IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15806-2023 (O&M)
Date of decision : 16.08.2023

DRONACHARYA COLLEGE OF ENGINEERING

…Petitioner

Versus

STATE OF HARYANA AND OTHERS

…Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Viren Jain, Advocate
Mr. Suresh Kumar Yadav, Advocate
and Ms. TarranumMadan, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

1. Petitioner-Dronacharya College of Engineering (here-in-after referred to as `the petitioner-College') has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of *certiorari*, for quashing the order dated 29.07.2022 (Annexure P-2) passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (for short `the 1972 Act'); whereby, an application seeking payment of gratuity filed by respondent No.4, (Jatinder Kumar) has been allowed.

The petitioner-College further seeks quashing of order dated 11.04.2023 (Annexure P-1) passed by the Appellate Authority under the 1972 Act; whereby the appeal filed by the petitioner-College against order dated 29.07.2022 (Annexure P-2) passed by the Controlling Authority, has been dismissed.

2. Briefly, respondent No.4-Jitender Kumar filed a claim petition under the 1972 Act on the plea that he joined the petitioner-College on 02.08.2004 as Lecturer and his last position was Academic Administrator and his last drawn salary was Rs.1,51,218/- (Basic Rs.75,609/- + DA Rs.75,609/-). Respondent no.4 is stated to have submitted his resignation vide e-mail dated 17.12.2016 along with notice for one month and he was relieved on 17.01.2017 and an experience certificate was also issued to him. Respondent no.4 claimed that he requested the petitioner-College for release of his gratuity; however, the same was not paid; whereupon, he filed the claim petition under the 1972 Act before the Controlling Authority, seeking payment of an amount of Rs.10,46,894/- with interest.

3. The afore-said claim of respondent No.4 was contested by the petitioner-College.

4. On the basis of the pleadings of the parties, the following issues were framed :-

> *"1. Whether the applicant is workman/employee under the provisions of Payment of Gratuity Act, 1972?*
> *2. Whether the applicant is entitled to the amount of gratuity, as claimed in the application? If so, to what amount and from whom?*
> *3. Whether the present case is not maintainable in view of the preliminary objections of the respondents?*
> *4. Relief."*

5. The parties led their respective evidence in support of their claims.

6. The learned Controlling Authority vide order dated 29.07.2022 (Annexure P-2) returned its finding on Issue Nos.1 and 3 by holding that the claim application filed by respondent No.4 was maintainable and that he was

an employee under the 1972 Act. As regards Issue No.2 and the relief, the Controlling Authority held as under :-

"***<u>Issue No.2</u>***

A perusal of the case file shows that the applicant had joined the respondents on 2.8.2004 (Appointment letter Ex.AW-1) and resigned from the service on 17.12.2016 and allowed to leave the duty with effect from 16.1.2017 and therefore, he had rendered 12 years, 5 months and 14 days services rounded to 12 years his last drawn salary was Rs.151218/- (basic plus DA). Hence, I hold that the applicant is entitled to gratuity which is calculated as Rs.1046894/-, but as per limit before 29.3.2018, it is reduced to Rs.1000000/- (Rs. Ten Lakh only) maximum.

The A.R. of the applicant further argued that as per the provisions of the Act, the gratuity was to be paid within one month, but the respondent did not do so and therefore, the applicant is also entitled to interest. In view of the above arguments advanced by the A.R. of the applicant, I hold that the applicant is also entitled to interest at the rate of 10% per annum from the date of end of service i.e. 18.1.2017 to the date of this order which is calculated as Rs.553333/-. This issue is decided accordingly in favour of the applicant.

<u>Relief.</u>

In view of my above findings, I hereby direct the respondents to pay jointly and severally Rs.1000000/- as gratuity and Rs.553333/- as interest total Rs.1553333/- (Rs. Fifteen Lakh, Fifty Three Thousand, Three Hundred and Thirty Three Only) to the applicant by depositing with this Authority within 30 days from the date of this order, failing which, the respondent shall be liable to pay further interest at the rate of 10% per annum from the date of this *order, till the date of actual deposit. No order as to costs."*

7. Being dissatisfied with the afore-said order dated 29.07.2022 (Annexure P-2), the petitioner-College filed a statutory appeal before the Appellate Authority under the 1972 Act; however, the same was also dismissed vide its order dated 11.04.2023 (Annexure P-1).

8. In the afore-mentioned circumstances, the petitioner-College has filed the instant writ petition before this Court.

9. Learned counsel for the petitioner-College submits that the impugned orders passed by the authorities under the 1972 Act are totally arbitrary and without any justifiable reasons. Learned counsel for the petitioner submits that the gratuity to the teachers became payable only upon rendering of the judgment dated 29.08.2022 in the case of ***Civil Appeal No.8162 of 2012*** titled as ***"Independent Schools' Federation of India (Regd.) versus Union of India and another",*** therefore, the provisions relating to payment of interest on amount of gratuity could be applied only after the judgment dated 29.08.2022 and not from 18.01.2017 i.e the last day of service of respondent No.4. Learned counsel for the petitioner contends that the retrospect effect given to the amendment has been upheld by the Hon'ble Supreme Court vide afore-said judgment dated 29.08.2022; however, the payment of gratuity to all the retired teachers would be a big drain on the resources of the petitioner and making the petitioner-College liable to pay the gratuity, would be unfair. Accordingly, prayer has been made for setting aside of the impugned orders.

10. I have heard learned counsel for the petitioner and perused the paper-book with his able assistance.

11. It is apposite to state here that the provisions of 1972 Act have an overriding effect and the same have been made applicable to the Educational Institutions with ten or more employees vide Government of India notification dated 03.04.1997. On 26.11.2007, the Payment of Gratuity (Amendment) Bill, 2007 (for short `2007 Bill') was introduced in the Parliament, seeking to amend the definition of the word "employee", which was apparently with an object to extend the benefit of gratuity to the teachers of private educational institutions.

12. The afore-said 2007 Bill was referred to the Standing Committee; who submitted its 26th Standing Committee Report, suggesting changes, which were accepted and the Payment of Gratuity (Amendment) Bill, 2009 was introduced in the Parliament on 24.02.2009, which was passed on 31.12.2009 and Clause `e' to Section 2 of the 1972 Act containing the definition of an employee was amended with retrospective effect from 03.04.1997.

Along with the afore-said amendment, Section 13-A was also inserted in the 1972 Act w.e.f. 03.04.1997, which stated that the gratuity shall be payable to an employee in pursuance to the notification dated 03.04.1997 and the said notification shall be valid and shall be deemed always to have been valid as if the Payment of Gratuity (Amendment) Act, 2009 had been enforced at all material times and the gratuity shall be payable accordingly.

13. The afore-said amendments and the newly inserted provisions of Section 13-A were duly considered by the Hon'ble Supreme Court in the judgment rendered in the case of ***Independent Schools' Federation of India (Regd.)*** (supra); wherein, it was categorically held that the Amendment Act

of 2009 has given retrospective effect to the amended provision of Section 2(e) and newly inserted Section 13-A w.e.f. 03.04.1997, which is also the date of notification issued by the Government under Section 1(3)(c) making the Payment of Gratuity Act applicable to the Educational Institutions with ten or more employees.

14. In the case of ***Independent Schools' Federation of India (Regd.)*** *(supra)*; Hon'ble Supreme Court while considering matters pertaining to grant of benefit of gratuity to private school teachers, briefly referred to various events / notifications / amendments relating to the Payment of Gratuity Act, 1972 and held as under:

> *"4. In exercise of powers conferred by clause (c) to Section 1(3) of PAG Act vide notification No. S.O. 239, the provisions of the PAG Act were made applicable to the "local bodies" in which ten or more persons are employed, as a class of establishments, with effect from 8th January 1982. As a result, the schools under the local bodies with ten or more employees became liable to pay gratuity to their employees. However, the notification did not apply to private schools.*
>
> *5. By Notification No. S-42013/1/95-SS.(II) issued by the Ministry of Labour and Employment, Government of India on 3rd April, 1997, the provisions of the PAG Act have been made applicable to the educational institutions with ten or more employees. The private schools being educational institutions, in which ten or more persons are employed, became liable to pay gratuity to their employees as per the provisions of the PAG Act.*
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> *6. However, some private schools raised a dispute claiming that the teachers in educational institutions or schools are not "employee" as defined in Section 2(e) of the PAG Act. The expression "employee" in clause (e) to Section 2, post the Payment of Gratuity (Amendment) Act, 1994, which came into effect from 24th May 1994, at that time, read thus:*

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*"**2. Definitions. -***

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(e) employee means any person (other than apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or nor such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity."

The contention that the teachers did not fulfil the description of the employees, who are skilled, semi-skilled or unskilled persons employed on wages, was accepted by the Full Bench of the High Court of Gujarat vide judgment dated 4th May 2001 (12). Thus, the teachers were denied the benefit of gratuity, but other employees of the private schools, were entitled to the benefit of gratuity.

[(12) Shantiben L. Christian v. Administrative Officer, Ahmedabad Municipal School Board, Special Civil Application No. 5272 of 1987.]

7. This decision of the High Court of Gujarat was impugned by an association of teachers - Ahmedabad Private Primary Teachers' Association, before this Court, but their challenge was rejected vide judgment dated 13th January 2004 (13). Applying the doctrine of parimateria, this Court held that the expression "employee", as defined vide clause (e) to Section 2, is restrictive and not expansive. Relying on decisions in ***A. Sundarambal v. Government of Goa, Daman and Diu and Others (1988) 4 SCC 42****. and* ***Haryana Unrecognised Schools' Association v. State of Haryana (1996) 4 SCC 225.****, while interpreting the definition of an "employee" under the Minimum Wages Act, 1948, and the Payment of Bonus Act, 1965, as also* *the definition of "workmen" under the Industrial Disputes Act, 1947, this Court pointed to the difference in the definition of word "employee" in the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. Accordingly, teachers who impart education to students were held not to be an "employee" under Section 2(e) of the PAG Act as they do not perform any kind of skilled, unskilled, semi-skilled, manual, supervisory, managerial, administrative, technical or clerical work. Reasoning in Ahmedabad Private Primary Teachers' Association (supra) is crystalized in paragraph 25 of the judgment, which reads:*

> *[(13) Ahmedabad Private Primary Teachers' Association v. Administrative Officer and Others, (2004) 1 SCC 755]*
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> *"25. The legislature was alive to various kinds of definitions of the word "employee" contained in various previous labour enactments when the Act was passed in 1972. If it intended to cover in the definition of "employee" all kinds of employees, it could have as well used such wide language as is contained in Section 2(f) of the Employees' Provident Funds Act, 1952 which defines "employee" to mean "any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment ...". Non-use of such wide language in the definition of "employee" in Section 2(e) of the Act of 1972 reinforces our conclusion that teachers are clearly not covered in the definition."*

Nevertheless, being conscious that the teachers would be thereby deprived of the benefit of gratuity, the Court had observed and clarified:

> *"26. Our conclusion should not be misunderstood that teachers although engaged in a very noble profession of educating our young generation should not be given any gratuity benefit. There are already in several States separate statutes, rules and regulations granting gratuity*

benefits to teachers in educational institutions which are more or less beneficial than the gratuity benefits provided under the Act. It is for the legislature to take cognizance of situation of such teachers in various establishments where gratuity benefits are not available and think of a separate legislation for them in this regard. That is the subject-matter solely of the legislature to consider and decide."

8. On 26th November 2007, the Payment of Gratuity (Amendment) Bill, 2007, was introduced in the Parliament seeking to amend the definition of the word "employee" and thereby rectify the error or lacuna identified by this Court in Ahmedabad Private Primary Teachers' Association (supra). The object and reasons, as stated and obvious, were to extend the benefit of gratuity to teachers of private educational institutions. The bill was referred to the Standing Committee on 10th December 2007. After due deliberations and in-depth consideration, the Standing Committee deemed it appropriate to suggest changes vide the 26th Standing Committee Report. The report, on the aspect of grant of gratuity to teachers with effect from 3rd April, 1997 states:

"36...The Committee feel that implementing the law from the year 2004 will cause irreparable loss to a large number of teachers of the country, particularly to those who have already retired. The Committee, therefore, call upon the Government to make the law applicable with retrospective effect, i.e. from the date of notification in the year 1997. This will provide the needed succour as well as justice to all those affected persons who were denied their rightful benefits due to some technical flaw/legal lacuna in the definition of the term 'employee' as contained in section 2 (e) of the Payment of Gratuity Act, 1972."

9. Accepting the said recommendation of the 26th Standing Committee Report, the Payment of Gratuity (Amendment) Bill, *2009 was introduced in the Parliament on 24th February 2009 and was passed on 31st December 2009. Clause (e) to Section 2 of the PAG Act was amended with retrospective effect from 3rd April, 1997, and reads:*

> ***"2. Definitions. -***
>
> *xxxxxx*
>
> *(e) "employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity;"*

Further, Section 13A was inserted also with effect from 3rd April 1997 and reads :

> ***"13A. Validation of payment of gratuity.-*** *Notwithstanding anything contained in any judgement, decree or order of any court, for the period commencing on and from the 3rd day of April, 1997 and ending on the day on which the Payment of Gratuity (Amendment) Act, 2009, receives the assent of the President, the gratuity shall be payable to an employee in pursuance of the notification of the Government of India in the Ministry of Labour and Employment vide number S.O. 1080, dated the 3rd day of April, 1997 and the said notification shall be valid and shall be deemed always to have been valid as if the Payment of Gratuity (Amendment) Act, 2009 had been in force at all material times and the gratuity shall be payable accordingly:*
>
> *Provided that nothing contained in this section shall extend, or be construed to extend, to affect any person with any punishment or penalty whatsoever by reason of*

the non-payment by him of the gratuity during the period specified in this section which shall become due in pursuance of the said notification."

10. The object and reasons for the Amendment Act, 2009 refers to the judgment in Ahmedabad Private Primary Teachers' Association (supra), and states that the legislature, to cover the definition of "employee" to all kinds of employees, has used language similar to the wide language of clause (f) of Section 2 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. It is also crystal clear that the Parliament has passed and enacted the Amendment Act, 2009 to confer, with retrospective effect from the date of the notification on 3rd April 1997, benefit of gratuity to the teachers who have rendered continuous service for not less than 5 years, on their superannuation, retirement or resignation, or on their death or disablement due to accident or disease.

11. Several private schools challenged the constitutional validity of the amendments, which writ petitions have been dismissed by seven High Courts, as mentioned in the first paragraph of this judgment. These appeals by way of special leave impugn these judgments. Some private schools have also filed writ petitions under Article 32 of the Constitution of India before us…

12. ……………………………….The two main grounds of challenge raised and required to be considered in nutshell can be summarised as:

(a) The legislation vide the Amendment Act 2009 overrules the judicial decision in Ahmedabad Private Primary Teachers' Association (supra) and violates the doctrine of separation of powers.

(b) The retrospective amendments are unreasonable, excessive and harsh, and therefore, unconstitutional.

13. The first ground should not hold us for long, as the legislation in question rectifies the infirmities and defects pointed out by the Court, and the amended clause (e) to Section

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2, defining the word "employee" and the newly inserted Section 13A with retrospective effect from 3rd April 1997, effectuate and catalyse the object and purpose of the Notification No. S-42013/1/95-SS.(II). This power to legislate with retrospective effect, which vests in every sovereign legislature, is not taken away by a court decision……….

14. The second ground is again devoid of any merit and substance. The legislature, vide the Amendment Act, 2009, has given retrospective effect to the amended provision of Section 2(e) and the newly inserted Section 13A with effect from 3rd April 1997, which is also the date of the notification issued by the Government under Section 1(3)(c), making the PAG Act applicable to the educational institutions with ten or more employees. The amendment enforces and gives effect to what was intended by the notification, but could not be achieved on account of the technical and legal defect. The lacuna, a distortion in the language that had the unwitting effect of leaving out teachers, has been rectified so as to achieve the object and purpose behind the issuance of the notification, making the PAG Act applicable to all educational institutions. The argument of the educational institutions that they have been taken by surprise is incorrect and unacceptable as the legislation had cured the inadvertent defect in a statute, as pointed out by this Court, through legislative repair. Private schools, when they claim a vested right arising from the reason of defect, should not succeed, for acceptance would be at the expense of teachers who were denied and deprived of the intended benefit. Marginal inconvenience in the form of financial outgo or difficulty is of little weight, when curing of an inadvertent defect is made retrospectively in greater public interest, which consideration will overrule the interest of one or some institutions……………

15. A secondary argument on behalf of the private educational institutions that they would be liable to pay gratuity for a period of service prior to 3rd April 1997, and, therefore, the *amendments are unconscionable and tyrannous, is equally fallacious for several reasons. A somewhat similar controversy had arisen in the case of* ***Management of Goodyear India Limited. v. Shri K.G. Devessar (1985) 4 SCC 45.****, wherein the employee was in service from 24th January 1961 to 31st December 1974. On 16th September 1972, the date when the PAG Act came into effect, he was drawing a salary of more than Rs. 1,000/- per month and hence, in terms of the then definition of the word "employee" under the PAG Act, which excluded those drawing salary of more than Rs. 1,000/- per month, as per the employer- management, the employee was not entitled to gratuity. Rejecting the contention, this Court held that the gratuity is payable to an employee as per the mandate of Section 4* [(25)] *of the PAG Act, after he has rendered continuous service for not less than 5 years on his superannuation, retirement or resignation or on his death or disablement due to accident or disease, when such event has occurred post the enforcement of the PAG Act. The Court rejected the submission on behalf of the employer-management that an employee is entitled to gratuity only when, both on the date when the PAG Act came into force, and on the date when the employee retired, he/she was drawing wages not exceeding Rs.1,000/- per month. The Court observed that to approve the submission of the employer-management would render a whole class of workers, who were during the course of their employment drawing salary less than Rs. 1,000/- per month but on the eve of their retirement were getting wages of Rs. 1,000/- per month, without the benefit of gratuity. This could not have been the intention of the Parliament. The reasonable way to construe Section 4 in the light of Section 2(e) of the PAG Act would be to hold that when the employees' services are terminated for any reason mentioned in Section 4 after coming into force of the PAG Act, the employee would be entitled to the payment of gratuity if he has rendered continuous service for not less than 5 years and for that period during which he* *satisfied the definition of "employee" under Section 2(e). It does not matter whether that period comes before the commencement of the PAG Act. Once that condition is satisfied, the next and only question would be regarding the amount of gratuity payable…………………..*

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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.

20. The schools have claimed violation of Articles 14, 19(1)(g), 21 and 300-A of the Constitution of India which, in our opinion, are not violated as, to deny gratuity benefits to the teachers upon enforcement of the notification No. S-42013/1/95-SS.(II) dated 3rd April 1997 was itself an anomaly which mandated *correction. The effect of the decision in Ahmedabad Private Primary Teachers' Association (supra) was that although private educational institutions were covered under the PAG Act, gratuity benefits could not be extended to teachers in view of the legal flaw in the definition, consequent to which they were not treated as employees. The teachers were discriminated to be denied benefit of gratuity, a terminal benefit, which was payable to other employees of the private schools/educational institutions, including those engaged in administrative and managerial work. The amendment with retrospective effect remedies the injustice and discrimination suffered by the teachers on account of a legislative mistake, which was understood after the pronouncement of the judgment in Ahmedabad Private Primary Teachers' Association (supra). The amendment was necessary to ensure that something which was due and payable to the teachers is not denied to them due to a defect in the statute. Payment of gratuity cannot be categorized as a windfall or a bounty payable by the private schools as it is one of the minimal conditions of service.*[(30)]*. In this background, the argument of the private schools that they do not have capacity and ability to pay gratuity to the teachers is unapt and parsimonious. All establishments are bound to follow the law, including the PAG Act. As observed earlier, the private schools were certainly aware of the intent of the Government that the educational institutions, as an establishment, would be covered and must pay gratuity upon issue of notification No. S-42013/1/95-SS.(II) dated 3rd April 1997. Some schools have raised an argument relying upon decision of this Court in* ***T.M.A. Pai Foundation and Others v. State of Karnataka and Others (2002) 8 SCC 481****., which observes that as a matter of principle, charging of capitation fee or profiteering by educational institutions is impermissible. However, the judgment does not state that the teachers should not be paid gratuity. In fact, the judgment holds that the educational institutions are entitled to reasonable surplus to* *meet the cost of expansion and augmentation of the facilities and this does not amount to profiteering. It is possible that in some States there are fee fixation laws which will have to be complied with. But compliance with these laws does not mean that the teachers should be deprived and denied gratuity, which they were/ are entitled to receive as other employees of an educational institution. Regulation of fee is to ensure that there is no commercialisation and profiteering, and the effect is not to prohibit a school from fixing and collecting "just and permissible school fee", as has been held by this Court in* ***Indian School, Jodhpur and Another v. State of Rajasthan and Others.(2021) 10 SCC 517…***

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26. For the reasons mentioned above, the aforesaid appeals, transfer case and the writ petitions are dismissed. The stay orders, as stated above, are vacated. The private schools would make payment to the employees/teachers along with the interest in accordance with the provisions of the PAG Act within a period of 6 weeks from today and in case of default, the employees/teachers may move the appropriate forum to enforce payment in accordance with the provisions of the PAG Act…"

15. A perusal of the afore-said judicial pronouncement would leave no manner of doubt that all employees, who have retired post 1997 would be entitled to the payment of gratuity under the 1972 Act and there is no force in the submission of the petitioner that the gratuity became payable to teacher only upon passing of judgment dated 29.08.2022 in ***Independent School's*** case (*supra*).

16. The contention that the payment of gratuity to all the retired teachers in pursuance to the judgment dated 29.08.2022 rendered in the case of ***Independent Schools' Federation of India (Regd.)*** *(supra)* would be a big drain on resources of petitioner-college; is devoid of any merit as a similar argument was rejected by the Hon'ble Apex Court in ***Independent***

Schools' case *(supra)* by observing that "the argument of the private schools that they do not have capacity and ability to pay gratuity to the teachers, is unapt and parsimonious".

17. The contention of the petitioner-College that the Controlling Authority has wrongly granted interest upon the gratuity amount @10% p.a. from the date of end of service i.e. 18.01.2017; is also devoid of any merit and the same is unsustainable in the light of the observations made by Hon'ble Supreme Court in the case of ***H. Gangahanume Gowda v. Karnataka Agro Industries Corpn. Ltd., 2003(1) SCT 937***, wherein it has been held that the interest on delayed payment of gratuity beyond 30 days is statutory and the payment of interest is mandatory and there is no discretion available with the court or the authority, except in case the employee was himself responsible for delay. In case of ***H. GangahanumeGowda (supra)***, it was held as under:-

> *"7. It is evident from Section 7(2) that as soon as gratuity becomes payable, the employer, whether any application has been made or not, is obliged to determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity. Under Section 7(3), the employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable. Under sub-section 3(A) of Section 7, if the amount of gratuity is not paid by the employer within the period specified in sub-section (3), he shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits; provided that no such interest shall be payable if the delay in the payment in due to the fault of the employee and the employer has obtained*

permission in writing from the controlling authority for the delayed payment on that ground. From the provisions made in Section 7, a clear command can be seen mandating the employer to pay the gratuity within the specified time and to pay interest on the delayed payment of gratuity. No discretion is available to exempt or relieve the employer from payment of gratuity with or without interest as the case may be. However, under the proviso to Section 7(3A), no interest shall be payable if delay in payment of gratuity is due to the fault of the employee and further condition that the employer has obtained permission in writing from the controlling authority for the delayed payment on that ground. Under Section 8, provision is made for recovery of gratuity payable under the Act, if not paid by the employer within the prescribed time. The Collector shall recover the amount of gratuity with compound interest thereon as arrears of land revenue and pay the same to the person entitled. A penal provision is also made in Section 9 for non-payment of gratuity. Payment of gratuity with or without interest as the case may be does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with the penalty of payment of interest was the view taken in State of Kerala &Ors. v. M. Padmanabhan Nayyar [1985 (50) FLR 145]. Earlier there was no provision for payment of interest on the delayed payment of gratuity. Sub-section (3A) was added to Section 7 by an amendment, which came into force with effect from 1st October, 1987. In the case of Charan Singh v. M/s. Birla Textiles and another [1988(57) FLR 543 SC], this aspect was noticed in the following words :

> *"There was no provision in the Act for payment of interest when the same was quantified by the Controlling Authority and before the Collector was approached for*

its realization. In fact, it is on the acceptance of the position that there was a lacuna in the law that Act 22 of 1987 brought about the incorporation of sub-section 3(A) in Section 7. That provision has prospective application."

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9. It is clear from what is extracted above from the order of learned Single Judge that interest on delayed payment of gratuity was denied only on the ground that there was doubt whether the appellant was entitled to gratuity, cash equivalent to leave etc., in view of divergent opinion of the courts during the pendency of the enquiry. The learned Single Judge having held that the appellant was entitled for payment of gratuity was not right in denying the interest on the delayed payment of gratuity having due regard to Section 7(3A) of the Act. It was not the case of the respondent that the delay in the payment of gratuity was due to the fault of the employee and that it had obtained permission in writing from the controlling authority for the delayed payment on that ground. As noticed above, there is a clear mandate in the provisions of Section 7 to the employer for payment of gratuity within time and to pay interest on the delayed payment of gratuity. There is also provision to recover the amount of gratuity with compound interest in case amount of gratuity payable was not paid by the employer in terms of Section 8 of the Act. Since the employer did not satisfy the mandatory requirements of the provisions to Section 7(3A), no discretion was left to deny the interest to the appellant on belated payment of gratuity. Unfortunately, the Division Bench of the High Court, having found that the appellant was entitled for interest, declined to interfere with the order of the learned Single Judge as regards the claim of interest on delayed payment of gratuity only on the ground that the discretion exercised by the learned Single Judge could not be said to be arbitrary. In the first place in the light of what is stated above, the learned Single Judge could not refuse the grant of interest exercising discretion as against the mandatory provisions *contained in Section 7 of the Act. The Division Bench, in our opinion, committed an error in assuming that the learned Single Judge could exercise the discretion in the matter of awarding interest and that such a discretion exercised was not arbitrary…"*

18. A perusal of the findings returned in the case of ***H. Gangahanume Gowda*** (supra) would manifest that the payment of interest is exempted by the proviso to Section 7(3A) of 1972 Act; only if the delay is on account of fault of the employee and the employer has obtained the permission in writing from the Controlling Authority for the delayed payments.

19. In the instant case, the petitioner-College has not shown any such permission from the Controlling Authority as envisaged under the proviso to Section 7(3A) of the 1972 Act. As such, the petitioner-College cannot agitate that they are not liable to pay interest from the date when respondent No.4 had resigned from service i.e. 18.01.2017.

20. In view of the above discussion, I do not find any merit in the instant case and the same is, accordingly, dismissed.

21. All pending application/s, if any, shall also stand closed.

August 16, 2023 **(HARSH BUNGER)**
gurpreet **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No