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

+ W.P.(C) 6243/2015 and CM No. 11361-11362/2015

RUKMINI DEVI PUBLIC SCHOOL

..... Petitioner

Through: Ms Asha Jain, Adv.

versus

DIRECTOR OF EDUCATION & ORS

..... Respondents

Through: Mr Anuj Aggarwal, ASC for Respondent
No. 1

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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03.07.2015

The petitioner has challenged the validity of the Payment of Gratuity (Amendment) Act, 2009 which introduced Section 13A in Payment of Gratuity Act, 1972. The said provision reads as follows:-

“13A. Validation of Payment of Gratuity-

Notwithstanding anything contained in any judgment, decree or order of any court, for the period commencing on and from the 3rd day of April, 1997 and ending on the day on which the payment of Gratuity (Amendment) Act, 2009, receives the assent of the President, the gratuity shall be payable to an employee in pursuance of the notification of the Government of India in the Ministry of Labour and Employment vide number S.O. 1080 dated the 3rd day of April, 1997 and the said notification shall be valid and shall be deemed always to have been valid as if the Payment of Gratuity (Amendment) Act, 2009 had been in force at all material times and the gratuity shall be payable accordingly.

Provided that nothing contained in this section shall extend, or be construed to extend, to affect any person with any punishment or penalty whatsoever by reason of the non-payment by him of the gratuity during the period specified in this section which shall become due in pursuance of the said notification.”

At the outset, the Court notices that the impugned amendment was challenged in previous litigation and its validity was upheld by a Division Bench of this Court in *Independent Schools’ Federation of India (Regd.) vs. Union of India & Ors*, W.P.(C) No. 6168 of 2010, decided on 02.12.2011. The Management of various schools, like the present petitioner, complained that the said amendment was violative of Articles 14, 19(1)(g) and 21 of the Constitution. They also sought to contend that the amendment had the effect of retrospectively casting an onerous burden and thus impairing valuable rights.

The Division Bench in *Independent Schools’ Federation of India (Regd.) (supra)*, noticed that the decision of the Supreme Court in *Ahmedabad Pvt. Primary Teachers’ Association’s vs. Administrative Officer and Ors*. AIR 2004 SC 1426 had ruled that teachers were not covered under the Payment of Gratuity Act. It was with the intent of overcoming that ruling that Section 13A appears to have been introduced. These developments were taken note of by the Division Bench in *Independent School’s Federation of India (Regd.) (supra)*. Learned counsel for the petitioner fairly concedes that the submissions and grounds which are sought to be urged in support of the present petition were dealt with and duly considered in the

Independent School's Federation of India (Regd.) (supra). However, since that judgment is pending appeal by Special Leave before the Supreme Court, this Court should await the decision and in the meanwhile make an interim arrangement to protect the rights of the employers. As is evident from the discussion, the validity of the enactment that the petitioner challenges in the present writ petition was specifically gone into by the previous Division Bench ruling. *Independent School's Federation of India (Regd.) (supra)* upheld Section 13A of the enactment and also considered significantly the contention that retrospective liability would have the effect of impairing the rights of the employers. In these circumstances, we are bound by precedent to follow *Independent School's Federation of India (Regd.) (supra)*.

Accordingly, the writ petition is dismissed along with the pending applications.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

JULY 03, 2015

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