IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 14554 of 2014
Date of Decision : 20.05.2016

St. Joseph's Senior Secondary School

...Petitioner

Versus

Lalita Ahuja and others

...Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. G.S. Bal, Senior Advocate with
Ms. Sunita Gupta, Advocate for the petitioner.

Mr. Sanjeev Manhas, Advocate for the respondents.

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P.B. Bajanthri, J.(Oral)

In this writ petition, the petitioner has questioned the validity of orders dated 20.03.2013 (Annexure P-13) passed by respondent No. 3 and 06.08.2013 (Annexure P-16) passed by respondent No. 2 respectively, whereby directing the petitioner-School to pay gratuity amount of Rs. 77,625/- along with interest @ 12% w.e.f. 01.05.2004 to respondent No. 1-Lalita Ahuja and amount deposited vide letter (Annexure P-15) be ordered to be refunded to the petitioner.

Brief facts of the case are that respondent No. 1-Lalita Ahuja joined the petitioner-School on 01.04.1981. The services were terminated on 03.05.2004(Annexure P-8). It is further stated that on request of the respondents instead of termination, voluntarily retirement of respondent No. 1 has been considered and accepted w.e.f. 31.03.2004. When things stood, Government of India amended the Payment of Gratuity (Amendment) Act, 2009 (hereinafter referred to as 'the Act') by incorporating Section 13(A). Section 13(A) is reproduced as under :-

> *"13A. Notwithstanding anything contained in any judgment, decree or order 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 employe 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 by payable accordingly.*
>
> *Provided that nothing contained in this section shall extend, or be constructed 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."*

In view of the above amendment, the respondent No. 1 is stated to have submitted application on 10.08.2011

(Annexure P-11) for payment of gratuity from the date of her initial appointment on 01.04.1981 till 31.03.2004 before the Controlling Authority-respondent No. 3. The petitioner-School has submitted reply before the Controlling Authority while deciding application of respondent No. 1 dated 10.08.2011 and on 20.03.2013 (Annexure P-13) directed the petitioner for payment of gratuity along with interest @ 12% per annum for the period from 01.04.1981 (date of joining service) to 31.03.2004 (date of acceptance of voluntarily retirement).

The petitioner-School aggrieved by the order dated 20.03.2013 (Annexure P-13) passed by respondent No. 3 had preferred an appeal before the appellate authority-respondent No. 2 on 22.04.2013. Respondent No. 2 rejected the appeal of petitioner-School on 06.08.2013 (Annexure P-16). Hence, the present petition.

Learned counsel for the petitioner submitted that the respondent No. 1 is entitled to gratuity amount w.e.f. 03.04.1997 and interest from 31.12.2009, the date on which Section 13(A) of the Act incorporated and not from the date of joining of respondent No. 1. It was further contended by learned counsel for the petitioner that before the Controlling Authority-respondent No. 3, petitioner-School had deposited gratuity amount to the extent of ₹77,625/- plus interest ₹83,835/- for the period from 01.05.2004 to 30.04.2013, total ₹1,61,460/- on 18.04.2013. The same was disbursed by the Controlling Authority to respondent No. 1. Learned counsel for the petitioner further contended that in view of incorporation of Section 13A in the Act, the respondent No. 1 is entitled to gratuity amount w.e.f. 03.04.1997and interest from 31.12.2009. Thus, the petitioner have deposited excess amount before Controlling Authority and excess amount had been disbursed to respondent No. 1. The difference amount is to be refunded to the petitioner-School.

On the other hand, learned counsel for the respondents, vehemently, contended that the cut off date incorporated on 03.04.1997 is in relation to the persons, who have retired or died prior to 03.04.1997, therefore, the cut off date 03.04.1997 is not applicable to the persons, who have retired subsequent to 03.04.1997. Hence, the service rendered prior to 03.04.1997 in respect of respondent No. 1 is concerned, is to be taken w.e.f. 01.04.1981, the date on which, she joined service and not from 03.04.1997. Further it was contended that the Controlling Authority have passed order in detail in favour of the respondent No. 1 that she is entitled to gratuity and interest from the date of joining service, therefore, there is no infirmity in the order of the Controlling Authority as well as appellate authority.

It was also submitted that Controlling Authority has disbursed the deposited amount i.e. ₹1,61,460/- on 18.04.2013 to respondent No. 1. Such disbursement of amount to respondent No. 1 is subsequent to her retirement, therefore, question of recovery may not arise in view of decision of Apex Court reported in AIR 2015 SC 696 *State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.* In view of the legal position, the petition is to be rejected.

Heard learned counsel for the parties.

Crux of the matter in this petition is whether respondent No. 1 is entitled to gratuity amount along with interest @ 12% w.e.f. 01.04.1981 or w.e.f. 03.04.1997? Reading of Section 13(A) of the Act, which was issued on 31.12.2009. It is made clear that it would be effected from 03.04.1997 for the reason that on 03.04.1997 Govt. of India issued Notification, which reads as follows :-

> *"Published in the Gazette of India, Part-II Section 3(i) of the Gazette of India on 19th April, 1997.*
>
> *Government of India/Bharat Sarkar*
>
> *Ministry of Labour/Shram Mantralaya*
>
> *New Delhi, the 3rd April, 1997*
>
> *Notification*
>
> *S.O. 1080----- In exercise of the powers conferred by Clause © of sub-section (3) of section 1 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies **the educational institutions in which ten or more persons are employed or were employed on any day preceding 12 months as a class of establishments which the said Act shall apply with effect from the date of publication of this notification.***
>
> *Provided that nothing contained in this notification shall affect the operation of the*

notification of the Ministry of Labour S.O. 239 dated 8th January, 1982.'

(F. No. S-42013/1/95-SS.II)

Sd/-

(J.P. Shukla)

Under Secretary to Government of India."

The object of Section 13(A) is to give effects to the Gratuity Act to the employee of educational institutions and it would be effective from 03.04.1997 with reference to the above notification dated 03.04.1997. Therefore, employees of the educational institutions in respect their service i.e. prior to 03.04.1997, is not countable for gratuity benefit. They are entitled to gratuity only w.e.f. 03.04.1997.

The Controlling Authority and Appellate Authority have failed to examine Notification dated 03.04.1997, which was gazetted on 19.04.1997 read with Notification dated 31.12.2009 for incorporating Section 13(A) of the Act. Therefore, the respondent No. 1 is entitled to gratuity only from 03.04.1997 till 31.03.2004 and not from 01.04.1981 as claimed.

Insofar as recovery is concerned, the decision cited by learned counsel for the respondent in State of Punjab and others' case (supra), is distinguishable for the reasons that in the present case, the petitioner had deposited gratuity amount and interest for the entire disputed period from 01.04.1981 to 31.03.2004 before the Controlling Authority, which is mandatory requirement to agitate the matter. Disbursement of the amount deposited by the petitioner before the Controlling Authority, Controlling Authority is not employer of respondent No. 1 so as to contend that by oversight, the amount has been paid to the respondent No. 1 after his retirement. More over petitioner was compelled to deposit disputed gratuity amount and interest for the purpose of prosecuting the matter before the Controlling Authority, which is mandatory requirement. Having regard to the facts of the present case, the cited decision is not applicable.

In view of the facts and circumstances of the case, orders dated 20.03.2013 and 06.08.2013 (Annexures P-13 and P-16 are modified and respondent No. 1 is directed to refund difference of amount for the period from 01.04.1981 to 03.04.1997 received as gratuity amount along with interest disburse to her for the period from 01.05.2004 to 31.12.2009, i.e. ₹23,625/- (5850x7x15/26) and interest from 01.01.2010 to 18.04.2013 i.e. ₹945/- (23625x12x10/3) within a period of 4 months from today.

The present writ petition is allowed in above terms.

May 20, 2016. (P.B. BAJANTHRI)
kanchan JUDGE