

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

+ **W.P.(C) 2282/2015**

% Judgement pronounced on: 09.03.2015

UNIVERSITY OF DELHI ... Petitioner
Through: Mr Girindra Kumar Pathak, Adv.

Versus

SH. TAHEL RAM BELLANI AND ORS.Respondents
Through: Ms.Amrita Prakash, Advocate for R-
3&4.

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA
JUDGMENT (ORAL)

CM No. 4088/2015 (Exemption)

Allowed, subject to just exceptions.

The application stands disposed of.

W.P.(C) 2282/2015 and CM No. 4087/2015 (stay)

1. Heard.
2. The present writ petition has been filed by the petitioner challenging the order of the Controlling Authority dated 18.03.2014 under The Payment of Gratuity Act, 1972 (hereinafter referred to as “the PG Act”), whereby the petitioner was directed to pay the remaining gratuity along with simple interest at the rate of 10% from the date it became payable till the date of

payment to the respondent and also against the order of the Appellate Authority dated 03.09.2014, whereby the appeal filed by the petitioner against the said order was dismissed.

3. Admitted facts are that respondent was in the employment of the petitioner. He attained superannuation from his services. He was paid all the dues. However, he sent a demand notice for payment of the deficient gratuity and, thereafter, filed a claim before the Controlling Authority. The petitioner had contested the matter before the Controlling Authority and after completion of the trial, the Controlling Authority passed its order dated 18.03.2014. The contention of the petitioner before the Controlling Authority was that the Payment of Gratuity Act, 1972 was not applicable to the petitioner who is governed by the Statute framed under Delhi University Act, 1922 and that the claim was barred by time and since the respondent had accepted his gratuity calculated as per the Statute framed under Delhi University Act, 1922 towards full and final settlement, without any protest, he was barred from raising such demand. The other contention was that the notification dated 03.04.1997 was not binding upon the petitioner as it is a statutory institution distinguishable from other educational institutions. The other contention was that the respondent was not an employee under Section

2(e) of the PG Act and that Section 14 of the said Act could not be construed to override all enactments. All these contentions of the petitioner were dealt with by the Controlling Authority and it gave its finding vide its order dated 18.03.2014. This order of the Controlling Authority was also confirmed by the Appellate Authority.

4. Before this Court, the petitioner has again raised the same issues. It has contended that the findings are bad because petitioner is an autonomous body governed by the Statute 28A of Delhi University Act, 1922 for the purpose of gratuity and provisions of PG Act were not applicable on it. Also, that the demand of the respondent for the gratuity was highly belated. He retired in the year 2005 and raised the demand before Controlling Authority in the year 2013. It is also contended before this Court that the respondent is not an employee under Section 2(e) of the PG Act since this definition does not include any such person who holds a post under Central Government/State Government and is governed by acts or rules provided under the PG Act and since the petitioner has its own rules providing for payment of gratuity, PG Act is not applicable. Also, that the petitioner has already taken up the matter with Government of India seeking exemption under sub-section (2) of Section 5 of PG Act and the matter is still pending

for disposal before the concerned authorities. It is also contended that the notification dated 03.04.1997 extending the provisions of PG Act to educational institutions cannot be equated with the petitioner.

5. Careful consideration has been given to the arguments forwarded by the learned counsel for the petitioner and the relevant provisions of law.

6. The admitted fact is that the petitioner is a statutory body. It is neither a Central Government nor a State Government establishment. The PG Act has come into effect on 21.08.1972 and this Act has an overriding effect over the other enactments. Section 14 of the PG Act reads as under:-

“14. Act to override other enactments, etc.—
The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.”

7. There is also no dispute to the fact that pursuant to the Notification S.O. 1080 dated 03.04.1997 of the Central Government, the provisions of PG Act was extended to the educational institutions employing ten or more persons. It is not contended by the petitioner that they are employing less than 10 persons in their institution. Thus, by virtue of this notification dated 03.04.1997, all the educational institutions come under the purview of PG

Act. This factual position has been accepted by the petitioner which is apparent from their act of taking up the matter with the Government of India seeking exemption under sub-section (2) of Section 5 of PG Act which is still pending for disposal. Under Section 5 of the PG Act, the appropriate Government has the power to exempt from the operation of the provisions of PG Act any establishment, factory, mine, etc. by a notification. Admittedly, no such notification has been passed by the appropriate Government under Section 5(2) of the PG Act.

8. Thus, the Act being binding upon the petitioner, the petitioner was duty bound to pay the gratuity to be calculated as per the provisions of PG Act to its employees. Section 7(2) of PG Act cast the duty on the employer to determine the amount of gratuity and pay the same whether or not any application demanding the same has been made. Thus, non-payment of the gratuity by the employer amounts to continuing offence which continued till the said gratuity is paid and it cannot be said that the demand of the employee was barred by time.

9. Also admittedly, the petitioner is an autonomous body and is neither a Central Government nor a State Government body. It does not matter that it has its own rules and regulations relating to the grant of gratuity. After the

passing of the PG Act and the notification dated 03.04.1997, the petitioner is duty bound to pay the gratuity to its employees under PG Act. The definition of employee under Section 2(e) does not help the petitioner in any way because it only exempts the employees of the Central Government and Central Government who are governed by any other Act regarding payment of gratuity. Since the employees of the petitioner are not considered either the Central Government or a State Government employee, they do not fall within the exempted category of the definition of an employee under Section 2(e) of the PG Act.

10. The findings of the Controlling Authority as well as the Appellate Authority are in consonance with the settled principle of law, as discussed above and do not suffer from any infirmity. There is also no error on the face of the orders.

11. It is a settled principle of law that this Court can interfere with the order of an inferior court only when there is an error of law of such a nature which is apparent on the face of the record. Where the conclusion of the law recorded by inferior court is based on obvious misinterpretation of the relevant statutory provisions or ignorance of it or in disregard of it or founded on reasons which are wrong in law, the said conclusion can be

corrected by writ. In the present case, the petitioner has failed to point out any error on the face of the record or that the Controlling Authority and the Appellate Authority has wrongly construed the law or has ignored any law. I find no reason to interfere with the findings of the Controlling Authority and the Appellate Authority. The writ petition has no merit and the same is dismissed with no order as to costs.

CM No.4087/2015 also stands dismissed.

**DEEPA SHARMA
(JUDGE)**

MARCH 09, 2015

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