

CWP-25382-2023

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

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CWP-25382-2023

Date of Decision: 17.11.2023

M/s West Academy Senior Secondary School

...Petitioner

Versus

Deputy Labour Commissioner Gurgaon and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Jai Vir Yadav, Senior Advocate with
Mr. Tarun Yadav, Advocate and
Ms. Parul Sharma, Advocate for the petitioner

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226/227 of the Constitution of India is seeking setting aside of order dated 29.08.2022 (Annexure P-6) whereby respondent No.2/Assistant Labour Commissioner-cum-Controlling Authority has directed the petitioner to pay gratuity to respondent No.3 and order dated 29.09.2023 (Annexure P-8) whereby respondent No.1-Deputy Labour Commissioner, exercising powers of Appellate Authority under Payment of Gratuity Act, 1972 (for short '1972 Act') has dismissed appeal of the petitioner.

2. The brief facts of the case which are necessary for the adjudication of present petition are that petitioner is a school run by Mishri Devi Charitable Trust (Regd.). Respondent No.3 (for brevity 'respondent') vide appointment letter dated 30.03.2010 was appointed as Teacher (PGT

Commerce). The petitioner on account of complaints of students initiated an inquiry against respondent. A show cause notice dated 17.11.2020 (Annexure P-1) came to be issued to respondent which culminated into her dismissal from service vide order dated 30.12.2020 (Annexure P-5). The respondent requested the petitioner to pay her gratuity. The petitioner did not release gratuity of the respondent. The respondent approached Controlling Authority constituted under 1972 Act. The petitioner filed reply to the application of the respondent. The Controlling Authority framed different questions arising from the pleadings and vide order dated 29.08.2022 (Annexure P-6) came to a conclusion that respondent is entitled to gratuity despite the fact that she was dismissed from service. It was also held that there is no order of forfeiture of gratuity and petitioner has not quantified any loss caused by the respondent, thus, gratuity cannot be withheld. The petitioner preferred an appeal before first Appellate Authority which came to be dismissed vide order dated 29.09.2023 (Annexure P-8).

3. Leaned Senior Counsel for the petitioner submits that as per Section 4(6)(b)(i) of 1972 Act, the respondent was not entitled to gratuity because she was dismissed on account of her disorderly conduct. Section 4(1) of 1972 Act extends benefit of gratuity, however, gratuity can be forfeited if there is dismissal from service on account of riotous or disorderly conduct or any other act of violence on the part of employee. The Controlling Authority was supposed to determine quantum of forfeiture of gratuity in terms of Section 7(4)(a) of 1972 Act. The Controlling Authority did not determine question of forfeiture of gratuity and ordered to release the gratuity.

4. Having heard the arguments of learned senior counsel for the petitioner and after perusing the record, this Court is of the opinion that petition *sans* merit and deserves to be dismissed.

5. The petitioner before the Controlling Authority pleaded that employee-respondent was dismissed from service, thus, she is not entitled to gratuity. There was no argument before the Controlling Authority as well as Appellate Authority that respondent has been dismissed from service and she was dismissed on account of her disorderly conduct, thus, her gratuity is liable to be forfeited and Controlling Authority is supposed to decide question of forfeiture of gratuity. The petitioner withheld gratuity forming an opinion that respondent has been dismissed from service, thus, she is not entitled to gratuity. The said argument of the petitioner has been turned down by the authorities below and now the petitioner has raised a totally new set of arguments. The gratuity was not withheld forming an opinion that there was disorderly conduct on the part of respondent. It is conceded fact that no order with respect to withholding or forfeiture of gratuity was passed while dismissing respondent from service. In the absence of order of forfeiture coupled with a total different opinion of the petitioner at an initial stage, the petitioner has no authority to withhold gratuity of the respondent. The petitioner is relying upon Section 7(4) (a) of 1972 Act which is not applicable at all because Section 7(4) (a) enjoins the employer to deposit admitted amount in case of dispute raised by an employee. The other clauses of said sub-section do not enjoin the Controlling Authority, on the application of an employee, to decide question of forfeiture vis-à-vis allegation of disorderly conduct. The petitioner neither approached Controlling Authority nor raised

question of disorderly conduct, thus, there was no occasion to decide said question while adjudicating application of the respondent.

6. This Court while exercising writ jurisdiction cannot act as an appellate authority over the orders passed by authorities constituted under the 1972 Act. It is apt to notice that 1972 Act is a piece of beneficial legislation and warrants liberal interpretation.

7. In the wake of above discussion and findings, this Court is of the considered opinion that present petition being bereft of merit deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

17.11.2023
Mohit Kumar

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