

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.6452 of 2017(O&M)

Date of decision: 7.10.2017

M.S.D. Senior Secondary School BathindaPetitioner

VERSUS

Raj Bansal and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Harkesh Manuja, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition directs challenge against order dated 18.07.2017 (Annexure P-10) passed by the Assistant Labour Commissioner, Bathinda being a Controlling Authority under the Payment of Gratuity Act, 1972 (in short 'the Act').

Counsel for the petitioner has two-fold submissions to make, to substantiate challenge to the impugned order. The first submission made by counsel is that the petitioner filed four applications (Annexures P-2 to P-5) and all the applications have been decided by a common order (Annexure P-10). The application directing respondent No.1 to admit or deny is also purported to be disposed of vide order impugned but in the discussion part, there is no reference to the said application and submissions made in this regard. Another submission made by counsel is that respondent No.1 filed the application for grant of gratuity in August 2016 though she admittedly retired from service on 10.01.2009. The application seeking gratuity under Section 4 of the Act can be filed within

a period of 30 days, therefore, the Controlling Authority has got no jurisdiction to entertain and decide the application filed by the respondent.

I have heard counsel for the petitioner, perused the paper-book particularly various annexures appended with the petition.

The petitioner filed application (Annexure P-2) that the respondent/applicant does not fall within the definition of 'workman'. Another application (Annexure P-3) was filed to challenge jurisdiction of the Controlling Authority/Assistant Labour Commissioner on the same plea that respondent/applicant is not a workman under the Industrial Disputes Act, 1947. Application (Annexure P-5) was filed on the premise that respondent is not entitled for gratuity as per law laid down by Hon'ble the Supreme Court in **C.A. No.6369 of 2001 titled Ahmedabad Private Primary Teachers Association Vs. Administrative Officer, decided on 13.01.2004.** The fourth application (Annexure P-4) was filed for directing the respondents to admit or deny. All these applications are dated 15.11.2016.

Counsel for the petitioner has fairly conceded that the purpose sought to be achieved by filing three applications (Annexures P-2, P-3 and P-5) can be achieved by filing a single application challenging entitlement of the respondent to seek adjudication of her claim for want of her being not covered under the definition of 'workman'. Counsel for the petitioner has not advanced any arguments to assail findings negating plea of the petitioner that respondent does not fall within definition of 'workman'. In this view of the matter, no patent error much less illegality can be noticed in the impugned order rejecting applications Annexures P-2, P-3 and P-5.

So far as the plea that application Annexure P-4 has been decided without assigning any reason, counsel has not disputed that the

fact sought to be admitted or denied by the respondent has no relevance for deciding her claim for grant of gratuity under the Act. As such the petitioner cannot derive any advantage to its contention in this regard.

This brings the Court to the issue of claim being barred for want of filing application by the respondent within 30 days from the date of retirement. Counsel would inform that the petitioner has already filed an application before the Controlling Authority with regard to claim of the respondent/applicant being barred having been filed beyond a period of 30 days from the alleged accrual of cause of action. This apart, in the application challenging jurisdiction of the Controlling Authority, there is no reference that the application is liable to be dismissed having been filed beyond the stipulated period. As the petitioner has already filed application with regard to claim of the respondent being barred by limitation, the same shall be decided by the authority concerned in accordance with law.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

OCTOBER 7, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no