

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3063 OF 2019

**The General Secretary
Sree Narayan Mandira Samiti
V/S
Nazma Hasan**

....Petitioner

....Respondent

**WITH
WRIT PETITION NO.2768 OF 2019**

**The General Secretary
Sree Narayan Mandira Samiti
V/S
Santhalata Narayanan**

....Petitioner

....Respondent

**WITH
WRIT PETITION NO.4494 OF 2019**

**The General Secretary
Sree Narayan Mandira Samiti
V/S
S. Radha**

....Petitioner

....Respondent

**WITH
WRIT PETITION NO.4495 OF 2019**

**The General Secretary
Sree Narayan Mandira Samiti
V/S
P. Radha**

....Petitioner

....Respondent

Mr. E.K. Sasidharan *for the Petitioner.*

Mr. Ramnathan C. Sadasivan *for Respondent /s.*

CORAM: SANDEEP V. MARNE, J.

DATE : 16 APRIL 2024.

P.C.:

1 By these four Petitions, the Petitioner-Management has challenged orders passed by the Appellate Authority constituted under the provisions of Payment of Gratuity Act, 1972. The Appellate Authority has modified the orders passed by the Controlling Authority on 31 December 2014 to the limited extent of enhancing the percentage of interest on the gratuity payable to the Respondents from 4% to 10%. The Appellate Authority has directed that interest at the rate of 10% be paid from 31 December 2009 till realization of the amount of gratuity.

2 I have heard Mr. Sasidharan, the learned counsel appearing for Petitioner-Management and Mr. Sadasivan, the learned counsel appearing for Respondent-teachers.

3 It appears that Respondents in the four Petitions have retired from service on following dates:

Sr.No.	Name of the Teacher	Date of retirement
1	Nazma Hasan	31.03.2010
2	Santhalata Narayanan	31.10.2006
3	P. Radha	02.06.2002
4	S. Radha	31.12.2010

4 It appears that at the time of their retirement, they were denied gratuity on account of confusion prevailing at that time due to amendment of definition of the term 'employee' under the Payment of Gratuity Act in the year 2009 consequent to the judgment of the Apex Court in **Ahmedabad Private Schools Teachers' Association vs. Administration Officer & Ors.**, AIR 2004 SC 1426. Now the issue is well settled that teachers are covered by the expression 'employee' defined under the provisions of the Payment of Gratuity Act and that teachers are also entitled to payment of gratuity in respect of the entire service rendered by them. In that view of the matter, entitlement of the Respondents to receive gratuity cannot be questioned.

5 Perusal of the orders passed by the Controlling Authority on 31 December 2014 would indicate that the Controlling Authority has declared that the Respondents are entitled to receive gratuity from Petitioner-Management as per rules. The Controlling Authority directed the Petitioner Management to pay the amount of gratuity to the Respondents after getting its quantum fixed, determined and finalized as per the last pay scale of the applicant payable in terms of 6th Pay Commission along with simple interest at the rate of 4% from the date of order till realization.

6 It appears that only Respondents challenged orders dated 31 December 2014 passed by the Controlling Authority before the Appellate Authority by filing their respective Appeals. Though Mr. Sasidharan orally submits that even Petitioner-Management had filed appeals challenging the orders passed by the Controlling Authority on 31 December 2014, there is neither any

avermment in the Petition to that effect nor copy of the appeals or orders passed therein are placed on record. What is placed on record are only copies of appeals filed by the Respondents before the Appellate Authority. In Appeals filed by the Respondents before the Appellate Authority, impugned judgments and orders dated 7 December 2017 have been passed by which the Appellate Authority has increased the percentage of interest from 4% to 10% and has directed that the interest be paid from 31 December 2009 till realization of the gratuity amount. It appears that the Respondents were also aggrieved by action of the Controlling Authority in not computing the exact amount of gratuity payable to them. The Appellate Authority has rejected the said grievance of the Respondents and has partly allowed the Appeal to the limited extent of enhancement of rate of interest from 4% to 10%. The Petitioner-Management has challenged the judgments and orders dated 7 December 2017 passed by the Appellate Authority enhancing the rate of interest from 4% to 10%.

7 So far as the initial orders dated 31 December 2014 passed by the Controlling Authority are concerned, though there is a prayer for challenging the said orders in the present Petition, there nothing to indicate that the said orders dated 31 December 2014 passed by the Controlling Authority were challenged by the Petitioner-Management before the Appellate Authority. Therefore, while seeking challenge to the orders passed by the Appellate Authority in Appeals filed by Respondents, Petitioner-Management cannot be permitted to challenge the initial orders of the Controlling Authority dated 31 December 2014. Thus the orders passed by the Controlling Authority on 31

December 2014 to the extent of directions to pay gratuity by fixation of quantum in the last pay drawn in 6th Pay Commission pay scales has neither been disturbed by the Appellate Authority nor the same can be challenged by the Petitioner-Management directly before this Court.

8 Thus the scope of the present Petitions will have to be restricted to the directions issued by the Appellate Authority for enhancement of interest from 4% to 10% per annum. Mr. Sasidharan would strenuously submit that Petitioner-Management does not have financial capacity to pay gratuity as per 6th Pay Commission scales to the Respondents nor interest at the rate of 10% as directed by the Appellate Authority. Mr. Sadasivan on the other hand would contest the said position submitting that Petitioner-Management has sound financial position as it not only has fixed deposits to the tune of Rs.22 crores, but has also recently opened an International School in Navi Mumbai. Be that as it may. Entitlement of Respondents to receive gratuity cannot be determined on the basis of financial condition of the Petitioner-Management. Payment of gratuity as well as interest thereon is a statutory right governed by the provisions of Payment of Gratuity Act and the same does not depend on the financial condition of the employer.

9 Perusal of the orders passed by the Appellate Authority would indicate that interest of 10% per annum is directed to be paid by a relying on Notification No.SO 874/(E), dated 1 October 1987 which prescribes payment of interest at the rate of 10% on the amount of gratuity. In my view, therefore,

no serious flaw can be traced in the order passed by the Appellate Authority, enhancing the rate of interest from 4% to 10% per annum.

10 The main issue sought to be raised by Mr. Sasidharan is about direction issued by the Controlling Authority for payment of gratuity as per 6th Pay Commission scales. He would invite my attention to Writ Petition No.149 of 2018 filed by some of the teachers for extension of benefit of 6th Pay Commission scales to them with effect from 1 January 2006. In paragraph 5 of the said Petition, there appears to be an averment that the Petitioner-Management has extended 6th Pay Commission scales to the teachers from October 2015. Mr. Sasidharan would therefore submit that unless Respondents seek a direction from appropriate Court for fixation of their pay in 6th Pay Commission scales from 1 January 2006, they cannot straightaway seek the benefit of payment of gratuity in the 6th Pay Commission scales. Though Mr. Sasidharan may not be entirely wrong in contending so, the difficulty for the Petitioner-Management is its failure to challenge orders dated 31 December 2014 passed by the Controlling Authority before the Appellate Authority. As observed above, there is nothing on record to indicate that the orders passed by the Controlling Authority on 31 December 2014 were challenged by the Petitioner-Management by filing Appeals before the Appellate Authority. Petitioner-Management thus acquiesced in the orders dated 31 December 2014 passed by the Controlling Authority. Therefore, they cannot now be permitted to question correctness of the directions issued by the Controlling Authority while challenging orders passed by the Appellate Authority in Appeals filed by Respondents. In that

view of the matter, orders passed by the Controlling Authority will have to be implemented by Petitioner-Management subject to the modification made by the Appellate Authority for payment of interest at the rate of 10% per annum. However, this order shall not be construed to mean that this Court has adjudicated the issue of entitlements of teachers of Petitioner-Management for payment of salary in 6th Pay Commission scales from 1 January 2006. Only the amount of gratuity payable to three Respondents namely, Nazma Hasan, Santhalata Narayanan and S. Radha, who have retired after 1 January 2006 will have to be determined by notionally fixing their pay in the 6th Pay Commission on the date of their retirement only for the purpose of determining their entitlement to gratuity. So far as the Respondent - P. Radha is concerned, she has retired on 2 June 2002 and that therefore there is no question of granting her gratuity as per 6th Pay Commission scale. Despite this position, the Controlling Authority appears to have directed payment of gratuity to Respondent-P. Radha by fixing the gratuity in 6th Pay Commission scale. This appears to be an obvious error on the part of the Controlling Authority. At the same time, the Controlling Authority has also directed payment of gratuity as per rules which would obviously mean that the gratuity will have to be paid to Respondent-P. Radha as per her entitlement as on 2 June 2002, when 6 Pay Commission recommendations were yet to be implemented.

11 There is yet another aspect so far as the order passed by the Appellate Authority is concerned. Though Respondents-Nazma Hassan and S. Radha have retired on 31 March 2010 and 31 December 2010 respectively, the

Appellate Authority has erroneously directed payment of interest to them with effect from 31 December 2009. As on 31 December 2009 the said two teachers were not entitled to payment of any gratuity and therefore there is no question of paying them interest from 31 December 2009. Their entitlement for interest would obviously from the dates of their retirement. Therefore, so far as Respondent- Santhalata and Respondent-P. Radha are concerned, their entitlement for interest would be from 31 December 2009.

12 Accordingly I proceed to pass the following order:

i) Writ Petition Nos.3063 of 2019 and 4494 of 2019 are partly allowed to the limited extent of modifying the order passed by the Appellate Authority by directing that interest on the amount of gratuity would be payable to Respondents-Nazma Hasan and S. Radha from the dates of their retirement i.e. 31 March 2010 and 31 December 2010 respectively.

ii) Writ Petition No.2768 of 2019 is dismissed.

iii) Writ Petition No.4495 of 2019 is partly allowed to the extent of clarification that Respondent- P. Radha would be entitled to gratuity as on the salary actually drawn by her on the date of her retirement i.e. 2 June 2002.

13 With the above directions, all the four Writ Petitions are disposed of.