

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

Date of decision: July 10, 2015

+ **W.P.(C) 2144/2015, CM Nos. 3850/2015 & 4826/2015**

SUMMER FIELDS SCHOOL

..... Petitioner

Through: Mr.Kamal Gupta, Adv.

Versus

UNION OF INDIA & ORS

..... Respondent

Through: Mr. Santosh Kumar Tripathi,
ASC for Govt. of NCT of
Delhi
Ms.Indrani Ghosh, Adv. with
Ms.Tamali Wad, Adv. for R-
3

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

1. The challenge in this writ petition is to the order dated December 2, 2014, passed by the Director of Education, Govt. of NCT, Delhi, respondent No.2, to the extent that the Director has allowed the claim of the respondent No.3 for grant of gratuity under the Payment of Gratuity Act, even for a period before April 3, 1997.
2. The challenge is on the ground that the amendment to the Payment of Gratuity Act, including the definition of the word 'Employee', being

made effective from April 3, 1997, a teacher of a school is not entitled to the benefits prior to that date. Learned counsel for the petitioner has relied upon a judgment of the Supreme Court in the case reported as **1983 (4) SCC 45 Management of Good Year India Ltd Vs. K.G. Devessar, K.B. Subanna Vs. Delhi Kannada Senior Secondary School and Anr. Writ Petition (Civil) No.1659/2013** decided by this Court on December 12, 2013 in support of his contention.

3. The respondent No.3 has filed counter affidavit to the writ petition wherein one of the contention is that, in terms of provision of Section 10 (1) of the Delhi School Education Act, it is an obligation of the school to provide, gratuity to the teachers. Learned counsel for the respondent No.3, during the submissions has also relied upon certain judgments including one reported as **1998 (9) SCC 192 Central Coal Fields Ltd VS. Union of India and Ors, Shambhu Nath Chatterjee Vs. Eastern Coal Fields Ltd and Anr.** decided on August 8, 2013 in FMA 585/2009, **Municipal Corporation, Burhanpur Vs. Smt. Jasoda Bai Writ Appeal Nos. 1385/2013, 1386/2013, 1387/2013** decided on August 26, 2014 by the Madhya Pradesh High Court, in support of her contention.

4. I note, that the impugned order only reflects consideration of one issue i.e entitlement of respondent No.3 to gratuity for a period, before April 3, 1997 on the basis of interpretation given to the

amendments/provisions in the Payment of Gratuity Act and by referring to a judgment relied upon by the learned counsel for the petitioner herein ie The School Management, which is, ***2004 (1) SCC 755 Ahmedabad Private Primary Teachers' Association Vs. Administrative Officer and Ors.***

5. It is conceded by the learned counsel for the respondent No.3 that the submissions with regard to the mandate of Section 10 (1) of the Delhi School Education Act was not urged before the Director of Education, the respondent No.2 herein, as an alternative submission for making a claim for gratuity for the period before April 3, 1997.

6. During the course of the submissions, learned counsel for the petitioner/school has suggested that the matter can be remanded back to the Director of Education for re-consideration of all the issues, which have been raised by learned counsel for respondent No.3 as well as by the petitioner in the writ petition afresh as the issue would have a far-reaching consequence, not only with regard to the petitioner/school but also with regard to the other schools in Delhi. This suggestion of learned counsel for the petitioner is acceptable to the learned counsel for respondent No.3.

7. In view of the above position, the order dated December 2, 2014 is

set aside. The matter is remanded back to the Director of Education for re-consideration of the claim of the respondent No.3 for payment of gratuity with effect from the date of her appointment in the petitioner's school afresh by considering all the issues/grounds raised by the parties before me including the judgments they have relied upon.

8. Accordingly, the petition is disposed of.

(V.KAMESWAR RAO)
JUDGE

JULY 10, 2015/ak