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

Date of Decision: 17th December, 2021

\+ **W.P.(C) 14565/2021 & CM APPLs. 45878/2021 & 45879/2021**

RAJESH BAJAJ ..... Petitioner

Through: Mr. Anant Nigam, Advocate. (M:8178188748)

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Ms. Aakanksha Kaul and Mr. Karan Chhibber, Advocates for R-2. (M:9654003808)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.

2. The present petition has been filed challenging the impugned letter dated 27th September, 2021, which was issued by Respondent No.2 – Central Medical Services Society (*hereinafter "CMSS"*), vide which CMSS claimed that gratuity is not payable to the Petitioner under the Payment of Gratuity Act, 1972 *(hereinafter "the Act")* as the Petitioner has not completed five years of service since the Act became applicable to CMSS on 27th April 2015. The case of the Petitioner is that he completed 5 years of service with CMSS as General Manager (Logistic & Supply Chain). He joined the CMSS on 13th February, 2014 and was employed with them till 31st March, 2019. Thus, he is entitled to payment of gratuity.

3. Mr. Nigam, ld. counsel for the Petitioner submits that the Petitioner has been repeatedly making representations to CMSS seeking the payment of gratuity. However, the same were being rejected on one ground or the other. Reply to the RTI filed by the Petitioner reveals that similarly placed employees have been paid the gratuity amount.

4. Ld. Counsel further vehemently contends that the Petitioner need not approach the Controlling Authority under the Act and the present writ petition would be maintainable as there is a violation of Petitioner's "right to equality" enshrined in Article 14 of the Constitution of India since he is being discriminated against from other employees by CMSS. He further submits that the Controlling Authority under the Act does not have jurisdiction to deal with all the issues sought to be raised by the Petitioner.

5. On the other hand, ld. counsel for the Respondent No.2 - CMSS submits that alternative remedy is available to the Petitioner and he is free to approach the Controlling Authority.

6. A perusal of the provisions of the Payment of Gratuity Act, 1972, shows that under Section 7, the Controlling Authority would determine as to whether the gratuity amount is payable and the quantum payable. Section 7(4)(a) also makes it clear that even the admissibility of the claim is in the domain of the Controlling Authority. The Supreme Court of India in ***State of Punjab v. Labour Court Jullunder and Ors.*** **AIR 1979 SC 1981** while analysing the scheme of the Act observed:

> *"7. It is apparent that the Payment of Gratuity Act enacts a complete code containing detailed provisions covering all the essential features of a scheme for payment of gratuity. It creates the right to payment of gratuity, indicates when the right will accrue, and lays*

> *down the principles for quantification of the gratuity. It provides further for recovery of the amount, and contains an especial provision that compound interest at nine per cent per annum will be payable on delayed payment. For the enforcement of its provisions, the Act provides for the appointment of a controlling authority, who is entrusted with the task of administering the Act. The fulfilment of the rights and obligations of the parties are made his responsibility, and he has been invested with an amplitude of power for the full discharge of that responsibility. Any error committed by him can be corrected in appeal by the appropriate Government or an appellate authority particularly constituted under the Act."*

The abovementioned decision of the Hon'ble Supreme Court has been followed by the Madras High Court in ***R. Gopalan v. The Registrar of Co-operative Societies*** **WP No. 9976/2015 dated 07th April 2015**. The relevant paragraphs are as under:

> *"5. The learned counsel for respondents 1 and 2 has submitted that the petitioner has an effective remedy under the Payment of Gratuity Act, if the third respondent institution is covered under the said Act. The Payment of Gratuity Act is a self contained code and even in the case of workman covered by the Industrial Disputes Act, such workman cannot make a claim under Section 33-C(2) of the I.D. Act before the Labour Court in respect of gratuity and such workman shall approach the Controlling and Appellate authority under the Payment of Gratuity Act, as held by the Apex Court reported in* ***1980 1 SCC 4 [State of Punjab v. Labour Court, Jullundur and others]***
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> *xxx*
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> *<u>In my view, the petitioner could approach the appropriate authority under the relevant statutes</u>*

> *seeking the relief relating to interest on the belated payment of terminal benefits. Hence, the writ petition is not maintainable. Further, writ petition is not maintainable against the Co-operative Societies. Accordingly, the writ petition stands dismissed. However, this will not preclude the petitioner from approaching the concerned authorities under the relevant statute. No costs. Connected miscellaneous petition is closed."*

Thus, in the opinion of this Court, the present case is one where the Petitioner ought to first approach the Controlling Authority for the determination of payment of gratuity amount, which according to him, was wrongfully denied.

7. Considering the fact that the matter has not reached the Controlling Authority and approximately three years have passed since the Petitioner left the employment of the CMSS, the following directions are issued:

(1) The present writ petition itself would be treated as an application before the Controlling Authority.

(2) The Petitioner may appear before the Controlling Authority on 5th January, 2022. The Controlling Authority shall, after entertaining the application of the Petitioner, afford a hearing to the employer, to determine whether the Petitioner is eligible for getting gratuity payment, if so, for what amount, as per the provisions of the Act.

(3) The Controlling Authority shall endeavour to complete the proceedings and pass the order within four months from the first date of hearing.

(4) All the remedies of either parties in respect of any challenge to the order of the Controlling Authority are left open to be availed of in

accordance with law. All contentions of parties are left open.

8. The present petition is disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

DECEMBER 17, 2021/*dk/SK*