IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(105) **LPA-1501-2024 (O&M)**
Decided on: 05.07.2024

Dronacharya College of Engineering ......Appellant(s)

Versus

State of Haryana & others ......Respondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Viren Jain, Advocate
Ms.Komaljit Kaur, Advocate, for the appellant (s).

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G.S. Sandhawalia, Acting Chief Justice (Oral)

CM-3530-LPA-2024

1. Application for condoning the delay of 105 days in filing the appeal is allowed, in view of the averments made in the application, duly supported by affidavit of the official. Delay of 105 days in filing the present appeal is hereby condoned.

2. CM stands disposed of.

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3. Consideration in the present appeal is to the judgment dated 16.08.2023 passed by the Learned Single Judge whereby CWP-15806-2023 had been dismissed. The resultant effect was that the application of the employee whereby he was entitled for the payment of gratuity under the Payment of Gratuity Act, 1972 which had been granted on 29.07.2022 (Annexure P-2) by the Controlling Authority which was duly affirmed by

the Appellate Authority on 11.04.2023 (Annexure P-1) was further approved.

4. The argument which has been raised by counsel for the appellant is to the extent that the employee who retired in January, 2017 had filed the application in the year 2021. Thus, it is his contention that since the vires was pending before the Apex Court in the case of **Independent School's Federation of India (Regd.) Vs. Union of India & another 2022 (4) SCT 119**, therefore the judgment would be applicable from that date i.e. 29.08.2022 since the constitutional validity of Section 2(e) of the Payment of Gratuity (Amendment) Act, 2009 and insertion of Section 13-A of the said Act was subject matter of consideration.

5. Learned Single Judge, while upholding the orders, noticed that the issue of retrospective effect given to the amendment has been upheld by the Apex Court in the above-said judgment and keeping in view the fact that the notification under Section 1(3)(c) pertaining to an education institution with ten or more employees being liable to pay gratuity had been issued and the fact that the employees who had retired post 1997 were entitled to payment and since it was a beneficial piece of legislation, the orders were not interfered.

6. Counsel for the appellant has thus submitted that there was an obligation of the employee to apply for the claim of gratuity and having failed to do so, interest is not liable to be paid from the date of retirement. It is thus submitted that the interest element which was to the tune of Rs.5,53,333/- should not have been awarded, keeping in view the conduct of the employee.

7. A perusal of the application filed by the employee would go on to show that it was mentioned that the resignation was sent on 17.01.2016 and the experience certificate was issued by the present appellant on 18.02.2017. The averment was that the appellant had requested in person to release the gratuity amount but the matter had been filed and the amount had not been released. Request vide email dated 18.11.2020 had been sent and thereafter the amount was quantified to Rs.10,46,894/- and the said claim was made along with interest vide the claim application. The said averments have not been denied in the response to the claim petition by the appellant. The only averment made in reply to para no.7 is that there is no such provision for providing gratuity to teacher under the Gratuity Act. Further the defence was that more than 3 years had lapsed since 16.01.2017 and claim for payment of gratuity was time-barred as it was to be applied within 30 days and had not become payable. Thus, there was basic denial that it is a time-barred claim in totality.

8. Under Section 4 of the Payment of Gratuity Act, 1972, the gratuity is liable to be paid to an employee who has been terminated from employment after he has rendered service for not less than 5 years; on his superannuation or on his retirement or resignation. However, on his death or disablement due to accident or disease, the condition of 5 years continuous service is not necessary. As per Section 7, the employee is liable for payment of gratuity and he has to send a written request to the employer within such time and in such form as may be prescribed. However, as per sub-section (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 the controlling authority specifying the amount of gratuity so determined. The further onus, as per sub-section (3) is to arrange to pay the amount of gratuity within 30 days from the date it becomes payable to the person to whom the gratuity is payable. The amount becomes payable along with simple interest under sub-section (3-A). The proviso only gives a right to deny claim of interest on delay in payment due to fault of the employee and the employer having obtained permission in writing from the controlling authority for the delayed payment on this ground.

9. It further provides that where there is any dispute in the demand of gratuity payable to an employee under the Act or as to the admissibility of any claim in relation to an employee for payment of gratuity or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity. Being a beneficial piece of legislation, it was the bounden duty of the present appellant to have at least deposited the amount with the controlling authority so that it could have protected its interest which was mandatorily payable under the statute and on adjudication of the issues passed necessary orders which include the power of refund as per the entitlement clause. Having not done so and only ground taken in defence that it is barred by limitation and now defended on the ground that the matter was pending before the Apex Court in **Independent School's Federation of India (Regd.) (supra)** could not absolve the employer of the liability to pay interest.

10. The statutory right of the payment to the employee and having not deposited the same with the controlling authority within the prescribed period, it was the bounden duty of the controlling authority to direct payment of gratuity amount to the employee. In such circumstances, only on account of pendency of the litigation before the Apex Court would not absolve the employer of the liability to deposit the same. Having not done so and having retained the amount, the appellant is bound to pay the interest element. The Apex Court having rejected the case of challenge of retrospective effect and all the interim orders which were in force would no longer hold the field and therefore the argument which has been raised that on account of the pendency of the litigation before the Apex Court the amounts had not been paid would not help. Once the said orders were vacated and the Apex Court had upheld the amendment and rejected the argument of principle of retro-activity, the Learned Single Judge thus fell in no error in upholding the orders passed by the statutory authorities.

11. In such circumstances, in the absence of any illegality or irregularity steming from the order of the Learned Single Judge, we are not inclined to call upon the respondent-employee to contest the present litigation on the element of interest entitlement. Resultantly, finding no merit in the present appeal, the same is hereby dismissed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

05.07.2024 **(VIKAS BAHL)**
Sailesh **JUDGE**

Whether speaking/reasoned :	Yes	
Whether Reportable :		No