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

\+ **W.P.(C) 2447/2015**

% Date of decision: 18th May, 2015

UNIVERSITY OF DELHI ..... Petitioner
Through: Mr.G.K. Pathak, Adv.

Versus

USHA SHARMA AND ORS. ..... Respondents
Through: None for R-1.
Mr.Apoorv Kurup & Mr.Rohit Rathi, Advs. for R-2/UGC.
Ms.Amrita Prakash, Adv. for R-3 & 4.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

VED PRAKASH VAISH, J. (ORAL)

1. The petitioner has assailed order dated 18.03.2014 passed by the Controlling Authority under Payment of Gratuity Act, 1972 in ALC-I/36/317/2013 whereby it was held that respondent No.1 is entitled to receive a sum of Rs.1,68,924/- (Rupees one lakh sixty eight thousand nine hundred and twenty four) after deducting a sum of Rs.5,90,469/- (Rupees five lakhs ninety thousand four hundred and sixty nine) already received from the amount determined by the said authority towards a balance gratuity alongwith a simple interest at the rate of 10% per annum as per Section 7 (3-A) of the Payment of Gratuity Act, 1972 (hereinafter referred to as the Act) and order dated 20.10.2014 passed by the Appellate Authority under the Act in Appeal No.

ND.36(23)/2014-P.A. whereby the appeal filed by the petitioner under Section 7(7) of the Act was dismissed.

2. Mr.Apoorv Kurup, Advocate on behalf of respondent No.2 and Ms.Amrita Prakash, Advocate on behalf of respondent Nos.3 and 4 enter appearance on advance notice.

3. Succinctly stating the facts of the case as borne out from the petition are that the petitioner is Central University which came into existence by virtue of Delhi University Act, 1922 and the said Act has specific provisions under the Statute 28-A for payment of gratuity to its employees. Respondent No.4 i.e. Union of India through its Secretary Ministry of Labour who, with the approval of respondent No.3 i.e. Ministry of HRD introduced the provisions of payment of gratuity to the employees of Delhi University through Central Universities Retirement Benefit Rules, 1967. The employees of the petitioner are governed by the said provisions under its Statute 28-A for payment of gratuity and accordingly the employees of the petitioner are being paid gratuity as per the same along with the Rules as aforesaid read with CCS Pension Rules.

4. The respondent No.1 is an ex-employee of the petitioner who retired on 31.01.2011 and was accordingly paid a sum of Rs.5,90,469/- (Rupees Five lakhs ninety thousand four hundred and sixty nine) towards gratuity under Statute 28-A read with Central Universities Retirement Benefit Rules, 1967 and CCS Pension Rules.

5. The respondent No.1 herein moved an application for payment of difference of gratuity amount before the Controlling Authority under the Act. The same culminated in impugned order dated 18.03.2014 passed by the Controlling Authority whereby the petitioner herein was

directed to pay the difference of gratuity amount of Rs. 1,68,924/- (Rupees One lakh sixty eight thousand nine hundred and twenty four) to respondent No.1 along with simple interest at the rate of 10% per annum as per sub Section (3-A) of Section 7 of the Act from the date the gratuity became payable to respondent No.1. Against this order, the petitioner preferred an appeal before the Appellate Authority which came to be rejected by the Appellate Authority constituted under the Act vide impugned order dated 20.10.2014.

6. Learned counsel for the petitioner contends that Section 14 of the Act is not applicable in view of Statute 28-A of Delhi University Act, 1922 for the purpose of gratuity.

7. Learned counsel for the petitioner also submits that the petitioner had approached Ministry of Labour and Employment, Government of India for grant of exemption to the employees of the University of Delhi from the provisions of the Act and the request of petitioner was rejected. The same was communicated to the petitioner vide letter No.S-42014/01/2013-SS.II dated 19/21.01.2015.

8. Before adverting to the facts of the present case, it is necessary to reproduce provisions of Section 14 of the Act which 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."

9. The Apex Court in **'Allahabad Bank versus All India Allahabad Bank Retired Employees Association'**, *(2010) 2 SCC 44*, observed as under:-

"14. A plain reading of the provisions referred to hereinabove makes it abundantly clear that there is no escape from payment of gratuity under the provisions of the Act unless the establishment is granted exemption from the operation of the provisions of the Act by the appropriate Government.

xxxx xxxx xxxx

31. No establishment can decide for itself that employees in such establishments were in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under the Act......

32. This Court in MCD v. Dharam Prakash Sharma [(1998) 7 SCC 221 : 1998 SCC (L&S) 1800] observed:

> "2. … The mere fact that the gratuity is provided for under the Pension Rules will not disentitle him to get the payment of gratuity under the Payment of Gratuity Act. In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect....."

10. In another case **'Y.K. Singla v. Punjab National Bank'**, *(2013) 3 SCC 472*, the Hon'ble Supreme Court of India had observed:-

"22. ......A perusal of Section 14 leaves no room for any doubt that a superior status has been vested in the provisions of the Gratuity Act vis-à-vis any other enactment (including any other instrument or contract) inconsistent therewith. Therefore, insofar as the entitlement of an employee to gratuity is concerned, it is apparent that in cases where gratuity of an employee is not regulated under the provisions of the Gratuity Act, the legislature having vested superiority to the provisions

> of the Gratuity Act over all other provisions/enactments (including any instrument or contract having the force of law), the provisions of the Gratuity Act cannot be ignored. The term "instrument" and the phrase "instrument or contract having the force of law" shall most definitely be deemed to include the 1995 Regulations, which regulate the payment of gratuity to the appellant."

11. A similar question came up for consideration before this Court in '**University of Delhi v. Sharwan Kumar Gupta and Others**', *W.P.(Civil) No.5138/2014* wherein it was held:**-**

> "16. The Payment of Gratuity Act, 1972 is a complete code in itself. It is clear from the law and the judgments mentioned above that Provisions of Payment of Gratuity Act, 1972 shall have overriding effect on all other provisions relating to Gratuity.
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> xxx xxx xxx
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> 18. If the contention of the petitioner is accepted that Delhi University Act, 1922 and State ordinances are statutory in nature, however, Section 14 of Payment of Gratuity Act, 1972, has overriding effect over the other Acts, Statutes and Regulations.
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> 19. Admittedly, the petitioner has taken up the case for exemption under Section 5, which is pending with the Central Government, however, not granted to the petitioner till date. Therefore, in my considered opinion, till this exemption is not granted, the petitioner is governed by the provisions of this Act.
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> 20. It is also admitted fact that the petitioner granted gratuity to some of its employees, after the order was passed by the Controlling Authority. If the plea of the petitioner is accepted that the respondent no. 1 in all the petitions are not entitled for gratuity under the Payment of Gratuity Act, 1972, then it tantamount to discrimination and inequality before Law, which violates Article 14 of the Constitution.

> 21. The Petitioner is an educational institution and employing more than 10 persons. The exemption under Section 5 of the Payment of Gratuity Act, 1972, has not yet been granted to it. The payment has already been made to some employees of the petitioner under the Payment of Gratuity Act, 1972".

12. At this juncture, it is relevant to consider the provisions of sub Section 2 of Section 5 of the Payment of Gratuity Act, 1972 which reads as under:-

> "**5. Power to exempt.—**
>
> xxxx xxxx xxxx
>
> [(2)] The appropriate Government may, by notification and subject to such conditions as may be specified in the notification, exempt any employee 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.]"

13. In the present case, the petitioner approached the Ministry of Labour and Employment for grant of exemption to the employees of University of Delhi from the provisions of the Act. However, the request made by the petitioner was rejected vide letter dated 19/21.01.2015 in the following terms:-

"No.S-42014/01/2013-SS.II
Government of India
Ministry of Labour & Employment

Shram Shakti Bhawan, Rafi Marg,

New Delhi dated $19^{th}/21^{st}$ January, 2015

To

The Registrar,
University of Delhi,
Main Campus,
Delhi-110007

Subject: Proposal to grant exemption to the employees of University of Delhi from the provisions of the Payment of Gratuity Act, 1972.

Sir,

I am directed to refer to your letter No.DU/124/Legal/ID /3830/2009 dated 09.10.2013 on the above mentioned subject. In this connection, it is stated that the above proposal has been examined in this Ministry in consultation with Chief Labour Commissioner (Central).

2. The Section 5 of the Payment of Gratuity Act, 1972 provides that exemption under the P.G. Act, 1972 can only be given if the gratuity benefits are not less favourable than the benefits conferred under P.G. Act, 1972. As the amount of gratuity as proposed by D.U. under CCS (Pension) Rules, 1972 read with statute 28-A of Delhi University Act, 1922, is less than the gratuity payable under P.G. Act, 1972 it is not possible to grant exemption to Delhi University under Section 5 of the P.G. Act, 1972 and therefore, rejected.

Yours' faithfully

sd/-
(Subhash Kumar)
Under Secretary to the Govt. of India"

14. In view of rejection of the prayer for exemption, the statutory provisions of the Act become applicable.

15. As regards the other submission of learned counsel for the petitioner that the petitioner had already paid a sum of Rs.6,24,620/-

(Rupees six lakhs twenty four thousand six hundred and twenty) to respondent No.1 however the Controlling Authority had considered the amount paid to respondent No.1 as Rs.5,90,469/- (Rupees five lakhs ninety thousand four hundred and sixty nine), it may be mentioned that the petitioner is at liberty to move an appropriate application before the Controlling Authority under the Act, within a period of one month from today along with the relevant documents. The Controlling Authority shall consider the same and after affording reasonable opportunity of hearing to both the parties, in case, the Controlling Authority considered that the amount of Rs.6,24,620/- was paid the same will be adjusted towards the outstanding amount.

16. In the light of the aforesaid discussion, the petition is devoid of any merit. Accordingly, the petition is dismissed in *limine*.

CM No.4410/2015

The application is dismissed as infructuous.

(VED PRAKASH VAISH)
JUDGE

MAY 18, 2015/gm