IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11036 OF 2023

Versova Education Trust & Anr. ...Petitioner
Versus
Mrs. Homai Yazdi Irani ...Respondents

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Ms. P. M. Bhansali, for Petitioner.
Mr. Bennet D'costa, a/w. Ms. Jignasha Pandya, for Respondent**.**

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CORAM : SANDEEP V. MARNE, J.

DATED : 13 MARCH 2024.

P. C. :

Petitioner-Management has filed this petition challenging Order dated 23 October 202 passed by the Controlling Authority under Payment of Gratuity Act, 1972 (**Gratuity Act**) and Judge, 8th Labour Court, Mumbai in Application (PCRA) No.261 of 2018. By the impugned Order, Controlling Authority has directed Petitioner to pay gratuity of Rs.5,54,594/- alongwith interest at the rate of 10% p.a. from the date of retirement i.e. 30 April 2018 till payment of it. In ordinary course this Court would not have entertained the present petition on the ground of availability of alternate remedy of filing Appeal before the Appellate Authority under provisions of Section 7(vii) of the Gratuity Act. However, considering the narrow controversy raised by the Petitioner in the present petition and with the objective of preventing any further litigation on the issue, thereby further prejudicing the interest of Respondent employee, the petition is taken up for hearing.

2. The short issue that is raised by the Petitioner-Employer in the present petition is about liability to pay gratuity in respect of services rendered by the Respondent before 03 April 1997. It appears that by notification dated 03 April 1997 issued by the Ministry of Labour and Employment, Government of India, the provisions of Payment of Gratuity Act are made applicable to the educational institutes with 10 or more employees. This is how even private schools, which employ 10 or more persons, became liable to pay gratuity to their employees as per provisions of the Gratuity Act.

3. It appears that Indian Schools Federation of India petitioned Supreme Court with a complaint that the schools cannot be held liable for payment of gratuity in respect of the period of services prior to 03 April 1997. The Apex Court relied upon it's previous Judgment in **Management of Goodyear India Limited Vs. Shri. K. G. Devessar,** (1985) 4 SCC 45 which dealt with slightly different issue of taking into consideration services prior to issuance of notification making provisions of Gratuity Act applicable for the purpose of computing 05 years eligibility services. The Apex Court accordingly rejected the contention of schools, which attempted to avoid liability to pay gratuity for services prior to 03 April 1997. The Apex Court held in paragraph No.19, 20 and 23 as under :

> 19. 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, 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. 1000 /- 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 425 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.

20. The argument of unreasonableness and that the amendment is financially confiscatory, predicated on past liability, which may predate the notification effective from 3rd April 1997, apart from the other reasons, is to be rejected as there are upper- cap limits on payment of gratuity. Therefore, though gratuity is computed with reference to the years of service, in view of the upper-cap limit, the payment towards gratuity cannot exceed the specified amount, even if the employee would be entitled.

23. The provisions of the PAG Act, even post the retrospective 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 o 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 notification issued under Section 1(3)(c) of the PAG Act, unless a contrary intention is expressed which is not the situation the present case and thus need not be examined.

4. While Mr. D'costa seeks to rely upon the Judgment of the Apex Court in **Indian Schools' Federation of India (Regd.) Vs. Union of India & Anr.,** 2022 SCC OnLine SC 1113 contending that the Judgment squarely covers the issue involved in the petition, Ms. Bhansali, the learned counsel appearing for Petitioner would submit that Apex Court has not decided the issue involved in the present petition. She would submit that the issue before the Apex Court was about counting of services prior to issuance of notification dated 03 April 1997 for the purpose of computing the eligibility 05 years of services. I am unable to agree. In paragraph No.19 of the Judgment the Apex Court has clearly recorded grievance of the private educational institutions that they cannot be made liable to pay gratuity for period of services prior to 03 April 1997. The said contention has been rejected by the Apex Court.

5. In my view therefore, the issue involved in the present case is squarely covered by the Apex Court in Judgment in **Indian Schools' Federation of India** (supra). No serious error can therefore be traced in the Order passed by the Controlling Authority. Accordingly, Writ Petition filed by the Petitioners is rejected. No costs.

SANDEEP V. MARNE, J.

KISHOR VISHNU KAMBLE Digitally signed by KISHOR VISHNU KAMBLE Date: 2024.03.18 12:57:57 +0530