

223 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CWP-16014-2016

Dyal Singh Public School and another Petitioners

Versus

The Appellate Authority under the Payment of Gratuity Act-cum-Deputy

Labour Commissioner, Panipat and others Respondents

2. CWP-17264-2016

Dyal Singh Public School and another Petitioners

Versus

The Appellate Authority under the Payment of Gratuity Act-cum-Deputy

Labour Commissioner, Panipat and others Respondents

Date of Decision: 08.12.2022

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Jatinder Nagpal, Advocate,
for the petitioner in both petitions.

Mr. Sudhanshu Makkar, Advocate,
for respondent No.3 in CWP-16014-2016.

None for respondent No.3 in CWP-17264-2016.

RAJBIR SEHRAWAT, J. (ORAL)

This shall dispose of two writ petitions, i.e. CWP-16014-2016 and 17264-2016, by a common order because almost similar facts and the same prepositions of law are involved in these petitions. However, for the sake of brevity, the facts are being taken from CWP-16014-2016.

This is a petition filed under Article 226 of the Constitution of

India seeking issuance of a writ of certiorari quashing the order dated 15.07.2015 (Annexure P-1) passed by respondent No.2 as also for quashing the order dated 25.04.2016 (Annexure P-2) passed by respondent No.1, whereby appeal filed by the petitioner has been dismissed; along with certain other prayers.

The brief facts of the case are that respondent No.3 was employed as a Teacher with the petitioner-School w.e.f. 01.07.1989. She retired on 30.04.2011 after completion of 22 years and 06 months of service. As per the provisions of the Payment of Gratuity Act, 1972, as amended vide amendment of the year 2009, respondent No.3 who retired as a teacher was entitled to the gratuity. The petitioner-School paid her the gratuity w.e.f. 03.04.1997 till the date of her retirement. However, she was not paid the gratuity for the period from 01.07.1989 till 1997. Aggrieved against the same, respondent No.3 had approached the Controlling Authority under the Payment of Gratuity Act. Allowing the application filed by respondent No.3, the Authority has directed the petitioner-School to pay the difference of the amount of gratuity as has already been paid to respondent No.3 and to which the respondent No.3 was entitled; by calculating the same w.e.f. 01.07.1989. It is challenging the said order that the present petition has been filed by the petitioner-School.

Arguing the case, the learned counsel for the petitioner has submitted that the employment of respondent No.3 with the petitioner-School is not in dispute. It is also not in dispute that she was employed with the petitioner-School w.e.f. 01.07.1989. However, under the Payment of

Gratuity Act, the teachers were not entitled to any gratuity. By way of amendment made in the year 2009 only the teachers were included under the definition of 'employee', which are entitled for getting gratuity under the Payment of Gratuity Act. The said Act was given retrospective effect w.e.f. 03.04.1997. Therefore, respondent No.3 was entitled to the gratuity only with effect from the said date. Respondent No.3 has already been paid the gratuity, as calculated w.e.f. 03.04.1997 till the date of her retirement on 30.04.2011. Hence, the Authorities have passed a wrong order and the same deserves to be set aside.

On the other hand, learned counsel for respondent No.3 has submitted that since the Act was made applicable retrospectively w.e.f. 03.04.1997, therefore, all employees, who were in employment on the said date would be entitled to the gratuity for the entire service rendered by them. Since, respondent No.3 was in employment w.e.f. 01.07.1989, therefore, she is also entitled to gratuity with effect from the same date. Learned counsel for respondent No.3 has relied upon a judgment rendered by Hon'ble the Supreme Court in the case of **Independent Schools' Federation of India (Regd.) Vs. Union of India and another, 2022(4) S.C.T. 119**, to support his arguments. Hence, it is submitted that the impugned orders have rightly been passed by the Authorities.

Having heard the learned counsel for the parties and having pursued the record, this Court finds substance in the arguments raised by learned counsel for respondent No.3. Undisputedly, respondent No.3 was employed w.e.f. 01.07.1989 and she retired on 30.04.2011. Therefore, it is

not even in dispute that she was in service as on 03.04.1997. To deal with the entitlement of gratuity to those persons, who were in service as on 03.04.1997 under the amended Payment of Gratuity Act, Hon'ble the Supreme Court in the case of ***Independent Schools' Federation of India (Regd.)'s case (supra)*** has held as under:

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19. The provisions of the PAG Act, even post the retrospective amendments, will apply only to those teachers who were in service as on 3rd April 1997, and at the time of termination have rendered service of not less than 5 years. The period of 5 years may be partly before 3rd April 1997, as the date on which the person was employed does not determine the applicability of the PAG Act. The date of termination of service, in the form of superannuation, retirement, or resignation, or death or disablement due to accident or disease, should be post the enforcement date, which in the present case is 3rd April 1997. The entire length of service, including the service period prior to 3rd April 1997, is to be counted for the purpose of computing the entitlement condition of 5 years of service. This is the correct effect of the ratio and decision in Management of Goodyear India Limited. (supra) and the decisions explaining retroactive effect of a statute. This legal position would be equally true and correct when the PAG Act was first enforced with effect from 16th September 1972, and when Notification No. S-42013/1/95-SS.(II) under Section 1(3)(c) of the PAG Act was issued and enforced with effect from 3rd April, 1997. It would be the position in case of all notifications issued under Section 1(3)(c) of the PAG Act, unless a contrary intention is expressed, which is not the situation in the

present case and thus need not be examined.

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Since, Hon'ble the Supreme Court itself has clarified the legal proposition that all those employees, who were in service on 03.04.1997, would be entitled to the gratuity for the entire service rendered by them including the service prior to 03.04.1997. Therefore, this Court finds that the case of respondent No.3 is squarely covered by the judgment rendered by Hon'ble the Supreme Court. Hence, the orders passed by the Authorities deserve to be upheld and the petition deserves to be dismissed. The amount, if any, lying deposited with the Authorities, be released to respondent No.3.

In view of the above, finding no merit in the present petitions, the same are hereby dismissed.

(RAJBIR SEHRAWAT)
JUDGE

08.12.2022

adhikari

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No