

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

CWP-9246-2019
Decided on: 05.04.2019

Shri Dhanwantry Ayurvedic College & HospitalPetitioner
Versus
Dr.Neena Chaudhary & others ...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Parth Goyal, Advocate, for
Mr.Vivek Aggarwal, Advocate, for the petitioner.

G.S. SANDHAWALIA, J. (Oral)

Challenge in the present writ petition, filed under Article 226 of the Constitution of India, is to the order dated 22.01.2019 (Annexure P-4), passed by the Additional District Judge, Chandigarh-cum-Educational Tribunal, whereby the petitioner-Institute has been directed to pay Gratuity and leave encashment to respondent No.1.

The only argument which has been raised is that the respondent-employee would not be entitled for Gratuity on account of the fact that she had not superannuated but had left the service. Reliance has been placed upon Clause 4 of the Service Conduct & Leave Rules, 2004 of the petitioner-Institute/Society. Said clauses read as under:

“Gratuity / Ex-gratia benefits

1. The Gratuity or ex-gratia by whatever name called, shall be payable to an employee, and which shall be granted by the GB / MC to every teacher for 'efficient and faithful service rendered', by the teacher concerned with the institution and for this purpose the entire service record of the employee shall be taken into consideration. If the GB found upon minute scrutiny of the entire service record and annual reports of an employee, which were sufficient to draw a conclusion

that the employee concerned did not fulfill the parameters of the aforesaid regulation, for being awarded the benefit of Gratuity.

2. The rate of Gratuity, in the even of admissibility shall be same as laid down by the University.

3. In case sudden eventuality or demise of an employee (in case of regular or Permanent employee) the benefits of gratuity calculated proportionately as per conduct and service rule may be given to his or her spouse or legal heir

4. In those cases where employee resigns or leave the services in between for any reasons no gratuity will be given.

5. The claim of gratuity shall not bestow a vested right upon an employee, the college being a totally un-aided college.”

It is pertinent to notice that the respondent-employee was appointed as Assistant Professor in the Department of Ras Shastra on 13.05.1991. Eventually, her services were dispensed with by the petitioner-Institute itself on account of her being declared surplus, vide the office order dated 23.11.2015 (Annexure P-3). As per the communication also, she was given the first priority to join in the said department, in case any vacancy arises within the concerned department. She filed a petition under Section 7A(12) of the Punjab Affiliated College (Security of Service) Amendment Act, 2007, praying for appropriate direction to grant promotion to her w.e.f. the date her juniors were promoted as Associate Professor/Professor and Reader and to grant all consequential benefits including Grade Pay/Revised Salary and pension etc. Apart from that direction was also sought for the benefit of Gratuity, leave encashment along with interest @ 18%.

Since the Institute has come forth as petitioner, this Court is

not commenting upon the other aspects noticed in the impugned order, regarding the first portion of the relief of promotion etc., which was denied to the employee on various grounds, that they were not maintainable etc.

However, on the issue of Gratuity, it was noticed that the employee had served the petitioner-Institute for 24 ½ years and there was nothing that she was ever awarded minor punishment or faced any enquiry, apart from the minor punishment of suspension for a short period which was revoked. Resultantly, she had become entitled for Gratuity and Leave Encashment. Reliance was placed upon the above relevant Rules, to hold out that where the employee resigns or leave the service in between, no Gratuity shall be paid.

Reference was also made to the judgment of the Apex Court passed in **Ahmedabad Private Teachers Association Vs. Administrative Officers & others 2004 (2) RSJ 315**, to hold that Gratuity is a gratuitous payment given to the employee on discharge, superannuation or death. The same was unconnected with any consideration and given freely, voluntarily or without recompense.

In such circumstances, as per the Rules itself, the Gratuity had to be paid and it was not a case of resignation or leaving service or any violation by the employee but the same was on account of the Institute itself dispensing with the service. Therefore, fall back on the said Rules, would not be available to it. Under Section 4(6) of the Payment of Gratuity Act, 1972, it is further provided that Gratuity can

only be forfeited in specific conditions whereby the services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer. The amount of forfeiture is to the extent of the damage or loss so caused. Similarly, where the services have been terminated for riotous or disorderly conduct or any other act of violence on his/her part, or which constitutes an offence involving moral turpitude, the employer has a right, as such, to withhold the Gratuity. In the present case, the employee do not, as such, fall within the said conditions and it is the petitioner-Institute itself which has dispensed with the services and therefore, it cannot take advantage of its own act and not pay Gratuity and Leave Encashment, as such.

Resultantly, in view of the above discussion, the present writ petition is dismissed in limine, being devoid of any merit.

05.04.2019
Sailesh

(G.S. SANDHAWALIA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>