

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

CWP-9747-2018
Date of Decision: 29.08.2022

Nishan Public School

..... Petitioner

Versus

Appellate Authority under the Payment of Gratuity Act-cum-through its
Deputy Labour Commissioner, Panipat and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Mohit Garg, Advocate, for
Mr. Rajiv Sidhu, Advocate,
for the petitioner.

Mr. Harish Rathee, Deputy Advocate General, Haryana.

Mr. J.P.Sharma, Advocate,
for respondent No.3.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Articles 226/227 of the Constitution of India seeking issuance of a writ of certiorari quashing the impugned order dated 20.02.2018 (Annexure P-1) passed by respondent No.1, whereby respondent No.1 has set aside the order dated 14.09.2017 (Annexure P-2) passed by respondent No.2, whereby respondent No.2 had rightly dismissed the application with respect to gratuity and the said order dated 14.09.2017 is liable to be upheld by this Court; with a further prayer that during the pendency of the present petition, operation of the impugned order dated 20.02.2018 may kindly be stayed.

It is submitted by the learned counsel for the petitioner that the respondent-workman has never been an employee of the petitioner-School. The petitioner has taken over this school from the earlier management in the year 2014. As per the record, after 2014, the respondent-workman was never in the service of the petitioner-School. Although, the respondent-workman claimed to have retired from the petitioner-School in October, 2011, however, no such document has been placed on record to show that he was in service in the year 2011. Rather, the documents placed on record show that the respondent-workman stood retired w.e.f. 30.04.2005 on attaining the age of superannuation. Therefore, if the respondent-workman was to move any application for gratuity, then the same should have been moved within 30 days, as prescribed under the Haryana Payment of Gratuity Rules, 1972 (hereinafter referred to as 'the Rules'). However, no such application was made by the respondent-workman to the then management. Therefore, the Controlling Authority had rightly rejected the application filed by the respondent-workman. The Appellate Authority has gone wrong in law in reversing the findings recorded by the Controlling Authority and holding that the respondent-workman remained in service of the petitioner-School upto 30.09.2011 and is entitled to gratuity upto this date. There is no record or the legal basis for holding the respondent-workman entitled to the gratuity upto the year 2011.

On the other hand, learned counsel for the respondent-workman has submitted that the respondent-workman was employed in the petitioner-School in the year 1995 and he retired on 30.09.2011. Document Exhibit A-

8 had been placed before the Controlling Authority. The said document is the certificate issued by the then Principal of the petitioner-School certifying that the respondent-workman was in service upto 30.09.2011. Learned counsel has further submitted that even the EPFO has issued pension pass-book to the respondent-workman in the year 2012. Hence, this document also shows that the respondent-workman was retired in the year 2011. Therefore, the Appellate Authority has rightly reversed the order passed by the Controlling Authority and has held the respondent-workman entitled to the gratuity upto the year 2011.

Having heard the learned counsel for the parties, this Court finds substance in the arguments raised by the learned counsel for the petitioner to some extent. Although, the learned counsel for the petitioner has submitted that the application filed by the respondent-workman was beyond the limitation of 30 days, as prescribed under the Rules, however, the said provision itself clarifies that mere non-making of application within the stipulated time does not make a ground to deny the gratuity to a workman, who is otherwise entitled to the same. So far as the delay in making an application or approaching the authorities is concerned, it has been pleaded by the respondent-workman that he had approached the authorities but they were deferring the issue every time by asserting that they will pay the same as and when they will pay it to any other employee. Therefore, there appears to be a justification in the assertion of the respondent-workman that he had been approaching the authorities right from the day one. It is obvious that because of the transfer of the school from one

management to another management, the issue of the entitlement of the employees to gratuity was not taken up with right earnest. Therefore, even the pension of the respondent-workman could not be started upto the year 2012. Hence, the argument of the learned counsel for the petitioner qua the claim of the respondent-workman being barred by limitation, is rejected.

However, this Court finds substance in the argument of the learned counsel for the petitioner that the respondent-workman had served in the petitioner-School only upto 30.04.2005. Although, learned counsel for the respondent-workman has relied upon the document Exhibit A-8, which is a certificate issued by the then Principal of the petitioner-School, however, this document does not inspire any confidence in view of the plethora of other documents relating to the employment of the respondent-workman being placed on record. The very document relied upon by the learned counsel for the respondent-workman, i.e., the payment of pension to the respondent-workman and the documents issued in that regard show it clearly that although the pension papers were prepared in February, 2012, however, the same had been made effective w.e.f. 01.05.2005. The said undisputed and statutory documents prepared by the statutory authority for grant of benefit of the pension to the respondent-workman reflect the date of retirement of the respondent-workman to be 30.04.2005. There is no other document placed on record by the respondent-workman to controvert the fact that he stood retired from the service of the petitioner-School w.e.f. 30.04.2005 on attaining the age of 58 years. Hence, the order of the Appellate Authority to that extent is non-sustainable. The date of retirement

of the respondent-workman has to be taken as 30.04.2005 for the purpose of entitlement of the gratuity.

Another argument raised by the learned counsel for the petitioner is that the current management had taken over the petitioner-School only in the year 2014, therefore, this management is not responsible for non-payment of gratuity to the respondent-workman, however, this Court does not find any substance in the same. The employee of a school is never an employee of the particular management, as such, rather, he is the employee of the school, irrespective of the fact as to who manages the affairs of the school. Undisputedly, the respondent-workman was the employee of the petitioner-School, at least, upto 30.04.2005. Therefore, the current management cannot be excused of its financial liability qua the entitlement of the respondent-workman towards gratuity. Whenever, the management changes or takes over from the previous management, that takes over the school with all its financial liabilities and entitlements. There is nothing on record to show that the said liability was excluded from the liabilities of the new management at the time of take over. Moreover, the statutory liabilities cannot be left to the discretion of the incoming management or the outgoing management. Therefore, the liability of payment of the gratuity qua the respondent-workman shall remain intact against the petitioner-School; as such.

Accordingly, this writ petition is partly allowed and the order of the Appellate Authority is modified to the extent that the respondent-workman shall be entitled to the gratuity for the period mentioned in the

pension papers, i.e., from 16.11.1995 till 30.04.2005. The gratuity shall be payable only at the rate of wages reflected in the pension papers of the respondent-workman. However, the award of interest on the amount payable to the respondent-workman shall remain the same as awarded by the Appellate Authority. The amount, so calculated, as per the statutory provisions, along with the interest, is ordered to be paid by the petitioner to the respondent-workman within a period of three months from today.

(RAJBIR SEHRAWAT)
JUDGE

29.08.2022
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No