

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: August 03, 2021

+ W.P.(C) 11154/2019

JANARDAN SHARMA

..... Petitioner

Through: Mr.Varun Mudgil, Mr.Rakesh Kumar
and Mr.Mohit Mudgal, Advs.

versus

GNCT OF DELHI THROUGH: ITS CHIEF SECRETARY & ORS.

..... Respondents

Through: Mr.Santosh Kumar Tripathy, SC
(Civil) (GNCTD) for DoE

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. The present petition has been filed by the petitioner with the following prayers:

“In view of the aforementioned facts and circumstances it is most respectfully prayed that this Hon'ble Court may be pleased to:

a) Issue an appropriate writ, order, or direction to the Respondent No.1 & 2 for the implementation of the Payment of Gratuity (Amendment) Act, 2009 (No. 47 of 2009) with retrospective effect from 03/04/1997 and extending benefits for Payment of Gratuity to the Vocational Part-Time Teachers' working under the Govt. Schools of the GNCT of Delhi.

b) Issue an appropriate writ, order, or direction to the Respondent No.2 & 3 to release the payment of the Gratuity to the Petitioner and/or Vocational Part Time Teachers' after their superannuation or

retirement or relieving from the service after attaining the age of 60 years.

c) Pass such order or further order(s) including order in respect of costs of the petition as may be deemed fit and proper in the facts and circumstances of the present case.”

2. The facts as noted from the petition are that in the year 1977-78 the respondent No.2 / Directorate of Education, Govt. of NCT of Delhi had introduced Vocational Stream in +2 stage of the school education. The Directorate created various posts for Vocational Teachers on temporary basis which have been continued on year-to-year basis by the subsequent orders issued by it. The petitioner was appointed as a Part Time Vocational Teacher in the course of Banking by the respondent No.2 on December 02, 1991.

3. Vide notification dated August 07, 1995, the respondents have framed Recruitment Rules for the posts of Post Graduate Teachers (Vocational) in various Vocational Courses. In the year 2009, the Parliament amended the definition of the word ‘employee’ as defined in Section 2(e) of the Payment of Gratuity Act, 1972 (‘Act of 1972’, for short) with retrospective effect, from April 03, 1997. Pursuant thereto, the teachers were entitled to the Gratuity under the Act of 1972 from their employer w.e.f. April 03, 1997. The petitioner continued to work as a Part Time Vocational Teacher with the respondents and has retired on attaining the age of superannuation on March 26, 2020.

4. Mr.Varun Mudgil, learned counsel for the petitioner in support of the petitioner’s case has reiterated the stand taken in

the petition. That apart, he stated that the teachers having been covered under the Act of 1972, could not have been denied the same. In support of his submission, he has relied upon the judgment of a Coordinate Bench of this Court in the case of ***National Bal Bhawan v. Vandana, W.P.(C) 10027/2019*** and other connected petitions decided on November 27, 2019 to contend, even a part time employee is eligible for gratuity as held by the Court in the said judgment.

5. On the other hand, Mr.Santosh Kumar Tripathy, learned Standing Counsel appearing for the respondents would submit that the petitioner's appointment was temporary on contingent basis with the condition that his services are liable to be terminated at any time. Approval for Vocational Teachers continuation was issued every academic / financial year by the department with prior concurrence of Hon'ble Lieutenant Governor Delhi and their wages are being paid from contingency fund. They are paid on the basis of periods taken by them subject to a maximum of 32 periods per week and the payment is made on the basis of actual periods taught by them. It is conceded that the work of training and skill training to students is being imparted in terms of National Skill Qualification Framework as introduced by the CBSE in 2018 through Vocational Trainers in the Government Schools and are outsourced through Vocational Training Partners i.e. private agencies. The nomenclature of the post was changed from Vocational Teacher to Vocational Trainer. The subjects cannot be introduced on permanent basis as the subjects are introduced

on market demand and utility basis. The Recruitment Rules for appointment of Teachers, under the newly introduced NSQF are yet to be revised.

6. Mr. Tripathy during submissions has sought time to take instructions. The Court did not grant time, as he had earlier also sought time, but could not get any instructions. As the issue which falls for consideration is a very short one, I proceed to decide the same.

7. Having heard the learned counsel for the parties, there is no dispute that the teachers have been included within the definition of the word ‘employee’ under Section 2(e) of the Act of 1972 in the year 2009 w.e.f. April 03, 1997. For all purposes, a teacher is entitled to gratuity. The Supreme Court has also in its judgment in the case of ***Birla Institute of Technology v. The State of Jharkhand and Ors.***, MANU/SC/0337/2019, has dismissed the appeal filed by the appellant Institute by relying upon the amendment, in the proceedings initiated by a teacher before appropriate authority for grant of gratuity under the Act of 1972. The Supreme Court has in paras 29 and 30 held as under:

“29. In other words, the teachers were brought within the purview of “employee” as defined in Section 2(e) of the Payment of Gratuity Act by Amending Act No. 47 of 2009 with retrospective effect from 03.04.1997.

30. The effect of the amendment made in the Payment of Gratuity Act vide Amending Act No. 47 of 2009 on 31.12.2009 was two-fold. First, the law laid down by this Court in the case of Ahmadabad Pvt. Primary Teachers Association (supra) was no longer applicable against the

teachers, as if not rendered, and Second, the teachers were held entitled to claim the amount of gratuity under the Payment of Gratuity Act from their employer with effect from 03.04.1997.”

8. Having said that the plea of the learned Standing Counsel for the respondents is that the petitioner was working as Part Time Vocational Teacher and as such not entitled to gratuity. I am afraid the said plea is unmerited in view of the definition of the word ‘wages’ in Section 2(s) of the Act of 1972. A similar plea was taken on behalf of the petitioner in ***National Bal Bhawan (supra)*** which was rejected by a Coordinate Bench of this Court by holding as under:

“7. Undisputedly, the respondents were offered appointment by the petitioner in its own rights. There is a relationship of employer and employee amongst the petitioner and the respondents is also not in question. Petitioner is an establishment under the Act, 1972, also not being in question and sub-Section (e) of Section 2 of the Act, 1972 not coming to the aid to the petitioner, there is no reason as to why, the respondents would not be covered within the purview of the Act, 1972.

8. In the other limb of his submissions, though Mr. Rajappa, ld. Counsel for the petitioner contended that the respondents were part time employees and therefore, the Act, 1972 was not applicable to the respondents, he fails to point out any statutory provision, rule or regulation, in support of such submissions. The Court does not find merit even in the submission so made. An employee is an employee, whether on casual, ad-hoc or part time basis. The definition of employee in the Act, 1972 also does not speak of any specific categories of the employees for its applicability, be it, regular, adhoc, part time, casual etc. etc. As for the payment of gratuity under the subject Act, to assess the quantum thereof, it

provides for the definition of wages in sub-Section (s) of Section 2, which reads as under:

“wages” means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.”

9. The combined reading of sub-Section (e) and sub-Section (s) of Section 2 of the Act, 1972 leaves no doubt that the gratuity is payable to the employees defined under the subject Act and is to be assessed on the basis of the wages / emoluments, within the ceiling limit as provided there-under.”

9. From the above, it is clear that the Act does not draw a distinction between a fulltime employee / a part time employee / *ad hoc* employee etc. In other words, as stated by the Court, the Section does not speak of any specific categories of the employees for its applicability i.e. regular, ad-hoc, part time, casual etc. The petitioner being an employee, though according to the respondents Part Time, he is still entitled to gratuity. He worked for almost 28-29 years but was denied the benefit of pension as he was not a regular employee. In fact, on that ground, it appears he was denied the benefit of the scheme for payment of gratuity as prevailing in the department. Being a so called “Part Time Employee”, if he is not entitled to gratuity under the scheme prevailing in the department, the petitioner is entitled to gratuity under the Act of 1972. He cannot be left without means of sustenance, post retirement. In this regard, I would like to refer to paragraph 10 of the judgment of the

Coordinate Bench of this Court in *National Bal Bhawan* (*supra*) as under:

“10. During the course of hearing, Mr.Rajappa also submitted that the respondents were paid only the consolidated wages besides conveyance. The impugned order takes note of the consolidated salaries of the respondents as Rs.300-20-400 p.m. w.e.f. 11.11.1986, Rs.400-20-500 p.m. w.e.f. 15.06.1987, Rs.400-20-500 p.m. w.e.f. 15.05.1990, Rs.200/- p.m. w.e.f. 11.05.1984, Rs.200/- p.m. w.e.f. 05.11.1983, Rs.200/- p.m. w.e.f. 11.05.1984, Rs.200/- p.m. w.e.f. 16.05.1983. It would thus be seen, for few of the respondents, who are equally stated to be part-time employees, the petitioner has provided for the increments, apparently, on yearly basis. All of them, undisputedly, have rendered their uninterrupted services for more than five (05) years to be eligible for the gratuity under the Act, 1972. Most of them have rendered services for almost 30 years or more and they have come to be declined the entitlement of gratuity, that too, by a Society, which is stated to be wholly funded by the Central Government. They are not entitled to pension as they are not the regular employees under the Central or the State Government nor the society on its part is shown to have any such scheme. Fact however remains that the payment of gratuity is a Statutory liability under the Act, 1972. Thus, for the respondents services having been availed for over the years, most of them having been the employees of the petitioner for decades, denial of gratuity to them, is to leave them in lurch, when they superannuated. What to talk of bread and butter, they are left even without bread, a basic necessity for survival. It is a reflection of total insensitivity to their just cause, which, the petitioner has failed to advert to, ignoring the genesis of the beneficial legislation like the Act, 1972.” (emphasis supplied)

10. The petition is allowed, the respondents are directed to pay gratuity to the petitioner by counting the period of service w.e.f. April 03, 1997 till March 26, 2020 with interest computed @ 6% per annum. The same shall be complied, within a period of eight weeks from today. The petition is disposed of with costs quantified as Rs.20,000/- to be paid to the petitioner within the same period.

V. KAMESWAR RAO, J

AUGUST 03, 2021/aky

