest from anybody. Thus, all that the University has done, vide its letter dated 24.02.2010 and as conveyed to the Principal of the Kanya Mahavidayala, Jalandhar, vide letter dated 17.05.2011, (impugned by the Colleges), is to enhance the said cap to Rs.10 lacs, as has been done by the Government of Punjab qua its own employees w.e.f. 01.01.2006. In fact, de hors the said capping, there is no limit on the amount of gratuity payable in terms of Ordinance 18. Therefore, the question of retrospective enhancement of the limit of gratuity payable, in terms of either the GNDU Act of 1969, or

the Statutes and Ordinances issued thereunder, by which all colleges affiliated to the University are governed, does not arise.

Hence, the action of the University, cannot, in any manner, in the opinion of this Court, be construed to be in violation of any provision of the GNDU Act, 1969, or the Statue and Ordinances issued thereunder.

Therefore, the contention of learned counsel for the colleges in this regard, is misconceived and is rejected.

59. That main issue having been settled, the question then is as to whether leave encashment is payable by the colleges or not. That matter was also settled by the Division Bench in *Arya Colleges' case* (supra) (LPA No.920 of 2012), wherein directions were given to the colleges to pay leave encashment to its employees. However, no direction was given that it would be reimbursed by the State Government because it was observed by the Division Bench that whether or not it is a part of salary is a matter before the Supreme Court. However, no ruling to the contrary, by the Apex Court, thereafter, has been brought to the notice of this Court, holding differently to what has been observed by the Division Bench in *Arya Colleges' case*, while referring to an earlier Division Bench judgment dated 05.04.2011, in *Anglo Sanskrit High School of Khanna supra*, (LPA No.519 of 2011), holding that leave encashment is a part of salary and therefore the liability of the State, as part of its grant-in-aid policy.

In the *Anglo Sanskrit case* the relevant policy instructions of the Government, with regard to reimbursement of financial deficit, were referred to by the Division Bench, to hold that leave encashment is a part of the salary to be paid, as can be seen from a perusal of the relevant part

of the judgment (para 10 thereof):-

“Therefore, we are of the view that the aforesaid expression 'pay and allowances' used in Para 3 of Annexure II of the Policy instructions dated 21.03.1979 would include the element of leave encashment. We are further of the view that leave encashment is only a deferred payment of the salary in respect of time spent an employer on duty and rendered in actual service. In other words, he has earned the leave by virtue of time spent by him on actual service. Conceptually, an employee discharges duty on a day when he could have been on leave and, therefore, he earns the leave to which is credited to his account. The credit of that Leave could not be encashed to the extent provided by the rules. For the aforesaid proposition, we place reliance on Para 7 of the judgment of Hon'ble the Supreme Court in the case of ***Union of India v. Justice Gurnam Singh (1982) 2 SCC 314.*** Moreover, the amount of leave encashment was paid by the appellant themselves voluntarily. Therefore, the issue in any case is decided against the appellant and in favour of the writ petitioner-respondents.”

Thus, it was held that leave encashment, is a part of salary. That being so, this Court is obviously bound by the ruling of a larger Bench and accordingly, it is held that leave encashment, though payable by the colleges at the first instance, to their employees, would be reimbursable by Government, as a part of the grant-in-aid, to the extent of 95% deficit budget of the colleges.

60. With regard to payment of arrears of revised salary/pay, w.e.f. 01.01.2006, that aspect already has been settled by the Division Bench and not upset by the hon'ble Apex Court. In fact, there is no serious challenge to that issue, by the colleges, even in the present

petitions, except to say that Government has not released the arrears of such salaries. Obviously, the colleges are bound to make such payment to the petitioners of CWPs No.23204 of 2011 and 14473 of 2012 and all such employees who are beneficiaries of such revised pay scales, w.e.f. 01.01.2006. Again, though the colleges in each litigation always claim that Government is to first release such arrears and only thereafter they are payable to the employees, it is actually the first liability of the colleges themselves to make such payment and thereafter get it reimbursed from the Government.

61. Next, dealing with the argument of a delayed claim raised, by the petitioner-employees in CWP Nos.23204 of 2011 and 14473 of 2012. The argument, qua specific employees would have been considered by this Court; however, in view of the fact that the colleges themselves have also challenged the action of the University, in making the enhanced limit of gratuity applicable to all colleges, the issue does not remain confined to the two petitioners in CWP Nos.23204 of 2011 and 17743 of 2012.

Hence, the question of delay loses meaning, especially when the letter dated 24.02.2010 has specifically still not been challenged in any of the petitions filed by the colleges (all of which have been filed in the year 2013) and only the letter issued to the Principal, Kanya Mahavidayala, Jalandhar, dated 17.05.2011, has been challenged. The University already having made its stand clear in the beginning of 2010 itself, on the basis of the Punjab Government policy, and further, for the reason that Ordinance 18 of the GNDU Calendar, in any case, does not lay down any cap on the amount of gratuity, I find no force in the argument raised with regard to delay and laches.

62. As regards the contention of Mr. Sharma that no reliance has been placed by the petitioners on Ordinance 18 of the GNDU Calendar, the same is factually incorrect because the said provision has specifically been referred to in CWP No.23204 of 2011, though not referred to in CWP No.14473 of 2012. Hence, the judgments cited by him, on arguments made beyond pleadings, have not been referred to by this Court.

63. Consequently, in view what has been held, CWPs No.23204 of 2011 and 14473 of 2012 are allowed. The order impugned in CWP No.14473 of 2012, i.e. Annexure P-11, dated 20.06.2012, is quashed.

The respondent-colleges in these two petitions are directed to pay gratuity, leave encashment and arrears of revised pay scales w.e.f. 01.01.2006, to the petitioners, alongwith 9% interest thereupon, running till the date that actual payment is made.

The said benefits be released to the petitioners within three months from the date of receipt of a certified copy of this order.

Upon such payment being made, the colleges would be obviously at liberty to apply to the respondent-State for reimbursement to the extent of leave encashment and arrears of salary since 01.01.2006. The Government would, thereafter, within three months of the date of the claim of such reimbursement, calculate and pay the same, as found due in terms of its grant-in-aid policy.

64. It is necessary to observe here that though this Court did contemplate payment of the said benefits by way of installments, in view of the burden it would create on colleges, however, the same is not being done in view of the fact that the colleges were obviously fully aware of

the provisions of the Act of 1969, the Statutes and the Ordinances issued thereunder and as such, were bound to make payment in terms of the conditions thereof, subject to which they were granted affiliation to the University. Hence, non-payment/delayed payment to their employees of the benefits flowing to such employees, is obviously only a ploy resorted to, by approaching this Court by filing the present petitions/by non-payment of dues rightfully accruing to their employees. It further needs notice that the said Statutes and Ordinances, i.e. clause-17 of the Statutes and clause-18 of the Ordinances, have not been challenged by the colleges in their writ petitions and in fact, no such challenge, would lie in view of the provisions of the Act of 1969, itself.

65. Having held as above on the issues common to all the petitions, it is to be added, in the specific circumstances of CWP No.14473 of 2012, that in view of the fact that payment of gratuity even upto Rs.3.5 lacs, and other retirement benefits, were deliberately delayed by respondents no.3 and 4, the said respondents are saddled with costs of Rs.25,000/-.

CWPs no.6159 of 2013, 6210 of 2013 and 19782 of 2013 are dismissed, with no order as to costs.

July 24, 2015
vcgarg/dinesh

(Amol Rattan Singh)
Judge