

2024:PHHC:119335



CWP-5039-2023

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

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CWP-5039-2023

Date of Decision : 11.09.2024

MANAGEMENT, BHAVAN VIDYALAYA PETITIONER

V/S

APPELLATE AUTHORITY AND OTHERS RESPONDENTS

2.

CWP-5041-2023

MANAGEMENT, BHAVAN VIDYALAYA PETITIONER

V/S

APPELLATE AUTHORITY AND OTHERS RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Ms. Promila Nain, Advocate and
Ms. Isha Dhingra, Advocate
for the petitioner.

Mr. H.R.Bhardwaj, Advocate
for respondent No.2.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order, CWP-5039-2023 and CWP-5041-2023 are disposed of as issues involved and prayer sought in both the petitions are common. For the sake of convenience and with the consent of parties, the facts are borrowed from CWP-5039-2023.



2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 14.02.2023 (Annexure P-1) whereby appellate authority has modified order dated 07.07.2022 (Annexure P-2) of controlling authority and directed the management to pay interest @ 7% per annum.

3. The respondent No.2-workman served petitioner-management from 03.04.1998 to 31.03.2010. The workman did not claim gratuity at the time of his superannuation. Supreme Court vide judgment dated 07.03.2019 titled as *Birla Institute of Technology vs. State of Jharkhand and others (2019) 4 SCC 513* held that teachers are entitled to benefit of Payment of Gratuity Act w.e.f. 03.04.1997. In view of judgment of Supreme Court, the present workman along with others who had worked as teachers with management became entitled to gratuity for the period they had served. The workmen in view of judgment of Supreme Court approached controlling authority seeking release of gratuity. The controlling authority by order dated 07.07.2022 directed the management to pay a sum of Rs.90,000/- to workman towards gratuity within a period of 30 days failing which interest @ 9% per annum till the date of realization would be payable. The said order was a consolidated order for 20 employees.

4. The petitioner in compliance of the aforesaid order deposited gratuity payable to all the employees on 20.07.2022.

5. The workman preferred an appeal before appellate authority claiming interest. The appellate authority by impugned order dated



14.02.2023 has granted interest @ 7% per annum on the expiry of one month from the date of retirement till the date of realization of amount of gratuity.

6. Ms. Promila Nain, Advocate submits that prior to judgment of Supreme Court in *Birla Institute (supra)*, the teachers were not entitled to gratuity. The Supreme Court while passing aforesaid order did not direct management to pay interest. The benefit of gratuity was extended with retrospective effect, however, there was no direction for interest.

7. Mr. H.R.Bhardwaj, Advocate submits that interest is compensatory in nature and Supreme Court has granted gratuity with retrospective effect, thus, management is liable to pay interest on the expiry of 30 days from the date of retirement.

8. I have heard the arguments of counsel for the parties and perused the record.

9. Interest, no doubt, is compensatory in nature and as per Section 7(3-A) of Payment of Gratuity Act, 1972 (for short '1972 Act'), the employer is liable to pay interest to employee on delayed payment of gratuity. The interest is payable at the rate as notified by the Central Government. The employer is liable to arrange payment of amount of gratuity within 30 days from the date it becomes payable. As per sub-section (2) of Section 7 of 1972 Act, the employer is required to determine the amount of gratuity and give notice in writing to a person to whom it is payable. Concededly, none of the teachers approached



employer or controlling authority claiming gratuity prior to afore-cited judgment of Supreme Court. The judgment was delivered on 07.03.2019. The gratuity became payable as soon as the judgment was delivered by Supreme Court. The interest becomes payable from the expiry of 30 days from the date on which gratuity becomes payable. Section 7 of 1972 Act does not provide that interest would be payable on the expiry of 30 days from the date of retirement. Interest is payable on the expiry of 30 days from the date gratuity becomes payable. For the ready reference, relevant extracts of section 7 of 1972 Act are reproduced as below :

“7. Determination of the amount of gratuity.—(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, 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 so determined.

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3-A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer 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



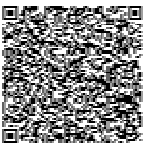
notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.”

10. From the perusal of afore-cited Section, it is quite evident that employer becomes liable to pay interest on the expiry of 30 days from the date gratuity becomes payable.

11. In the case in hand, prior to judgment of Supreme Court, none of the employees either approached employer or controlling authority claiming gratuity because it was not payable. The judgment dated 07.03.2019 of Supreme Court made teachers entitled to gratuity. From the date of judgment of Supreme Court, gratuity became payable, thus, the employer was liable to pay interest on the expiry of 30 days from the date of judgment of Supreme Court. Accordingly, the employer/petitioner was liable to pay interest w.e.f. 06.04.2019 i.e. expiry of 30 days from 07.03.2019. The petitioner has paid gratuity on 20.07.2022, thus, is liable to pay interest for the period from 06.04.2019 to 19.07.2022.

12. The appellate authority has awarded interest @ 7% whereas Central Government in exercise of power conferred by Section 7(3-A) has notified 10% simple rate of interest, thus, respondent is entitled to simple interest @ 10%.



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13. In the backdrop, the petition stands disposed of with a direction to petitioner to pay simple interest @ 10% from 06.04.2019 to 19.07.2022. The needful shall be done within two months from today.

11.09.2024
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(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No