

214

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

**CWP-2987-2015
Date of Decision :13.07.2017**

RAJESH KUMAR

.....Petitioner

Versus

STATE OF HARYANA & ORS

.....Respondents

CORAM : HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Raj Kapoor Malik, Advocate
for the petitioner.

Dr. Sushil Gautam, DAG, Haryana.

Mr. Rajinder S.Rana, Advocate
for respondent No.2.

None for respondents no.3 and 4.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner seeks various benefits after he was relieved from service as an Assistant Professor in Chemistry in the respondent college no.4, run by the management of respondent no.3, pursuant to the closure of the college. The closure was made after due permission for progressive closure was granted by the Kurukshetra University, as has now been shown by learned counsel for respondents no.3 and 4, vide the University's letter dated 26.02.2013, Annexure R-3/1.

The petitioner is stated to have been relieved on 09.10.2014 after having joined as Assistant Professor on 19.06.2008. Learned counsel for the petitioner submits that as regards the amount due to him under the Employees Provident Fund and Group Insurance Scheme, he has no further

grievance, as the said amounts have been received by the petitioner.

However, now his grievance is in respect of 3 months' salary in lieu of his being relieved (referred to as termination in the petition), alledgedly without any notice having been served upon him. He has further a grievance with regard to non payment of the gratuity due to him at the time of his being relieved.

As regards the issue on gratuity, learned counsel for respondents no.3 and 4 submits that it was delayed only on account of the fact that earlier an interpretation has been given by the Supreme Court in ***Ahmedabad Pvt. Primary Teachers Association vs. Administrative Officer and Others 2004(1) S.C.T. 667*** that teachers would not fall within the definition of Section 2(e) of the Payment of Gratuity Act, 1972, but thereafter the provision itself was amended in the aforesaid Act, with effect from 03.04.1996 (the amendment having taken place in the year 2009). Hence, it is not denied that the petitioner is now entitled to the payment of gratuity in terms of the said Act.

Consequently, as regards payment of gratuity of the petitioner, it having been unnecessary delayed, he having been relieved from service on 09.10.2014 with the amendment having taken place in the year 2009, he would be paid statutory interest as per Section 7 of the Act itself, on the principal amount of gratuity due to him.

Coming to the issue of payment of 3 months' salary in lieu of termination without notice, learned counsel for respondents no. 3 and 4 has drawn attention firstly to Clause 8.3 of Ordinance XVI of the Calender of the University, Volume-I, which reads as follows:-

“In the case of discontinuation of the College, it shall be incumbent upon the Governing Body of the Institution concerned to give a notice of one year to its employees regarding termination of their services, which will take effect only if and when the permission is granted by the University and subject to the condition, if any, imposed by it.”

He next draws attention to the approval granted by the Kurukshetra University vide a 'No Objection Certificate' issued on 22.02.2013 (Annexure-3/1) to the Institute, allowing it to be closed down by way of “progressive closure from the Session 2013-14”.

He next draws attention to the notice stated to have been issued to the petitioner along with 9 other Assistant/Associate Professors of the Institute on 03.10.2013, a copy of which is annexed as Annexure R-3/4 with the reply of respondents no. 3 and 4.

In the said notice the University's, letter dated 06.02.2013 as also the 'No Objection Certificate' granted for progressive closure have been referred to, along with the provisions of Clause 8.3 of Ordinance XVI of the University Calender, Volume I.

Consequently, it is the contention of the learned counsel for respondents no.3 and 4, that once the university had granted permission for progressive closure from the next academic session, and notice had also been issued to the petitioner on 03.10.2014 informing him of such closure and termination of his services along with 9 other Associate/Assistant Professors, one year from the date of the notice, there would be no question of giving him salary of 3 months in lieu of notice.

Learned counsel for the petitioner on the other hand submits

that the said notice was never ever served upon him.

Though nothing specific has been shown by learned counsel for respondents no.3 and 4 to the effect that the said notice was actually served upon the petitioner however, it is not possible to believe that the petitioner, being a member of the faculty, was not aware of the fact that the college was being closed one year hence in terms of the 'No Objection Certificate' granted by the Kurukshetra University. This would be specifically so and it has been pointed out by learned counsel for respondent no. 3 and 4 that none of the other 9 Assistant/ Associate Professors to whom such notice was issued have ever challenged the aforesaid notice or the closure of the institution or even non-service of such notice upon them.

Consequently, as regards the prayer of the petitioner for grant of 3 months' salary in lieu of 3 months notice, it is declined and the petition in that respect is dismissed; but as regards his claim for gratuity, (the other claims of EPF and GIS already having been given to him), the petition is allowed in the manner already aforesaid, with the respondents no. 3 and 4 directed to ensure that gratuity along with statutory interest thereupon, is paid to the petitioner within a period of 3 months from the date of receipt of a certified copy of this order.

(AMOL RATTAN SINGH)
JUDGE

July 13, 2017

Sunil Devi/Mehak

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No