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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP-16173-2023
Date of Decision: 31.07.2023**

Kirori Mal High School, Bhiwani

..... Petitioner

Versus

Controlling Authority under Payment of Gratuity Act and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Ankit Bishnoi, Advocate
for the petitioner.

HARSH BUNGER J. (ORAL)

1. Petitioner-School has filed the instant petition under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing of order dated 13.03.2023 (Annexure P-6) passed by the learned Controlling Authority under the Payment of Gratuity Act, 1972 (for short, '1972 Act'), whereby the application of petitioner for setting aside *ex parte* orders dated 10.12.2021 (Annexure P-2) and 22.11.2022 (Annexure P-3) have been dismissed. A further prayer has been made for directing the learned Controlling Authority under the 1972 Act to permit the petitioner to join the proceedings and present its defence and thereafter, the matter be decided afresh, upon considering the version of petitioner-School.

2. Briefly, respondent No.3 (Madan Lal) approached the learned Controlling Authority under the 1972 Act by filing an application under

Section 7(3) of the 1972 Act claiming that he was entitled to payment of gratuity under Section 4 of the 1972 Act on account of his superannuation, with effect from 31.05.2020, after completion of 34 years 10 months and 19 days of continuous and unblemished service. It was the case of respondent No.3 (Madan Lal) that he was initially appointed as Drawing Teacher on 12.07.1985 against aided post and as such, he was posted at Kirori Mal High School, Bhiwani (petitioner) and he worked there up to 14.02.2018. Respondent No.3 stated that thereafter, his services were taken over by the Government and he joined his services as Drawing Teacher at the Government Senior Secondary School with effect from 15.02.2018 and he superannuated on 31.05.2020. It was claimed that the Government had not released his share of gratuity to the tune of Rs. 8,73,288/- out of total gratuity of Rs.11,64,384/- and the Managing Committee of petitioner-School was to pay its share of gratuity amounting to Rs.2,91,096/-. It was the case of respondent No.3 that the employer had neither paid gratuity to him inspite of repeated requests and notice dated 18.01.2021 nor amount of gratuity was deposited with the Office of Controlling Authority under the 1972 Act.

3. It appears that on 10.12.2021, the petitioner-School was proceeded against *ex-parte* by the Controlling Authority under the 1972 Act (respondent No.1) and the matter was finally decided vide order dated 22.11.2022 (Annexure P-3) by holding as under:-

“ - x - x -

In view of finding on issue No.1 the applicant is entitled to the amount of gratuity to the tune of Rs.2,91,096/- along with interest to the tune of Rs.65,494/- total amounting to Rs.3,56,590/-.

I, therefore, direct the respondent No.1 to deposit the

amount of Rs.3,56,590/- within 30 days from the communication of this order failing which the amount gratuity will be recovered with interest @ 10% per annum.

- x - x - ”

4. As per the petitioner-School, it came to know about the aforesaid order on 05.12.2022, when it received copy of the same by post and thereafter, the petitioner-School is stated to have moved an application for setting aside orders dated 10.12.2021 (Annexure P-2) and 22.11.2022 (Annexure P-3) before the authority concerned. The said application was contested by respondent No.3 (Madan Lal) by filing his reply. Thereafter, the Controlling Authority under the 1972 Act, Bhiwani dismissed the aforesaid application of petitioner-School vide its order dated 13.03.2023 (Annexure P-6). Accordingly, the instant writ petition has been filed before this Court.

5. Learned counsel for the petitioner contends that order dated 13.03.2023 (Annexure P-6) has been passed in a slipshod and hurried manner and averments/submissions of the petitioner-School have not been considered by the Controlling Authority under the 1972 Act, Bhiwani (respondent No.1). It is further submitted that the said order is a non-speaking order and is accordingly, unsustainable in the eyes of law. Learned counsel for the petitioner-School contends that the Controlling Authority under the 1972 Act, Bhiwani has failed to appreciate that the petitioner-School was only seeking to participate in the proceedings, however, the same has been wrongly declined. It is submitted that even otherwise, respondent No.3 does not fall within the purview of 1972 Act as he had worked as a 'teaching personnel' in an Educational Institution and as not a 'labour official' in the Ministerial Staff. Accordingly, respondent No.3

(Madan Lal) is not covered under the definition of an employee as provided in the 1972 Act as the petitioner-School is a Government aided Institution. Learned counsel for the petitioner-School contends that the Controlling Authority under the 1972 Act, Bhiwani has exceeded its jurisdiction in entertaining and allowing the application filed by respondent No.3 for claiming gratuity under the 1972 Act. It is also contended that the proceedings conducted by the Controlling Authority under the 1972 Act are violative of principles of natural justice, accordingly it is prayed that impugned order be quashed and the matter be remitted to the Controlling Authority under the 1972 Act, Bhiwani, permitting the petitioner-School to join the proceedings and to present its defence, with a further direction to the Controlling Authority under the 1972 Act, Bhiwani to decide the matter afresh after considering the submissions of petitioner-School.

6. I have heard learned counsel for the petitioner and gone through the paper book with his able assistance.

7. Concededly, respondent No.3 (Madan Lal) has filed an application under Section 7(3) of the 1972 Act against the petitioner-School and District Education Officer, Bhiwani, claiming gratuity under the 1972 Act. It appears that the petitioner-School was proceeded against *ex-parte* on 10.12.2021 and vide order dated 22.11.2022 (Annexure P-3), the application filed by respondent No.3 seeking gratuity amount was allowed. The petitioner filed an application for setting aside the *ex-parte* order dated 10.12.2021 as well as the final order dated 22.11.2022 on the plea that the petitioner-School never received summons personally of the said case, hence it could not appear before the concerned authority and, was accordingly, proceeded against *ex-parte* on 10.12.2021. The petitioner-

School further pleaded that it came to know about the aforesaid decision only when it received the intimation of order dated 22.11.2022 on 05.12.2022 through post. It was pleaded that non-appearance of the petitioner-School before the concerned authority was unintentional, accordingly prayer for setting aside *ex-parte* order dated 10.12.2021 and the final order dated 22.11.2022 was made. It appears that aforesaid application was contested by respondent No.3 (Madan Lal) by filing his reply. It was the stand of respondent No.3 that petitioner-School was proceeded against *ex-parte* on 10.12.2021 and the application for setting aside the *ex-parte* proceedings was filed on 03.01.2023, i.e. after a delay of almost one year. It was also the stand of respondent No.3 that the notice/summons were served upon the petitioner-School through its official Bhupender Singh, however, the petitioner-School did not appear before the Controlling Authority under the 1972 Act, Bhiwani and consequently, it was proceeded against *ex-parte*.

8. Considering the rival stands of the parties, the learned Controlling Authority under the 1972 Act, Bhiwani dismissed the application for setting aside *ex-parte* order dated 10.12.2021 and final order dated 22.11.2022, vide its order dated 13.03.2023 (Annexure P-6) by holding as under:-

“ - x - x -

On perusal of the main case file and summons issued to the applicant/respondent No.1 it is very much clear that notice/summon to the respondent no.1 was served through this court and received by official of the respondent no.1 school on 16.4.2021. However respondent no.1 chose not to appear on next date of hearing on 3.5.2021. Thereafter, keeping in view interest of justice, notice was again served through this court and received by official of the respondent no.1 school on 12.11.2021. However respondent no.1 again

chose not to appear on next date of hearing on 10.12.2021. On 10.12.2021, respondent no.1 was proceeded ex-parte. Hence, the contention raised by the respondent no.1/applicant that he has never received the summons of the case personally is not tenable. Moreover, the respondent no.1 has not raised any objection regarding address of School.

In view of my findings above the application of the respondent no.1/applicant for setting aside ex-parte order dated 10.12.2021 and final order dated 22.11.2022 is hereby dismissed with no order as to costs.”

9. A perusal of the aforesaid finding returned by the learned Controlling Authority under the 1972 Act, Bhiwani would manifest that the notices/summons were served upon the petitioner-School and was duly received by the official of petitioner-School on 16.04.2021. It is further recorded that notice was again served upon the petitioner-School, which was also received by the official of petitioner-School on 12.11.2021, however, petitioner-School again chose not to appear on the next date, i.e. 10.12.2021, and accordingly on the said date, the petitioner-School was proceeded against *ex-parte*. It has been held by the Controlling Authority under the 1972 Act, Bhiwani that the contention raised by the petitioner-School with regard to the fact that it never received the summons of case personally is not tenable; more so, the petitioner-School never raised any objection regarding the address of School.

10. I have considered the aforesaid observations made by the Controlling Authority under the 1972 Act, Bhiwani vide its order dated 13.03.2023 (Annexure P-6), whereby the application for setting aside *ex-parte* order dated 10.12.2021 and final order dated 22.11.2022 was dismissed and I do not find any illegality or perversity in the said order.

More so, when it has been held as a matter of fact that summons sent by the

Controlling Authority under the 1972 Act were duly received by the official of petitioner-School, not only on 16.04.2021 but also on 12.11.2021, however, the petitioner-School chose not to appear before the authority concerned for the reasons best known to it. Moreover, it has also been observed that the petitioner-School did not raise any objection regarding address of the School. Still further, I have perused the entire writ petition and also the categorical stand taken by respondent No.3 (Madan Lal) in his reply to the application for setting aside the *ex-parte* order, wherein it was stated that notices/summons of the case were served upon petitioner-School through its official Bhupender Singh, however, the said fact has also not been disputed by the petitioner-School in the entire petition.

11. As regards the submission of the petitioner-School that 1972 Act is not applicable upon it and respondent No.3 (Madan Lal) as he was working as a teacher and the petitioner is a Government aided School, suffice it to say that issue regarding applicability of 1972 Act as regards the schools/aided schools is no more *res integra* as the same has been decided by the Hon'ble Supreme Court in the case of ***“Independent School's Federation of India (Regd.) Vs. Union of India and another”***, 2022(4) S.C.T. 119, wherein it has been held as under:-

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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.

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14. 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. We find little merit in this argument also for the reason, that the observations of this Court in Ahmedabad Private Primary Teachers' Association (supra) in paragraph 26 were sufficient to indicate that a legislation

should intervene to grant the benefit of gratuity to teachers.

The contention that the private schools were sure to succeed as to deny the teachers the benefit of the Notification No. S-42013/1/95-SS.(II) dated 3rd April 1997, is questionable and farfetched to be accepted. The challenge was contested and had remained pending before the High Courts and then this Court. The private schools had relied on some judgments of this Court, but these judgments have interpreted the word “employee” under other enactments. The law is subject to uncertainty ex-ante when two or more views are possible, but there may be certainty ex-post litigation in view of the law of precedents, which reduces uncertainty.

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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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20. ... 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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12. Keeping in view of the above discussion, I do not find any merit in the present writ petition and the same is accordingly dismissed.

13. All pending application(s), if any, shall also stand closed.

31.07.2023

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No