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

Date of decision: August 01, 2018

LPA No.1328 of 2015 (O&M)

The Managing Committee, Kamla Nehru College for Women

.....Appellant

Versus

Saroj Balram and others

....Respondents

LPA No.1329 of 2015 (O&M)

Kamla Nehru College for Women

.....Appellant

Versus

State of Punjab and others

....Respondents

LPA No.1330 of 2015 (O&M)

The Managing Committee, Guru Nanak College Sukhchainana Sahib

.....Appellant

Versus

Satnam Singh and others

....Respondents

LPA No.1331 of 2015 (O&M)

Guru Nanak Nav Bharat College

.....Appellant

Versus

State of Punjab and others

....Respondents

LPA No.1332 of 2015 (O&M)

Guru Nanak College Sukhchainana Sahib

.....Appellant

Versus

State of Punjab and others

....Respondents

LPA No.848 of 2016 (O&M)

Ramgarhia Education Council and others

.....Appellants

Versus

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Mr. Rahul Sharma, Advocate for the appellants.

Mr. Puneet Jindal, Senior Advocate with
Mr. Amandeep Singh, Advocate
for respondent No.1 (in LPA No.1328 of 2015).

Mr. Amrit Paul, Advocate
for respondent No.3 (in LPA No.1328 of 2015) and
for respondent No.4 (in LPA Nos.1329, 1331 & 1332 of 2015).

Mr. Kanlwaljeet Singh, Senior Advocate with
Mr. Abhishek Bajaj, Advocate
for respondents No.3 to 12 (in LPA No.848 of 2016).

Ms. Monica Chhibbar Sharma, Senior DAG Punjab.

A.B. CHAUDHARI, J

By this common order, above said all the Letters Patent Appeals are being disposed of.

By these Letters Patent Appeals, there is a challenge to the judgment dated 24.07.2015 passed by the learned Single Judge, in CWP No.23204 of 2011 and other connected petitions, by which the learned Single Judge allowed two writ petitions, bearing CWP No.23204 of 2011 and CWP No.14473 of 2012, filed by the respondents asking the appellants-Management to make payment of the difference of gratuity amount with interest and also costs in the sum of ₹25,000/-.

Learned counsel for the appellants submitted that the appellants had filed their written statements to the writ petitions claiming that the Government of Punjab had issued a notification dated 17.08.2009 making revision of gratuity amount giving effect thereto from 01.01.2006.

The decision was communicated to the appellants-College by communication dated 17.05.2011. In response, the defence that was raised by the appellants, was that said notification regarding enhancement of the amount of gratuity, that too retrospectively, was applicable to the employees of Government of Punjab and was not applicable to the retired employees of the appellants-College being a private institution. The further defence was that the University did not have any authority to compel the appellant-College to make payment of the difference of gratuity to the respondents, in respect of the period from 01.01.2006 to 31.07.2009 and therefore, such communication from the University did not have any binding force in law, which could be enforced by a writ Court. It is also stated that if at all the cause of action arose, the same was on 31.07.2009 while writ petitions were filed in 2011 and onwards; and therefore, they were liable to be dismissed for delay and laches. At any rate, according to the appellants, even if the instruction to make payment of difference of gratuity is accepted, the same could be prospective and any direction to make it retrospective would not bind the appellant's College. Even otherwise, the question of award of interest at 9% per annum on the amount which could never be said to have been defaulted because of the decision made retrospectively, could arise. After all the private college like the appellants cannot be saddled with the liability with retrospective effect and then in addition with interest and costs of the petitions as well for no fault. Learned counsel for the appellants also submitted that there was no foundation for the claim for leave encashment

dues, but again the learned Single Judge granted the same with interest. The appellants-College will not be in a position to pay interest nor it could be reimbursed by anybody. Learned counsel, therefore, prayed for allowing the appeals.

Per contra, learned Senior Advocates for the respondents vehemently opposed the appeals and supported the impugned judgment made by the learned Single Judge. They contended that there was obligation on the part of the appellants-College to follow Government instructions in the matter of payment of difference of gratuity and appellants not having been paid at the relevant time were rightly saddled with interest and costs. They submitted that retrospective grant of amount of gratuity as well as leave encashment and the interest thereon cannot be said to be faulty as it is a matter of fact that the pay-scale etc. are ordered to be paid years after the due dates, for which the employees should not suffer. As to the leave encashment, they submitted that there was prayer made in the writ petitions and the submissions made by the appellants that there was no foundation therein, is hyper-technical and no *verbose* pleadings are required for such purpose as leave encashment is the deferred payment of the part of the salary as held by the Apex Court.

We have heard learned counsel for the rival parties at length. We have perused the impugned judgment made by the learned Single Judge. We have noticed the order dated 27.10.2016 made by this Court, which reads thus:-

“Learned counsel for the appellants states that pursuant

to the order dated 27.09.2016 of this Court, the Management has agreed to release the arrears of enhanced amount of gratuity, provided that the respondents forego the interest claim as awarded by the learned Single Judge.

Learned counsel for the contesting respondents seek time to have instructions.

List on 13.12.2016.

Let a copy of this order be placed in the files of connected matters.”

The relevant period in respect of the respondents, namely the retirement, is 01.01.2006 till 01.01.2010. It is not necessary for us to go into various challenges raised by the learned counsel for the appellants relating to the validity or otherwise of the directives of the University to the appellants to make payment of the difference of gratuity retrospectively in view of the statement made by the learned counsel for the appellants, which is recorded in the order dated 27.10.2016 made by this Court. Even, during the course of hearing before us, the learned counsel for the appellants has agreed to abide by the said statement on instructions from appellants. We are, therefore, not required to go into the question of validity of instructions/directions for payment of amount of gratuity for the period in question.

The next submission assailing impugned order for payment of leave encashment made by the appellants, will have to be rejected. Making payment of leave encashment, as is held by the Apex Court, is a part of deferred payment of salary to be paid at the time of retirement. The submission that there was no foundation in the pleadings for making the

payment of leave encashment, cannot be accepted as no pleadings are required for claiming leave encashment, but at any rate, there is a prayer for claiming so. We, therefore, reject the submission that the learned Single judgment could not have made order for payment of leave encashment.

The next question that arises for consideration is about grant of interest on difference of payment of gratuity as well as on leave encashment.

It is not in dispute that the Government of Punjab had issued the notification in question regarding revision of amount of gratuity from 01.01.2006 till 31.07.2009 with retrospective effect, on 17.08.2009. This decision was communicated to the appellant-college for the first time on 17.05.2011. The controversy relates to the payment of difference of gratuity for the employees who retired between 01.01.2006 till May 2010. Thereafter, civil writ petitions were filed in this Court in the year 2011 onwards. These writ petitions remained pending and were ultimately, decided by the impugned judgment and order in the year 2015. Thereafter, these LPAs were lodged in this Court in the year 2015/2016 and are being decided today.

Thus, the above details clearly show that the appellants could not be held to be at fault or responsible in making delay in payment of gratuity. It is manifest that the notification regarding enhancement of gratuity dues was made retrospective from 01.01.2006, and further admittedly, the gratuity amount then payable was duly paid to employees

of the appellant-College. The instructions to pay retrospectively from 01.01.2006 is bound to affect the financial planning and budget of the institution of the appellant which is a private institution. Apart from that, the appellants had raised the issue specifically that the decision to enhance the gratuity retrospectively was bound to affect the financial position of private college. But they have still agreed to make payment of additional gratuity amount. But then, it would be unjust to levy interest for no fault of theirs. No reimbursement for interest would be made to the appellant. The petitions, however, remained pending from 2011 to 2015-16 for which, it could not be said that the appellants were at fault in the matter of delay in decision of the cases. *Actus curiae neminem gravabit*. Similar is the case with leave encashment benefits for which also the appellants cannot be held responsible in delaying the payments. It is noteworthy that whenever there is a revision of pay, the implementation thereof is late by a few years. For example, in respect of implementation of 7th Pay Commission benefits, the period of 2 years was taken for payment of arrears of salary and allowances. But then, it is a known fact that whenever such pay-scales are made, there is no question of payment of interest on delayed payment of arrears nor there is any such provision or agreement. Applying the said analogy, in our opinion, it would be unjust to levy interest on the difference of amount of gratuity which was asked to be paid with retrospective effect on the difference of amount of gratuity and leave encashment benefits as well. It is also the known fact that the Government will not reimburse the amount of interest on any counts to the

private college like the petitioners. There is no reason, therefore, why the appellant-college should be saddled with liability for grant of interest on gratuity and leave encashment. We do not find that there was any deliberate refusal on the part of the appellants in not making the payments of difference of gratuity and leave encashment with retrospective effect as the appellants had already paid gratuity etc. that was due to all the employees. After all, the private colleges like the appellants are required to raise their own finances for running the colleges, maintenance of college buildings and so on and so forth. The appellant-College cannot be saddled with unforeseen financial burden for not fault of theirs. We, therefore, do not find any reason for awarding interest on gratuity and leave encashment by way of financial liability on the appellants.

The counsel for the respondents have pointed out the orders in other decided cases wherein, the interest at the rate of 6%/9%/12% on gratuity was awarded. We have gone through all those orders. We, however, find that no reason has been mentioned in any of the orders or judgments for awarding interest on gratuity/leave encashment asked to be paid with retrospective effect and there is no adjudication as to why interest was awarded. We, however, find that by taking recourse to Section 34 of the Code of Civil Procedure, 1908 (for short 'CPC'), there is power in the Court to award interest. The litigation has been continuing for a few years. The rate of interest on the savings account by the Banks is presently said to be around 4%. It is a known fact that the interest rates have come down and therefore, there is no reason why any higher rate of

interest should be awarded by this Court, even in exercise of power under Section 34 CPC. In the result, we make the following order:-

ORDER

- (i) **LPA No.1328 of 2015, LPA No.1329 of 2015, LPA No.1330 of 2015, LPA No.1331 of 2015, LPA No.1332 of 2015 and LPA No.848 of 2016** are partly allowed;
- (ii) The impugned judgment dated 24.07.2015 passed in CWP No.23204 of 2011 by the learned Single Judge, is modified and it is ordered that difference of amount of gratuity and leave encashment under the said decision shall be paid to the private respondents/retired employees, with savings bank's interest @ 4% per annum for a period of 12 months and thereafter, till the date of actual payment to the employees;
- (iii) The order awarding costs is set aside;
- (iv) The amount of difference of gratuity as well as leave encashment shall be paid within a period of six weeks from the date of this order.

**(A.B. CHAUDHARI)
JUDGE**

**(KULDIP SINGH)
JUDGE**

August 01, 2018
mahavir

Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**