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

+ **LPA 20/2015**

UNIVERSITY OF DELHI THR REGISTRAR Appellant
Represented by: Mr.G.K.Pathak, Advocate

versus

POONAM SOTA & ORS Respondents
Represented by: Mr.Akshay Makhija, CGSC with
Ms.Namisha Gupta, Advocate for R-3
and R-4

LPA 21/2015

UNIVERSITY OF DELHI THR REGISTRAR Appellant
Represented by: Mr.G.K.Pathak, Advocate

versus

RAMESH CHANDRA JHA & ORS Respondents
Represented by: Mr.Akshay Makhija, CGSC with
Ms.Namisha Gupta, Advocate for R-3
and R-4

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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19.01.2015

CM No.908/2015 in LPA No.20/2015

CM No.916/2015 in LPA No.21/2015

Allowed subject to just exceptions.

Signature Not Verified

Digitally Signed
By:AMULYA

LPA Nos.20/2015 & 21/2015

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CM No.907/2015 in LPA No.20/2015
CM No.915/2015 in LPA No.21/2015

For the reasons stated in the two applications the delay in the filing the appeals is condoned.

The applications are disposed of.

LPA Nos.20/2015 & 21/2015

1. Having heard learned counsel for the appellant we find no infirmity in the impugned order dated November 18, 2014 passed by the learned Single Judge.
2. As per the order the writ petition filed by the appellant has been dismissed.
3. In the writ petition filed by the appellant the challenge is to an order dated September 30, 2013 passed by the controlling authority under the Payment of Gratuity Act, 1972 requiring the appellant to pay gratuity to some employees. The order of the controlling authority was upheld by the Appellate Authority under the Act.
4. The case of the appellant as pleaded in para 9 of the writ petition is that it has applied to the Central Government seeking exemption as contemplated by sub-Section (2) of Section 5 of the Payment of Gratuity Act, 1972 from paying gratuity as per Act in question. As per the appellant, it is governed by the Delhi University Act, 1922 and as per statute 28-A and the Central University Retirement Benefit Rules, 1967 it is competent to have its own gratuity scheme.
5. Sub-Section (2) of Section 5 of the Payment of Gratuity Act, 1972 reads as under:-

“5(2) The appropriate Government may, by notification and subject to such conditions as may be specified in the notification, exempt any employees or class of employees employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act, if, in the opinion of the appropriate Government, such employee or class of employees are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.”

6. Suffice would it be to state that the appellant would be entitled to a favourable order if it can show to the appropriate Government that its employees are recipient of a gratuity or pensionary benefits not less favourable than the benefits conferred under the Payment of Gratuity Act, 1972.

7. Thus, in any case the benefits which the employees of the appellant have to receive pertaining to gratuity can under no circumstances be less than what is contemplated by the Payment of Gratuity Act, 1972.

8. That apart, the appellant does not dispute the liability to pay gratuity. All what the appellant contends is that it has made a request to the appropriate Government to grant exemption from the provisions of the Payment of Gratuity Act, 1972 as per sub-Section (2) of Section 5.

9. If the appropriate Government is not deciding the request of the appellant the remedy of the appellant is to seek a mandamus against the appropriate Government. Till the exemption is granted, appellant's liability to pay gratuity to its employees under the Payment of Gratuity Act, 1972 shall enure and subsist.

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10. Dismissing the appeals we would request the appropriate Government to decide appellant's request for exemption under the Payment of Gratuity Act, 1972 within a period of two months from today.

11. No costs.

CM No.906/2015 in LPA No.20/2015
CM No.914/2015 in LPA No.21/2015

Dismissed as infructuous.


PRADEEP NANDRAJOG, J.


PRATIBHA RANI, J.

JANUARY 19, 2015

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