

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 297 of 2017**

{Arising out of Order dated 09.03.2017 passed in Writ Petition (L) No. 3 of 2012 by the learned Single Judge}

Smt. Gulab Pandey Wd/o Late Shri Vidyadhar Pandey, Aged About 80 Years R/o Murarka Market, Korba Chhattisgarh.

---- Appellant

Versus

1. President / Secretary Vidyut Grih Vidyalaya Prabandhan Samiti, Korba East, Korba Chhattisgarh Through Its Secretary, B. B. D. Jaiswal
2. Appellate Authority, Under The Payment Of Gratuity Act, 1972 And Office Of Assistant Labour Commissioner, Raipur Chhattisgarh
3. Controlling Authority Under The Payment Of Gratuity Act, 1972 And Office Of Assistant Labour Commissioner, Raipur Chhattisgarh

---- Respondents

For Appellant : Shri Punit Ruparel, Advocate.
 For Respondent No. 1 : Shri Narendra Kumar Vyas, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**Per Ajay Kumar Tripathi, Chief Justice****20/03/2019**

1. Heard learned counsel for the Petitioner and the Respondent No. 1.
2. Appellant is the widow of Late Vidyadhar Pandey. He was working as a Teacher in the school run by the Respondent No. 1-Establishment. Death of the employee occurred in harness on 16.10.1996. A claim therefore was made in the year 2011 before the Controlling Authority under the Payment of Gratuity Act, 1972-cum-Assistant Labour Commissioner, Korba, who allowed the application, fixed the liability upon the Respondent No. 1 to the

extent of Rs.4,08,206/-. An appeal was preferred by the Respondent No. 1- Establishment before the Deputy Labour Commissioner, Raipur. The Appellate Authority, without giving much of reason reduced the gratuity amount to Rs.1,00,000/- and also payment of interest of Rs.1,00,000/- meaning thereby that the liability to pay under the Payment of Gratuity Act was fixed at Rs. 2,00,000/- upon the Respondent No. 1.

3. The Respondent No. 1 decided to file a writ application. Writ application was heard by the learned Single Judge. The core issue which was required to be considered was whether there was legal obligation upon the Establishment to pay gratuity to the widow of the ex-employee.
4. The learned Single Judge delved into the history in relation to entitlement of Teachers to be covered under the Payment of Gratuity Act emerging from the definition so provided to the word 'employee'.
5. It is evident from the order under challenge that initially, Teachers were not to be treated as employee under the Payment of Gratuity Act, however, the law underwent a change in the case of **Ahmadabad Private Primary Teachers Association v. Administrative Officer and Others**; {(2004) 1 SCC 755}. The Central Government amended the meaning of the word 'employee' in the year 2009 which was retrospective in nature and was to apply from 03.04.1997.
6. Reverting to the case, the fact that the death of the employee occurred on 16.10.1996 is not disputed. At the relevant time, when the death occurred, husband of the present Appellant was working as a Teacher so did not come under the definition of an 'employee' under the Payment of Gratuity Act. Therefore, there was no occasion to pay gratuity. If the law underwent a change, it only happened in the year 2009, but some how the retrospectivity to the said amendment in regard to the definition was w.e.f.

03.04.1997. This amendment was made keeping in mind the Hon'ble Apex Court's decision rendered in ***Ahmadabad Private Primary Teachers Association*** (supra).

7. Obviously, since the death happened on 16.10.1996 i.e. prior to the period when the word 'employee' underwent a change in the Payment of Gratuity Act, there was no occasion for the authorities under Payment of Gratuity to pay gratuity under the said Act. In this background, the learned Single Judge allowed the writ application of the Respondent No. 1-Establishment and set aside the orders of the subordinate forums which had allowed payment of gratuity. It is in this background that the present appeal has been filed.
8. Before us, an argument is made that the obligation to pay gratuity emerges from an enactment known as the *Madhya Pradesh Ashaskiya Sikshan Sanstha (Anudan Ka Pradaya) Adhiniyam, 1978*. The issue so urged before us seems to be a misplaced kind of argument to make because the decision of the learned Single Judge was based on a decision rendered by the authorities under the Payment of Gratuity Act and the validity of such decision whether gratuity is payable under any other law was not the issue. Therefore, such argument is required to be negated.
9. An argument is also made that in another case, yet another learned Single Judge took a view in favour of a Teacher which was Writ Petition (L) No. 227 of 2014 decided on 11.12.2015. The challenge thrown by the School was rejected.
10. The facts do not match. There is no infirmity committed by the learned Single Judge. In the given set of facts, a simple view which emerges from the pleadings is that the husband of the Appellant died on 16.10.1996 when Teachers did not come within the ambit of the definition of 'employee' under

the Payment of Gratuity Act. However, they got the protection or got covered only w.e.f 03.04.1997. In the said facts therefore, an authority cannot be allowed to exercise powers on an Establishment when the same is not covered or was not covered under the definition of the Act as it stood then.

11. The appeal therefore has no merit. It is dismissed.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE