



CWP-12066-2024

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

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CWP-12066-2024

Date of decision: 03.10.2024

S.D. MODERN PUBLIC SCHOOL**....PETITIONER****Vs.**

**APPELLATE AUTHORITY UNDER THE PAYMENT OF GRATUITY
AND OTHERS**

...RESPONDENTS**CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Mr. Ashok Arora, Advocate
for the petitioner.

JAGMOHAN BANSAL, J (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 17.10.2023 (Annexure P-7) whereby Appellate Authority has dismissed appeal against the order dated 30.10.2022 (Annexure P-5) passed by Controlling Authority under Payment of Gratuity Act, 1972.

2. The petitioner is a private school managed by Co-operative Society. It is affiliated to Central Board of Secondary Education, New Delhi. The respondent No. 3 on 07.07.2020 (Annexure P-3) filed an application before Controlling Authority under Payment of Gratuity Act, 1972 (for short '1972 Act') seeking gratuity. The respondent No. 3 had resigned on 19.09.2016 and at that point of time, she was getting salary of Rs.18,793/- per month. The Controlling Authority considering submissions of the parties vide order dated 03.10.2022 (Annexure P-5) directed the petitioner to pay a sum of Rs. 2,67,800/-



to respondent No. 3 along with interest. The petitioner unsuccessfully preferred an appeal before Appellate Authority.

3. Mr. Ashok Arora, Advocate submits that respondent No. 3 did not file an application under Rule 7(1) of Payment of Gratuity (Central) Rule, 1972 (for short 'Gratuity Rules') before the Employer within 30 days of her resignation, thus, application filed before Controlling Authority was not maintainable. She did not file application before Employer because it was barred by limitation.

4. I have heard counsel for the parties and with their able assistance perused the record.

5. Section 7 of 1972 Act deals with mode and manner of payment. Sub-section (1) provides that a person who is eligible for payment of Gratuity shall file an application before the Employer, within time as may be prescribed. Sub-section (2) provides that Employer shall determine the amount of Gratuity irrespective of application of employee under sub-section (1) and intimate to the employee. The Employer is also required to inform to Controlling Authority. 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.”

6. From the perusal of above-quoted Section, it is evident beyond the pale of doubt that an Employer irrespective of application of an employee is duty bound to determine amount of gratuity and pay it to employee within 30 days from the date it becomes payable. The Employer is also duty bound to inform the employee as well as Controlling Authority about the amount to be payable. The petitioner in the case in hand had never determined amount of Gratuity and intimated to the employee. The Employer-petitioner is trying to deflect from its responsibility on the sole ground that employee had not filed application under Section 7(1) read with Rule 7(1) of Gratuity Rules. The contention of petitioner is apparently misconceived in the light of sub-section (2) and (3) of Section 7 of 1972 Act.



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7. This Court does not find any substance in the submissions of petitioner. The present petition being bereft of merit deserves to be dismissed and accordingly dismissed.

03.10.2024
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[JAGMOHAN BANSAL]
JUDGE

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