

\$~15

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 26th November, 2020
+ **W.P.(C) 9463/2020 & CM APPLs. 30433-34/2020**
GURU HARKRISHAN PUBLIC SCHOOL & ORS..... Petitioners

Through: Mr. Chirag Madan, Ms. Ravleen
Sabharwal, Mr. Vipul Sharma,
Advocates. (M: 9999276327)

versus

KULJEET KAUR & ANR. Respondents

Through: Mr. Nikhilesh Kumar, Advocate for R-
1.
Mr. Anand V. Khatri, Advocate for R-
2/ GNCTD. (M:9958897511)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done by video conferencing.
2. The present writ petition has been preferred by the Petitioners, who run the Guru Harkrishan Public School (*hereinafter*, 'School'), challenging the impugned order dated 20th October, 2020, passed by the Id. Controlling Authority under the Payment Of Gratuity Act, 1972 (*hereinafter*, 'Authority') by which the Authority has directed them to pay a sum of Rs. 7,99,113/- along with interest @10% per annum as payment of gratuity for the services rendered by Respondent No.1.
3. The claim of Respondent No.1 was that she was an employee working as a teacher at the School. She had approached the Authority, as the Petitioner-Management had not paid the gratuity for the services rendered by her as TGT Physical Education. In reply to the claim, one of the objections taken by the Petitioners was that the Authority has no jurisdiction to entertain the claim, as

according to the definition of 'employee' under the Payment of Gratuity Act ('Act'), the Act would not apply to any authority which is governed by a special Act.

4. According to the Petitioners, the School has been established under the aegis of Petitioner No.2 i.e. the Delhi Sikh Gurudwara Management Committee, which is governed by the Delhi Sikh Gurdwaras Act, 1971 and under Section 32 of the said Act, only the District Court would have jurisdiction in respect of any dispute that arises between the Committee and its employees. This objection was not adjudicated by the Authority.

5. Mr. Chirag Madan, Id. counsel appearing for the Petitioner submits that the Authority has committed two errors. Firstly, the question of law as to maintainability has not been adjudicated and, secondly, a proposal for settlement discussed on 22nd September, 2020 has been read as an admission against the Petitioner and the final order has been passed without following the appropriate procedure in terms of the Gratuity Act.

6. On the other hand, Mr. Nikhilesh Kumar, Id. counsel appearing for Respondent No.1 submits that the School is governed by Delhi School Education Act And Rules, 1973. Though, the overall management of the School may be by the Delhi Sikh Gurudwara Management Committee, the Schools are run by a separate society, called the Guru Harkrishan Public School Society. Mr. Kumar, Id. counsel submits that this Society is independent of the Management Committee and the Society has to abide by the Delhi School Education Act and Rules. He submits that as per Rule 172 of the said Rules, the Payment of Gratuity Act would be applicable to all the employees of the schools. He further relies upon a recent order dated 7th October, 2020 passed in *W.P.(C) 1576/2020* titled *Guru Harkrishan Public*

School & Ors. v. Dharni Kant Joshi, wherein this Court had directed that the gratuity would be paid in instalments and the Respondents were agreeable to the payment in instalments.

7. Mr. Kumar, ld. counsel also argues that the present writ petition is not maintainable as the impugned order is appealable under Section 7(7) of the Gratuity Act.

8. Various issues have been raised in these petitions. However, this Court has had the opportunity to deal with similar matters in the past where gratuity was directed to be paid by the Authority and this Court had directed payment in instalments while exercising writ jurisdiction including in *W.P.(C) 1576/2020* titled *Guru Harkrishan Public School & Ors. v. Dharni Kant Joshi*, *W.P.(C) 1585/2020* titled *Guru Harkrishan Public School & Ors. v. Suresh Chander Yadav* and *W.P.(C) 1569/2020* titled *Guru Harkrishan Public School & Ors. v. Jasmeet Kaur Chani*. When this was put to ld. counsels, there appears to be in consensus on the gratuity to be paid in instalments. Thus this Court does not deem it appropriate to go into the questions of law raised. Accordingly, without going into the question of law as well as the objection as to maintainability of the present petition, the following directions are issued:

- i) The gratuity amount due is admitted to be Rs.7,99,113/-. The said amount shall be paid in six equal instalments beginning from 1st December, 2020.
- ii) Accordingly, the Petitioner shall pay a sum of Rs.1,33,185/- every month starting from 1st December, 2020, on or before the 10th of every month, directly into the Respondent's account. The entire amount due shall be cleared by 10th June, 2021.

iii) If the amount as directed above is not paid to the Petitioner, interest @ 15% per annum would be liable to be paid on the entire amount as determined above, with effect from 1st January, 2021 and shall be recoverable under the provisions of the Act.

9. If there is any violation of the above order, the Respondent is permitted to approach this Court.

10. The present petition, along with all pending applications, is disposed of in the above terms.

**PRATHIBA M. SINGH
JUDGE**

NOVEMBER 26, 2020

dj/A