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

\+ **W.P. (C) No. 18004-05/2005**
& W.P. (C) No. 6351/2006

% **23rd January, 2017**

\+ **W.P.(C) No. 18004-05/2005**

VARDHAMAN SHIKSHA MANDIR SENIOR SECONDARY SCHOOL & ANR. ..... Petitioner

Through: Mr. Ruchi Jain, Adv.

versus

GOVT. OF NCT OF DELHI & ORS. ..... Respondents

Through: Mr. Satyakam, Addl. Standing counsel for Govt. of NCT of Delhi-R-1 and 2.
Mr. Bhagwan Swarup Shukla, CGSC with Mr. Shekhar Gehlot, Adv. for R/UOI.
Mr. Shankar Raju, Adv. for R-3.

\+ **W.P.(C) No. 6351/2006**

MRS. PROMILLA JAIN ….Petitioner

Through: Mr. Shankar Raju and Mr. Nilansh Gaur, Adv.

VARDHAMAN SHIKSHA MANDIR SENIOR SECONDARY SCHOOL & ORS. … .Respondents

Through: Ms. Ruchi Jain, Adv.
Mr. Satyakam, Addl. Standing counsel for Govt. of NCT of Delhi

Mr. Bhagwan Swarup Shukla, CGSC with Mr. Shekhar Gehlot, Adv. for R/UOI.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

W.P.(C) No. 18004-05/2005 and W.P.(C) No. 6351/2006

1. The limited issue argued before me in these cases is as to whether the petitioner/Mrs. Promilla Jain in W.P. (C) No. 6351/2006 is or is not entitled to payment of gratuity on account of being an employee of the respondent no.1/school in W.P. (C) No. 6351/2006 and which school is Vardhaman Shiksha Mandir Senior Secondary School.

2. In both the writ petitions effectively what is challenged is the order of the Directorate of Education dated 6.9.2004 which clarifies and applies the requirement of payment of gratuity to employees of schools in Delhi. This order of the Directorate of Education dated 6.9.2004 reads as under:-

"GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
DIRECTORATE OF EDUCATION, (ACT BRANCH) R. NO. 212A OLD SECTT., DELHI

No.F.15/ACT/2004/7045-7146 Dated: 06.09.04

ORDER

Sub: Clarification regarding the payment of gratuity.

Attention of Managing Committee of all Recognized private school is hereby invited to Section 10(1) of Delhi School Education Act 1973, which is reproduced below:-

"The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognized private school shall not be less than those of the employees of the corresponding status in school run by the appropriate authority:

Provided that where the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of any recognized private school are less than those of the employees of the corresponding status in the schools run by the appropriate authority, the appropriate authority shall direct, in writing the managing committee of such school to bring the same up to the level of those of the employees of the corresponding status in schools run by the appropriate authority:

Provided further that the failure to comply with such direction shall be deemed to be non-compliance with the conditions for continuing recognition of an existing school and the provisions of section 4 shall apply accordingly.

Terminal benefits of the employees of the Govt. Schools are being disbursed as per provisions of C.C.S. (Pension) Rules, 1972, and C.C.S.(Temporary Service) Rules, 1965.

In supersession of all orders issued on the subject, management committee of all the recognized private schools are therefore directed to make payment of terminal benefits of their employees not less than as prescribed under CCS (Pension) Rules, 1972 and CCS (Temporary Service) Rules, 1965.

Sd/-
(RAJENDRA KUMAR)
DIRECTOR OF EDUCATION

To
The Managing Committee
Through the Manager of all
The Unaided Recognized Schools.
Copy to:
1. All Regional Directors of Education.
2. Addln. DE (Schools)
3. All DDEs/ADEs/Eos/DEOs.
4. All Managers of Govt. Aided Schools/AOs of taken over schools.

Sd/-
(ABHA JOSHI)
ASSTT. DIRECTOR OF EDN. (ACT)"

3. I have had an occasion to examine the aspects of payment of gratuity, provident fund and pension to employees of schools in Delhi in different cases and wherein judgments have been passed. The schools in Delhi are of three types i.e. government schools where employees are government employees, private aided schools where 95% of the aid is provided by GNCTD through the Directorate of Education and private unaided schools, and that employees of latter two schools are private employees of the schools. As regards the payment of gratuity to employees of all the private schools is concerned, I have had an occasion to consider and decide the same in the case of ***Deepak Dua Vs. Director of Education and Anr.***, W.P. (C) No. 7040/2011 decided on 10.4.2013 where I have held that the private schools in Delhi are bound to pay gratuity to its employees in view of the notification of the Directorate of Education dated 28.3.2013.

4. In the subsequent judgment delivered by this Court in the case of ***K.R. Subbanna Vs. Delhi Kannada Senior Secondary School and Anr***. W.P. (C) 1659/2013 decided on 12.12.2013 I have further clarified the issues of payment of gratuity, pension/provident fund etc by carving out the schools in Delhi under three heads of government schools, private aided schools and private unaided schools. The relevant paras in the case of ***K.R. Sunbanna (supra)*** are paras 10 and 11 and the same read as under:-

"10(i). Before concluding, a detailed footnote is required to be added to this judgment. This footnote is required to remove certain confusion and ambiguity which prevails with respect to application of CCS Pension Rules and Leave Encashment Rules to all private schools, whether aided or unaided. The confusion which arises is because to private schools whether aided or unaided, it is the Payment of Gratuity Act, 1972 (hereinafter referred to as "1972 Act") and the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "1952 Act") which apply and payments of amounts towards pension, provident fund and gratuity are not under CCS Pension Rules and CCS Leave Rules. So far as 1972 Act is concerned, the same has been extended to schools by Notification of Director of Education dated 28.3.2013. In fact the notification of the Director of Education dated 28.3.2013 is a clarificatory notification because 1972 Act became applicable to the private schools by virtue of the Notification dated 3.4.1997 of the Ministry of Labour & Empowerment, extending applicability of the 1972 Act to all educational institutions including schools. Section 13A was introduced by the Parliament in the 1972 Act for validation of certain acts because there were doubts as to the date from which the notification dated 3.4.1997 became applicable. I have considered all these aspects in the judgment delivered by me in the case of ***Deepak Dua Vs. Director of Education and Anr.*** in W.P.(C) No. 7040/2011, decided on 10.04.2013. Therefore, it is the 1972 Act so far as the gratuity amount payable is concerned, which would apply to all private schools in Delhi, whether aided or unaided.

(ii) I have clarified this aspect with respect to1972 Act being applicable to private aided schools in the judgment delivered by me in the case of ***Lt. Col. (Retd.) Mr. S.S. Dubey Vs. The Director of Education and Ors.*** in W.P.(C) No. 110/2008 decided on 07.11.2013. Para 8 of the said judgment reads as under:

> "8.I must also at this stage put an important conclusion on record as I find that Director of Education is unnecessarily causing confusion. This confusion is created by the first para of the circular dated 30.4.2004 because it seems to suggest application of both the payment of Gratuity Act, 1972 as also the CCS(Pension) Rules to the same educational institution. There are three types of schools in Delhi: private unaided schools, private aided schools and government schools. To employees of government schools only CCS(Pension) Rules will apply for grant of gratuity and not the Payment of Gratuity Act, 1972, and which Act applies to private unaided schools for grant of gratuity by such schools to its employees as to such private unaided schools CCS (Pension) Rules will not apply. As regards aided private schools either CCS (Pension) Rules will apply for grant of gratuity or Payment of Gratuity Act, 1972 but both CCS (Pension) Rules and 1972 Act cannot apply at the same time otherwise gratuity will be paid twice over. In my opinion, since the

aided schools are not government schools, though they may be financed by the Government of NCT of Delhi through the Director of Education, yet as they continued to remain private schools, therefore, they will be governed by the Payment of Gratuity Act, 1972 and not CCS (Pension) Rules."

(iii) So far as provident fund & pension are concerned, there is a statute being the 1952 Act. In terms of clause (b) of sub-Section (3) of Section 1 of this Act, Government has power to issue notification to extend the applicability of the 1952 Act to various institutions from time to time. In pursuance of this power, Central Government has issued the following notification on 19.02.1982 extending the applicability of the 1952 Act to schools:

" S.O.986.- In exercise of the powers conferred by clause (b) of sub-section(3) Section 1 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby specifies the following classes of establishments in each of which twenty or more persons are employed, as establishments to which the said Act shall apply, namely:-

(i) any University;

(ii) any college, whether or not affiliated to a University;

(iii) any school, whether or not recognized or aided by the Central or a State Government;

(iv) any scientific institution;

(v) any institution in which research in respect of any matter is carried on;

(vi) any other institution in which the activity of imparting knowledge or training is systematically carried on."

(iv) Accordingly, it is the 1952 Act which will apply so far as all private schools in Delhi are concerned on the aspect of amounts which are payable towards provident fund. Once 1952 Act applies, the pension scheme provided therein will also apply to all private schools in Delhi, whether aided or unaided.

11. Accordingly, it cannot be disputed and it is accordingly held that so far as private schools in Delhi are concerned, whether aided or unaided, with respect to payments of gratuity amount, the 1972 Act will apply and with respect to provident fund and pension amount, it is the 1952 Act which will apply."

5. In view of the ratios in the cases of ***Deepak Dua (supra)*** and ***K.R. Subbanna (supra),*** so far as government schools are concerned, employees of such government schools being government employees will be governed by the CCS (Pension) Rules. Employees of private schools in Delhi, be they aided or unaided, will be governed by the Payment of Gratuity Act, 1972 and the Employees Provident Fund and Miscellaneous Provisions Act, 1952, with the qualification that the Employees Provident Fund Act will not apply in case the school in its scheme of management gives the benefit of provident fund to its employees similar to those received by employees of the government schools, and this is so held by this Court in the judgment in the case of ***Regional Provident Fund Commissioner Vs. Lovely Bal Shiksha Parishad 2014 VI AD (Delhi) 291*** wherein it is held that the Employees Provident Fund and Miscellaneous Provisions Act by virtue of its Section 16(1)(b) would not apply to private schools in Delhi if the private schools are recognized schools and in which case there is a scheme of management existing and which requires to have a provident fund scheme for the benefit of its employees and hence provident fund is paid to the employees of such schools. However the Delhi School Education Act, 1973 also applies to unrecognized schools by virtue of a decision of a Division Bench judgment of this Court in the case of ***Social Jurist, a Civil Rights Group Vs. GNCT & Ors. 147 (2008) DLT 729 (DB)***, and if such

unrecognized schools do not have a scheme of management for grant of provident fund, then to such unrecognized schools the Employees Provident Fund Act will have to apply.

6. Therefore, so far as the Payment of Gratuity Act is concerned, the same is applicable for payment of gratuity to employees of private schools in Delhi, whether the private schools be aided or unaided and therefore to all employees of private schools in Delhi, gratuity has to be paid gratuity in view of the Payment of Gratuity Act. As already stated above, to private schools in Delhi, the CCS (Pension) Rules will not apply inasmuch as the employees of private schools, aided or unaided, are not government employees and only to the government employees/teachers in government schools in Delhi would the CCS (Pension) Rules apply. Once the CCS (Pension) Rules do not apply to private schools in Delhi, the argument urged on behalf of the Vardhaman Vidya Mandir Senior Secondary School of applicability of Section 2(d) of the said CCS (Pension) Rules also goes and which section 2(d) provides that where provident fund is paid then CCS (Pension) Rules, which also provide for payment of gratuity, will not apply.

7. In view of the above, these writ petitions are disposed of by observing that to the employees of Vardhaman Shiksha Mandir Senior Secondary School, gratuity would be payable in terms of the Payment of

Gratuity Act, 1972 and to which extent the order of the Director of Education dated 6.9.2004 is upheld. These writ petitions are accordingly disposed of by dismissing the W.P. (C) No. 18004-05/2005 and by allowing W.P. (C) No. 6351/2006.

JANUARY 23, 2017 **VALMIKI J. MEHTA, J**

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