

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**Writ Petition (L) No.181 of 2017**

Balco Shikshan Samiti BALCO Nagar, District Korba Through Its Secretary,
D. L. Markam, S/o Late K. B. Markam, Aged 64 Years, R/o House No. 125,
Sector 1, B - Type, Balco Nagar, District Korba Chhattisgarh.

----Petitioner**Versus**

1. State of Chhattisgarh Through The Secretary, Department of Tribal and Schedule Caste, Development Department, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh.
2. Controller Officer Payment of Gratuity (Under Payment of Gratuity Act 1972) / Assistant Labour Commissioner, District Korba Chhattisgarh.
3. Tehsildar, District Korba Chhattisgarh
4. District Education Officer, Korba, District Korba Chhattisgarh.
5. Sushila Mishra, W/o R. D.P Mishra, R/o LIG - 2, Housing Board Colony, R. P. Nagar, Phase - 2, Kosabadi, District Korba Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Rajeev Shrivastava and Shri Gagan Tiwari, Advocates.
For Respondent/State	:	Ms. K. Tripti Rao, Panel Lawyer.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****12/09/2017**

1. The challenge in the present writ petition is to the order dated 03.12.2015 (Annexure P/1) and subsequent notice of recovery dated 24.07.2017 (Annexure P/2) passed by the respondent No.3.
2. The brief facts of the case is that, the respondent No.5 was working as Upper Division Teacher with the petitioner's establishment who stood retired from service w.e.f. 31.12.2010. On the date when the respondent No.5 stood retired, the provisions of Payment of Gratuity Act, 1972 (in short, the Act, 1972) was applicable upon the teachers entitling them for gratuity. The respondent No.5 filed a claim case before the controlling authority under the Act, 1972, vide case No.1/PGA/Korba/2015. The

Controlling Authority, vide order dated 03.12.2015 has allowed the claim application and ordered that the respondent No.5 was entitled for payment of gratuity of Rs.5,02,621/- which was ordered to be paid by the present petitioner within a period of 30 days.

3. What is pertinent to be taken note is the fact that the said order was passed only against the present petitioner. The petitioner did not challenge the said award by preferring any appeal under the Act, 1972 and by efflux of time the said award has attained finality. It is only now that the respondent No.5 has initiated a recovery proceeding for execution of the award passed by the Controlling Authority under the Act, 1972 when Annexure P/2 dated 24.07.2017 which was a notice under the RRC was served upon the petitioner. Subsequently, the petitioner forwarded the said recovery notice dated 24.07.2017 to the District Education Officer, Korba, for releasing the payment as awarded by the Controlling Authority which, vide order dated 10.08.2017 passed by the District Education Officer, Korba, was refused on the ground that since the respondent No.5 herein had retired prior to coming into force of the circular of the State Govt. issued on 07.06.2013 whereby it is held that teachers retired only after 01.04.2013 would be entitled for gratuity whereas, the respondent No.5 had retired on 31.12.2010. It is this refusal which had led to the filing of the present petition.
4. The contention of the counsel for the petitioner is that since the petitioner's establishment is 100 percent aided institution and complete salary part is being provided by the State Govt. and further it is the State Govt. who would be the employer for an aided school for the reason that the ultimate control over the affairs of the institution is that of the State

Govt., therefore, the payment of gratuity ought to have been released by the State authorities. Further, since the salary part is being paid by the State Govt., the petitioner's establishment does not have its own source of income to pay gratuity to the teachers who have retired from petitioner's establishment.

5. According to petitioner, it would be the State which would come within the definition of employer as per the provisions of Section 2(f)(iii) of the Act, 1972, as it is the State Govt. which has got the ultimate control over the affairs of the institution.
6. Be that as it may, taking into consideration the facts that as on date the circular of the State Govt. which is in force is to the extent that the State would pay gratuity to the teachers who have retired from an aided institution subsequent to 01.04.2013 and not for the teachers who have retired prior to that. So far as the teachers who have retired from 07.06.2013 are concerned, for all practical purposes, the gratuity has to be paid by the employer who have appointed them in service.
7. What is pertinent in this case is the fact that there was a claim filed by the respondent No.5 which was duly contested by either of the parties before the controlling authority and there is final order in favour of the respondent No.5 and unless the same is challenged or set aside, it is the responsibility of the present petitioner who was the respondent before the controlling authority to honour the said award. In the event of non satisfying the award so passed, the respondent No.5 or the authorities under the Act have all powers of getting the order executed.
8. Thus, this court is of the opinion that there is no illegality in the said proceeding initiated vide Annexure P/1 & P/2. The writ petition to that

extent does not have any merits and the two orders under challenge do not warrant interference. The petition thus, fails and is rejected.

9. However, it shall be the liberty with the petitioner's establishment to approach the State Govt. for indemnifying the petitioner's institution of the liability of payment of gratuity on the ground that the petitioner's establishment being an aided institution since long does not have sufficient financial viability for making the payment to teachers who have retired prior to 01.04.2013.

10. With the aforesaid observation, the writ petition stands disposed of.

Sd/-
(P.Sam Koshy)
Judge

inder