

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19837 of 2018

1. The Managing Committee Through Its Secretary and Anr
2. The Principle, Kamlu Nehru Shishu Vihar, Sadakat Ashram, Patna, 800010.

... .. Petitioner/s

Versus

1. The Union Of India and Ors
2. The Deputy Commissioner cum Controlling Authority, under the payment of Gratuity Act, Patna Divisio
3. Shiv Pyare Tripathi, Son of Late Sukhdeo Tripathi, Resident of Suroundha, P.O.- Badku Basauli Via Dumrao, District- Buxar, at present residing at H.O.- A.K. Thakur, 230, Patliputra Colony, P.S.- Patliputra, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Gyan Prakash Singh, Adv. with
	:	Mr. Uday Shankar Pandey, Adv.
For the Respondent/s No.3	:	Mr. Satyendra Krishna Prasad, Adv.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

5 04-01-2023 Learned counsel for the petitioner, counsel for respondent No. 6. appeared but no one appeared on behalf of Respondent No. 1, 2 and 3.

The present writ petition has been filed setting aside the order dated 04.08.2018 passed by Deputy Commissioner-cum- Controlling Authority under the Payment of Gratuity Act, 1972 by which direction was made to the petitioner to make payment of Rs. 96,570/- to the Respondent No.3 towards the payment of his gratuity amount.

The counsel for petitioner barely submits that the said writ petition was filed with one issue that is to say that whether

a school teacher comes within the purview of the Payment of Gratuity Act, 1972 or not. At the time of filing of the writ petition, he relied on judgment namely, Ahmedabad Private Primary Teacher Association vs. Administrative Officers and others reported in 2004 (1) SCC 755.

Learned counsel submits that the Hon'ble Apex Court subsequently over-ruled the said judgment and decided in case of Birla Institute of Technology Vs. State of Jharkhand and ors. reported in 2019 (2) PLJR 163 (SC) that the teacher is covered under Section 2(e) under the Payment of Gratuity Act, 1972 and in this view of the matter, the petitioner is now entitled for payment of gratuity under the Payment of Gratuity Act.

In this view of the changed position of law, he seeks to withdraw the present writ application and submits to the Court that Respondent No.3 may be directed to represent before the management and the management shall consider her entitlement towards payment of gratuity in accordance with law and also ensure the payment within the period of 4 weeks from the date of representation.

Learned counsel for respondent No.3 submits that he is contesting this case since long and therefore, due to delay made by the management, cost may be imposed.

In the light of the above said offer made by the management, I am hereby granting permission to withdraw this application with liberty to the petitioner to file fresh representation before the management and management shall pay entire payment to the petitioner within 30 days from the date of filing of the representation. So far as the cost is concerned, it transpires that Respondent No.3 himself contested the case.

With this direction, this writ application is disposed off.

(Dr. Anshuman, J.)

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