





that she was appointed as Teacher (T.G.T.) on 23.10.1983 in Public School Bal Bhawan, Bhiwani. She resigned from the post on 10.05.1998 upon completion of 14 years 6 months and 22 days of service. As per Service Rules, she was entitled to get gratuity from the management, i.e., appellants-defendants and she applied for the same through regular application dated 12.03.1999 and subsequently sent many reminders. The respondent-plaintiff served a legal notice dated 30.11.2000 upon them which was replied by them and refused to make the payment. In consequence, the present suit for declaration was filed by the respondent for redressal of her grievances.

3. Notice was issued to the appellants-defendants. A written statement was filed on behalf of the respondents wherein preliminary objections taken were regarding legality of the suit and that the plaintiff-respondent had not come before the Court with clean hands. On merits, it was submitted that the respondent-plaintiff had wilfully resigned on 10.05.1998 only to serve as a Principal at another school. It was also averred that the appellant-school, on account of being affiliated with Central Board of School Education, New Delhi is governed by C.B.S.E service rules and as per Term 9 of the contract, an employee only became entitled for gratuity after completing satisfactory service upto his/her superannuation. It was further averred that as per Civil Services Rules Vol. II, applicable to the employees working in the Education Department of State of Haryana, gratuity is a retiral benefit and cannot be paid to an employee who resigns from the job. Subsequently, as many as four issues were framed by the learned trial Court including the issue of relief.

4. After considering the evidence on record, the learned trial Court decreed the suit filed by respondent-plaintiff vide judgment and decree dated 17.03.2004. Feeling aggrieved by the decision of the trial Court, the appellants-



defendants preferred an appeal before the lower Appellate Court which was dismissed vide judgment and decree dated 08.11.2005. Both the aforesaid judgments and decrees are under challenge in the present second appeal.

5. Learned counsel for the appellants inter alia contends that the respondent-plaintiff joined the school managed by the appellants as Teacher on contractual basis. Further, school was affiliated to Central Board of School Education and as such, rules of Central Board of School Education would apply in the case of the respondent-plaintiff. As per Clause 9 of the contract, entitlement of the respondent-plaintiff to the gratuity would only be on her superannuation. Admittedly, the respondent-plaintiff had resigned from the school to join some other school, as such, she was not eligible for gratuity. Reliance in this regard has been placed upon Ex.P5, an application submitted by the respondent-plaintiff submitting her resignation in order to join another school. Further, the suit filed by the respondent-plaintiff was not maintainable under the provisions of the Payment of Gratuity Act, 1972 (for short 'Gratuity Act'). It is only the controlling authority, who has jurisdiction to decide the issue of gratuity. At the time of superannuation of the respondent-plaintiff, the Teachers were not entitled and covered under the provisions of Gratuity Act. The amendment was carried out in the year 2009 during pendency of the present appeal and only after 2009, the Teachers were made entitled to receive the gratuity. Reliance in this regard has been placed upon two judgments of the Hon'ble Supreme Court in *Ahmedabad Pvt. Primary Teachers Association Vs. Administrative Officer and others, 2004(1) SCC 755* and *Birla Institute of Technology Vs. State of Jharkhand and others, 2019 AIR (SC) 1309*.

6. *Per contra* Learned counsel for the respondent-plaintiff contends that the onus to prove that Central Board of School Education Rules and the



contract governing the service condition of the respondent-plaintiff was on the appellants. The appellants have never produced the original contract and now, it cannot be allowed to refer to Clause 9. The appellant-defendants filed the written statement, however, the contract itself has not been seen in the light of the day during pendency of the civil suit, as such, the arguments raised by learned counsel for the appellants on this ground are required to be rejected. It is further contended that the respondent-plaintiff was granted relief not under the provisions of Gratuity Act and she has been granted relief under Rule 6.16 Clause 2 Volume II para 2 of the Punjab Civil Services Rules, as the appellant is a semi-Govt. Enterprise. The respondent-plaintiff rendered 14 years, 06 months and 22 days of service and there was no complaint against the respondent-plaintiff and she has not resigned to seek employment in any other institution; rather the reason for her resignation was domestic in nature, which has been consistently held by both the Courts below.

7. In rebuttal, learned counsel for the appellants submits that the service conditions of the Teachers working in the school managed by the appellants are not governed by Punjab Civil Services Rules and as such, the contentions raised on behalf of the respondent are totally misplaced.

8. I have heard the learned counsel for the parties and have perused the record with their able assistance. After perusing the ***Birla Institute (supra)*** judgment, wherein the case of ***Ahmedabad Pvt. Primary Teachers Association (supra)*** has also been discussed, it transpires that instead of providing assistance to the arguments of learned counsel for the appellants-defendants, it does so to the case of respondent-plaintiff. It is true that the Hon'ble Apex Court concluded in the ***Ahmedabad Pvt. Primary Teachers Association (supra)*** case that teachers were not covered in the definition of "employee" 2(e) of The



Payment of Gratuity Act, 1972 but it is pertinent to note that teachers governed by any other Act or institution of the State Government were excluded from the observations made therein. Furthermore, this decision caused the Legislature to amend the 1972 Act with retrospective effect from 03.04.1997 and include teachers within its ambit. The relevant part of the observations made by a two Judge Bench of the Hon'ble Supreme Court in the case of ***Birla Institute (supra)*** is reproduced below: -

27. The definition of "employee" as defined under Section 2(e) was accordingly amended with effect from 03.04.1997 retrospectively vide Payment of the Gratuity (Amendment) Act, 2009 (No. 47 of 2009) published on 31.12.2009. The amended definition reads as under:

"(e) "employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity."

28. In the light of the amendment made in the definition of the word "employee" as defined in Section 2(e) of the Act by Amending Act No. 47 of 2009 with retrospective effect from 03.04.1997, the benefit of the Payment of Gratuity Act was also extended to the teachers from 03.04.1997.

29. In other words, the teachers were brought within the purview of



"employee" as defined in section 2(e) of the Payment of Gratuity Act by Amending Act No. 47 of 2009 with retrospective effect from 03.04.1997.

30. The effect of the amendment made in the Payment of Gratuity Act vide Amending Act No. 47 of 2009 on 31.12.2009 was two-fold. First, the law laid down by this Court in the case of Ahmadabad Pvt. Primary Teachers Association (supra) was no longer applicable against the teachers, as if not rendered, and Second, the teachers were held entitled to claim the amount of gratuity under the Payment of Gratuity Act from their employer with effect from 03.04.1997."

9. It further transpires that in para No. 3(d)(e) of the written statement filed by the appellants-defendants before the learned trial Court, it stands admitted by them that gratuity was being paid to other employees who had provided satisfactory service upto their superannuation. However, the appellants-defendants failed to bring on record any such contract which could show that terms and conditions pertaining to payment of gratuity to any employee and in consequence, failed to prove that service of the respondent-plaintiff was governed by a written contract. The appellants also failed to establish that resignation of their employee would disentitle him/her from payment of gratuity. As per the settled law, the appellant school, being a semi-government entity, is bound to give retiral benefits to its employees even upon voluntary resignation, albeit after completion of satisfactory service prescribed by the School Gratuity Rules. It stands admitted that the appellant school was paying gratuity to other employees. In light of the aforesaid facts, this Court finds no infirmity in the decisions of the learned Courts below.



10. Ex consequenti, no interference is warranted by this Court in the judgment and decree dated 17.03.2004 passed by learned Civil Judge (Jr. Div.), Bhiwani as well as the judgment and decree dated 08.11.2005 passed by learned Additional District Judge-II, Bhiwani.
11. As such, the present Regular Second Appeal is, hereby, dismissed.

(HARPREET SINGH BRAR)
JUDGE

08.11.2024
Neha

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