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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision : 4th August, 2015.

+ **LPA 810/2013**
UNIVERSITY OF DELHI Appellant
Through : Mr. G.K. Pathak, Advocate.
versus
KANWAR KUMAR GAMBHIR & ORS. Respondents
Through : Mr. Rajeev Saxena, Mr. Vardaan
Dhawan, Advocates for R1.
Mr. Anuj Aggarwal, Advocate for
R5 & 6/UOI.

+ **LPA 538/2014**
UNIVERSITY OF DELHI Appellant
Through : Mr. G.K. Pathak, Advocate.
versus
SH. SURINDER KUMAR Respondent
Through : Mr. Sudesh Goyal, Advocates for R1.
Mr. Anuj Aggarwal, Advocate for
R5 & 6/UOI.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE I.S.MEHTA

GITA MITTAL, J (ORAL)

1. The appellant /University of Delhi assails the orders dated 13th August, 2013 & 12th May, 2014 passed by the learned Single Judge affirming the order dated 9th October, 2012 passed by the Controlling Authority under the Payment of Gratuity Act, 1972.

2. Inasmuch as, identical questions of law arise on similar facts, we are taking up these appeals together for the purposes of adjudication. We have heard learned counsel for the parties at length and have carefully perused the case. The facts giving rise to the petitions are in a narrow compass and to the extent necessary are noted hereunder.

3. It is undisputed that both the respondents before us are the retired employees of the appellant/University of Delhi. The appellant/University of Delhi has disputed the applicability of the payment of Gratuity Act, 1972 to the organisation for the reason that it has its own Gratuity Scheme under the Delhi University Act and Statutes and ordinances notified thereunder. The respondent/Kanwar Kumar Gambhir in LPA 810/2013 consequently was compelled to move an application under Section 4 of the Payment of Gratuity Act, 1972 to claim payment of gratuity on account of his superannuation/retirement on 30th June, 2004 after completion of service of about 37 years w.e.f. 25th November, 1967 to 30th June, 2004 as Senior Technical Officer, Department of Zoology on attaining the age of 60 years on superannuation. So far as the respondent/Surinder Kumar in LPA 538/2014 was concerned, he was also compelled to approach the Competent Authority to claim the payment of gratuity under Section 4 of the Payment of Gratuity Act, 1972 on account of his superannuation/retirement on 30th September, 2007 after completion of service of about 40 years and 9 months w.e.f. 03.12.1966 to 30.09.2007 as Section Officer, Department of Social Work, University of Delhi on attaining the age of 60 years of superannuation.

4. The appellant/University of Delhi rejected the applications on the main plea of denial of applicability of statute and also that the claims of the respondents were time barred. The appellant/University of Delhi took another plea that it had sought exemption of applicability of the payment of gratuity, therefore it is curtailed under Section (2) of Section 5 of the Payment of Gratuity Act, 1972 from the Government of India. Before the Controlling Authority, the matters had to proceed to evidence. Thereafter, placing reliance on several judicial precedents of this court, as well as the Supreme Court of India, the Controlling Authority passed orders arriving at the conclusion that respondent/Kanwar Kumar Gambhir was entitled to total amount of Rs.4,30,958/- towards gratuity with interest and that as the amount of Rs.3,33,107 stood already paid to him, he was entitled to the balance amount of Rs. 97851/- . It was accordingly directed that this amount would be paid with simple interest @ 10% per annum in accordance with the provisions of sub-section (3-A) of Section 7 of the Payment of Gratuity Act, 1972 from the date on which gratuity became due and payable to the respondent.

5. So far as respondent/ Surinder Kumar is concerned by an order of the even date, i.e. by order dated 9th October, 2012, the Controlling Authority concluded that respondent/ Surinder Kumar was entitled for a total sum of Rs.5,48,390 towards gratuity. An amount of Rs.3,69,621 stood paid to him leaving an amount of Rs.1,78,770 as balance amount of gratuity with simple interest @ 10% per annum as per provisions of sub-section (3-A) of Section 7 of the Payment of Gratuity Act, 1972, from the date on which gratuity became due and payable to the respondent.

6. We note that as far as, the payment of gratuity is concerned, the Controlling Authority has relied upon the following directives of the Supreme Court of India dated 5th February, 2003 in ***SLP (Civil) No. 4114/2002, tilted as S. Gangahanume Gowda v. Karnataka Agro Industries Corporation Limited:***

“.....Payment of gratuity with or without interest, as the case may be, does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with the penalty of payment of interest. Earlier there was no provision for payment of interest on the delayed payment of gratuity. In view of that lacuna sub-section (3-A) was added to Section 7 by an amendment, which came into force with effect from 1.10.1987. There is a clear mandate in the provisions of Section 7 to the employer for payment of gratuity within time and to pay interest on the delayed payment of gratuity. There is also provision to recover the amount of gratuity with compound interest in case the amount of gratuity payable was not paid by the employer in terms of Section 8 of the Act.....

7. The University of Delhi's appeal (Appeal No. ND36 (10)2013-P.A) under Section 7 (7) of the payment of Gratuity Act came to be rejected by the Appellate Authority by its order dated 3rd April, 2013 for the reason that it was filed beyond the statutory period of 120 days from the date receipt of order as required by law.

8. The challenge by the University of Delhi to pay the gratuity did not

end here and it filed two separate writ petitions. So far as respondent/Sureinder Kumar is concerned, the University filed the writ petition being W.P.(C) No. 2117/2014. W.P.(C) No. 5065/2013 was filed against respondent/Kanwar Kumar Gambir.

9. W.P.(C) No. 2117/2014 against Sureinder Kumar was dismissed vide an order dated 12th May, 2014. W.P.(C) No. 5065/2013 against Kanwar Kumar Gambir was rejected vide an order dated 13th August, 2013 passed by learned Single Judge of this Court. These writ petitions were rejected by the learned Single Judge who concluded that the Controlling Authority had no power to extend or condone the period of delay beyond the statutory period of 120 days after the receipt of the impugned order vide two separate orders. Learned Single Judge thus upheld the order of the appellate authority.

10. It is well settled that an order can be assailed only on the factual matrix and on the grounds which were placed before the authority which passed the same.

11. The issue as to whether the employees are entitled to gratuity under the enactment is concerned, it has been effectively adjudicated upon by this court holding that the Payment of the Gratuity Act, 1972 applies to the employees of appellant/Delhi University. For this reason, this issue is no more *res integra*.

12. So far as the objections taken by the University of Delhi before the

Controlling Authority as well as in the appeals are concerned, the same have been authoritatively rejected as noted above. We are informed that the exemption claimed by the University of Delhi from applicability of provisions of the payment of Gratuity Act, 1972 also stands rejected by an order dated 19/21st January, 2015 by the Government of India which order has attained finality. It is submitted by learned counsel appearing for the respondents that in view of the above, the appellant/University of Delhi would be bound by the provisions under the Payment of Gratuity Act, 1972 and it cannot refute its responsibility to pay the gratuity.

13. A submission which was never placed before the Controlling Authority to dispute the liability has been pressed before us. It is submitted by Mr.G.K.Pathak, learned counsel for the appellant that the computation of the quantum of gratuity by the Controlling Authority also cannot be disputed. The University of Delhi, however, disputes the liability to pay any amount beyond the limit prescribed under sub-section 3 of Section 4 of the Act. It is urged that till the amendment of the statutory provision in 2010, the maximum amount that could be paid to an employee towards gratuity was subject to the limit of Rs.3,50,000/- under sub-section 3 of Section 4 of the Payment of Gratuity Act, 1972. It is submitted that after the amendment of the statutory provisions, this limit has been raised to Rs.10,00,000/- (Rupees Ten lacs).

14. The relevant amendment to the Payment of Gratuity Act made in year 2010 (w.e.f. 24th May, 2010), reads thus:-

“2. In Section 4 of the Payment of Gratuity Act, 1972, in sub-section (3), for the words “three lakhs and fifty thousand rupees”, the words “ten lakh rupees” shall be substituted”

15. It is further submitted that inasmuch as the respondent/Kanwar Kumar Singh retired in the year 2004 and the respondent/Surinder Kumar retired in the year 2007, irrespective of the computation of the gratuity, they could be paid a maximum of only Rs.3,50,000/- towards gratuity in view of the provisions of sub-section 3 of Section 4 of the Payment of Gratuity Act, 1972 as then existing. This objection is vehemently opposed by learned counsel for the respondents who have urged that the Payment of Gratuity Act is a part of social welfare legislation and that only an interpretation which is beneficial to the employee has to be given. Reliance is placed by learned counsel for the respondents on the pronouncement of the High Court of Kerala dated 12.11.2014 in ***Writ Petition (Civil) No. 2241/2011 in C. Renuka v. Kerala State Council for Science*** to urge that though the gratuity would be calculated with regard to dates of retirement, the relevant date for computing the limit of the payment would be the date on which the liability to make payment of the gratuity crystallized in favour of the respondents. It is submitted that only in such an eventuality can the objects of the Payment of Gratuity Act be meaningfully achieved.

16. It is noteworthy that no such plea was raised before the Controlling Authority and Appellate Authority under the Payment of Gratuity Act or before the learned Single Judge. No such plea was pressed before the learned Single Judge.

17. We have given our considered thought to the rival contentions raised before us and find substance in the grievance of the respondents. Even though, the respondents had retired in the years 2004 and 2007 respectively, however, the University of Delhi/employer had taken a categorical stand that these respondents are not entitled to the payment of gratuity under the enactment. It was the University of Delhi's contention that this statute has no application to its employees. By virtue of the computation of gratuity under the rules of the University Grants Commission and the statutes under the Delhi University Act, an amount of Rs.3,69,621/- (in case of Surender Kumar) and an amount of Rs.3,33,107 /- (in case of Kanwar Kumar Gambhir) was paid towards gratuity. It is an admitted position that these computations and payments were not in accordance with the payment of Gratuity Act.

18. After several unsuccessful representations to the appellant, these respondents were compelled to invoke the jurisdiction of the Controlling Authority in the year 2010. It is not disputed that the claim by the respondents was made after the provision of Section 4(3) of the Payment of Gratuity Act, 1972 stood amended w.e.f. 24th May, 2010. It is also an admitted position that by such amendment, the statutory limit of the amount which could be paid to an employee stands raised to Rs.10 lakhs.

19. Mr. Rajeev Saxena, learned counsel appearing for the respondents has drawn our attention also to the provisions of sub-section 5 of Section 4, which read thus:-

“Section 4(5) of Payment of Gratuity Act, 1972

“4. Payment of Gratuity.—

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer”.

20. Learned counsel for the respondents submits that it is clear that the Parliament has mandated that notwithstanding the provisions in Section 4(3) imposing a ceiling of Rs. 10 lakhs, the right of an employee to receive better terms of gratuity as envisaged in Section 4(5) shall remain unaffected. It is apparent that the Parliament has given freedom to the employer to stipulate better terms of gratuity than the provisions in the payment of Gratuity Act, more particularly that in Section 4 thereof.

21. In ***Allahabad Bank v. All India Allahabad Bank Retired Employees’ Association***, reported as ***(2010) 2 SCC 44***, it has been held that for the purpose of computation of quantum of grant of gratuity, if the terms of agreement are better than the statute, then the employee is entitled to that benefit. The Court has stipulated that the maximum limit as provided under sub-section 3 of Section 4 cannot be reduced by a mutual settlement and agreement.

22. In ***Allahabad Bank***, while interpreting the wide scope of Section 4(5) of the Act, the Apex Court has observed as under:-

“15.....It is true that Section 4(3) of the Payment of Gratuity Act stipulates that the amount of

gratuity payable to an employee shall not exceed Rs.10 lakhs. But it is clearly mandated in Section 4(5) thereof that nothing in the Section, viz., Section 4 thereof, shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer”.

23. We may also usefully advert to the observations made by the High Court of Kerala as noted in **C. Renuka**. In para 15 of the judgment, the Court has referred to the provisions of law laid down by the Supreme Court in **(1984) 3 SCC 369** in **Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd.** which may usefully be extracted hereunder and reads thus:-

“15.....The fundamental principle underlying gratuity is that it is retirement benefit for long service as a provision for old age. Demands of social security and social justice made it necessary to provide for payment of gratuity. The combined effect of the provisions in Section 4(3) vis-a-vis the provisions in Section 4(5) of the Payment of Gratuity Act has to be appreciated and interpreted in a harmonious manner, keeping in view the basic objective of legislature that the legislation has been framed primarily as benevolent piece of legislation for the welfare of the employees”.

24. On the interpretation of sub-section (3) and (5) of Section 4, the High Court of Kerala in **C. Renuka** has observed thus :-

“13. Coming to the next issue as to whether the provisions in Ext.P3 rules will get the protection of Section 4(5) of the Payment of Gratuity Act, the following aspects are relevant:

“”14. BEFORE adhering to the merits of the rival contentions, it would be apposite to refer to the inimitable words used by V.R.Krishna Iyer, J, in the Apex Court decision rendered in Som Prakash Rekhi v. Union of India, reported in 1981 (1) SCC 449,

wherein it was observed as under. (SCC p.p. 483-484, para 66)

“66..... We live in a welfare State, in a ‘socialist’ republic under a Constitution with profound concern for the weaker classes including workers (Part IV). Welfare benefits such as pensions, payment of provident fund and gratuity are in fulfilment of the directive principles. The payment of gratuity or provident fund should not occasion any deduction from the pension as a ‘set-off’. Otherwise, the solemn statutory provisions ensuring provident fund and gratuity become illusory. Pensions are paid out of regard for past meritorious services. The root of gratuity and the foundation of provident fund are different. Each one is a salutary benefaction statutorily guaranteed independently of the other. Even assuming that by private treaty parties had otherwise agreed to deductions before the coming into force of these beneficial enactments they cannot now be deprivatory. It is precisely to guard against such mischief that the non obstante and overriding provisions are engrafted on these statutes.

25. It is submitted that the socially beneficial legislation has to be interpreted to the benefit of the class of persons who are entitled to the benefit under the statutory enactment. So far as the present case is concerned, there is no restriction or limit at all on the extent of gratuity computation. The calculation of the gratuity is provided under sub-section (2) of Section 4 the statute, which reads thus:-

“4.....

(2) for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days’ wages based on the rate of wages last drawn by the employee concerned. Provided that in the case of piece rated

employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account.

Provided further that in the case of seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days' wages for each season''.

26. Section 4(2) makes a reference to even completed year of service or part thereof in excess of six months. Therefore, while computing the entitlement of an employee, he would be entitled to the benefit of every year of service or part thereof in excess of six months which have been rendered by the employee. There is no upper limit statutorily fixed on this computation. The Statute has cast its limit only on the extent of payment to the employee.

27. The employer/University of Delhi was denying the very applicability of the statute to its employees compelling them to approach the Competent Authority under the Payment of Gratuity Act. The applications were made in the year 2010. There is no dispute before us that the computation of the gratuity by the Controlling Authority in both the cases is in accordance with the provisions of statute. There is no dispute so far as the number of years of service rendered by the respondents are concerned.

28. In both these cases, the University of Delhi was also disputing the liability to make payment for the reason on which it had sought exemption from the Government of India on the applicability of statutory provisions which matter culminated only vide the letter dated 19/21st January, 2015, the Government of India, when Ministry of Labour & Employment has rejected the University of Delhi/appellant's proposal to grant exemption of its employees from the provisions of the Payment of Gratuity Act, 1972. This matter has attained finality only as a result.

29. In this background, the date on which the liability to make the payment has crystallized upon the adjudication by the Controlling Authority would be 9th October, 2012. The responsibility of the University to make the payment has been finally determined on 19/21st January, 2015, when its exemption request was rejected. Given the beneficial interpretation which has to be given to the legislation, the statutory limit prescribed under sub-section (3) of Section 4, in these cases it has to be held that the respondents would be entitled to the amount subject to the limit which has been stipulated on the date when the liability crystallized, that is the limit which was prescribed and applied on the date, when the Controlling Authority has passed the order.

30. Learned counsel for the respondents has drawn our attention to the provision made under Section 8 of the Payment of Gratuity Act, 1972 and has submitted that under this social welfare legislation, the issue of non payment of gratuity has been considered a serious matter and that if the respondents had approached the Collector for recovery of the amounts

which have not been paid by the appellant/University of Delhi, they would have received compound interest on the amounts awarded.

31. We may note that pursuant to the order dated 12th March, 2014 in LPA 810/2013, the appellant/University of Delhi has deposited the full amount as was directed by the Controlling Authority in the order dated 9th October, 2012, in favour of Kanwar Kumar Gambhir.

So far as LPA 538/2014 is concerned, we have been told that an amount of Rs.1,78,770/- is lying deposited in the Contempt Case (Civil) No. 16/2015 which was filed by Surinder Kumar, respondent in this LPA against the University Management. The Registry shall ensure that the above amounts are released to the respective respondent forthwith with all accruals thereon, if the same have been kept in FDRs.

32. The appellant shall compute the interest liability on the awarded amount and the interest component on the gratuity which became due and payable after the date of deposit in terms of the orders dated 9th October, 2012 within four weeks from today. The computation shall be communicated to the respondents.

33. The appellant/University of Delhi shall be entitled to adjust the amount of interest which may have accrued on the deposit in this court and make payment of the balance amounts to the respondents within a further period of six weeks thereafter.

34. We make it clear that this order shall not be treated as a precedent and

being passed on the peculiar facts and circumstances of the instant case.

35. We find no merit in these appeals which are hereby dismissed.

GITA MITTAL, J

I.S.MEHTA, J

AUGUST 04, 2015

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