

CWP-7045-2014 (O&M)

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

**CWP-7045-2014 (O&M)
Date of Decision: April 24, 2024**

Modern School, Sector 17, Faridabad

.... Petitioner

Versus

Kamla Sharma and others

....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Alok Jain, Advocate,
for the petitioner.

Mr. A.S. Chadha, Advocate, and
Ms. Kamaldeep Kaur, Advocate,
for respondent No. 1.

SANJAY VASHISTH, J.

1. Petitioner – Modern School, Sector 17, Faridabad, being employer, has filed the present writ petition, impugning the order dated 23.04.2013 (Annexure P-10), passed by respondent No. 3, i.e. Controlling Authority under the Payment of Gratuity Act, 1972, Circle IV, Faridabad (hereafter referred to as, ‘the Controlling Authority’), as well as order dated 28.02.2014 (Annexure P-12), passed by the Appellate Authority/Respondent No. 2 – Deputy Labour Commissioner, Faridabad (hereafter referred to as, ‘the Appellate Authority’).

The Controlling Authority, while deciding Claim Application No. 14 of 2012, filed by respondent No. 1 – Kamla Sharma, under the provisions of the Payment of Gratuity Act, 1972 (for short, ‘the 1972 Act’), assessed the gratuity amount payable to her, as Rs.3,76,740/-, and also held

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the applicant/respondent No. 1 (employee) entitled to interest @ 12% per annum on the said gratuity amount w.e.f. 01.04.2012 till date of actual realization. Petitioner-school was directed to deposit the awarded amount of gratuity alongwith interest within 30 days from passing of the order dated 23.04.2013.

The appeal preferred by the petitioner-school against the order dated 23.04.2013, has been dismissed by the Appellate Authority, thereby maintaining the order passed by the Controlling Authority.

2. Facts, leading to the filing of present writ petition, are that respondent No. 1 filed Claim Application No. 14 of 2012, dated 05.09.2012 (Annexure P-1), under the 1972 Act, claiming therein that she was employed with the petitioner-school, as a Primary Teacher on 10.11.1983, and served there upto 31.03.2012. Thus, claimed that she is entitled to receive gratuity amount for serving more than 28 years of continuous service with the petitioner-school. In the annexure attached with the said application, respondent No. 1 mentioned at Sr. No. 8, her date of appointment as '10.11.1983'; at Sr. No. 9, date of superannuation/retirement as '1.4.2012'; at Sr. No. 10, total period of service as '28 years 4 months and 20 days'; and at Sr. No. 11, wages last drawn as 'Rs.23322/- per month'.

3. Claim application filed by respondent No. 1 was duly replied by the petitioner-school, by filing written statement before the Controlling Authority, by taking some of the preliminary objections. However, no material fact pleaded by respondent No. 1, was countered in the written statement, except of denying entitlement of respondent No. 1 for the claimed

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gratuity amount of Rs.3,90,195/-. Pleadings raised by the petitioner-school in its written statement (Annexure P-2), are reproduced as under:-

“ *Written Statement on behalf of Respondent*

Respectfully Showeth

Preliminary Objections

1. *That the present Application is untenable under the law.*
2. *That the claimant/applicant is not an employee under the definition of employee of Payment of Gratuity Act before 2010 when presidential assent has been accorded on the New Bill.*
3. *That the notification for the amendment under the Gratuity Act, 2009 has already been challenged which is subjudice before the Hon'ble Supreme Court vide petition No. SLP 10724 of 2012 in the case of Independent Schools Federation Of India.*
4. *That the respondent is an un-aided minority institution, so far Gratuity Act is not applicable on the Respondent.*

On merits

1. *That the contents of para 1 are wrong and denied to the extent that the applicant is entitled for gratuity. However it is correct that the applicant has retired/superannuated on 31.03.2012.*
2. *That the contents of para 2 of the claim application are matter of record. The claimant is not entitled for payment of gratuity as claimed.*
3. *That contents of para 3 of the claim application are wrong, baseless, misleading and misrepresented.*
4. *That contents of para 4 are wrong, false, hence not admitted except those that are correct as per record. But it is specifically denied that the applicant claimant is entitled for the amount of Rs. 3,90,195/- as Gratuity. It is respectfully submitted that the notification of 2000 is already under challenge in the case of Independent Schools Federation Of India under the petition No. No. SLP 10724 of 2012 in the Hon'ble Supreme Court.*

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5. *That the contents of para 5 are wrong and denied hence not admitted.*

Prayer

In view of the above it is most respectfully prayed that the application of the applicant claimant may kindly be dismissed with heavy cost.

*Principal
Modern School, Sector 17, Faridabad*

Verification

Verified that the contents from para 1 to 5 are true and correct to the best of my knowledge and nothing has been concealed.

*Principal
Modern School, Sector 17, Faridabad”*

Thus, as per written statement (Annexure P-2), neither there is denial regarding total period of service rendered by respondent No. 1 nor any other explanation has been given by the petitioner-school.

Replication to the said written statement was also filed, however, the same is not required to be discussed here.

4. For considering entitlement for gratuity amount and interest thereon, the Controlling Authority discussed the evidence led by respondent No. 1 as well as the petitioner-school. Saurabh Jain, appeared as RW-1 and tendered his affidavit (Ex. RW-1/A) and also stated on oath that the applicant (respondent No. 1 herein) had been the employee of the petitioner-school w.e.f. 10.11.1983 and retired on 31.03.2012. Accordingly, while deciding the issue of entitlement of gratuity amount, following observation was made by the Controlling Authority:-

“ *Argument of both the parties were heard on 15.04.2013.*

In the instant case the length of the service and monthly wages of The applicant are not disputed. The main law point

involved in this case is whether the schools are covered under the Payment of Gratuity Act, 1972 before the year 2010 or not, In this regard, Ld. Counsel of the Respondent drew my attention towards the notification “The Payment of Gratuity (Amendment) Act, 2009”, which was published in April 2009 in Labour Law Reporter at page 122. According to this notification, schools are covered under the Payment of Gratuity Act, 1972 since 3rd day of April, 1997 therefore, Ld. counsel for the respondents stressed that the said Amendment Act is in force, with effect from 03.04.1997, so they are ready to pay the gratuity to be applicant after 03.04.1997 till her date of retirement/termination. On the other hand, Ld. counsel for the applicant argued that when the amendment is in force wef 03.04.1997 then the applicant is entitled for Gratuity amount for the whole service rendered by her. After going through the pleadings, evidence both oral or documentary placed on record and keeping in my view, my issues wise findings are as under:

Issue No. 1 & 2

On issue No. 1, the applicant has led her evidence by filing her affidavit in support of her case that she was appointed and was working in the respondent school w.e.f. 10.11.1983 and retired on 31.03.2012 and has thus rendered a continuous service as a teacher for 28 years in that establishment. Even in cross-examination of the respondent, Sh Saurab Jain who appeared as RW1, he has admitted that the applicant was working as a teacher with the respondent school continuously from 10.11.1983 and was retired on 31.03.2012. There is no denial with regard to the quantum of the last salary drawn by the applicant which is Rs. 23322/-. The counsel for the respondent has not assailed the factum of joining the services and the date of retirement of the applicant. The length of service of the applicant is admitted by the respondent. The applicant enough evidence, more particularly the Bank Pass Book, copy of which is Exh AW-1/1, has proved the fact that the respondent school has been continuity paying the monthly salary of Rs 23322/-to the applicant. There is no evidence to the contrary.

Another question which requires for examination on which a lot of stressed has been given by the respondent is that since in the Payment of Gratuity Act 1972, the amendment to include “other establishments” including Schools has been carried out on 03.04.1997, the amended provisions of the said act will be applicable from the date of amendment only and accordingly, the respondent can at the most be directed to pay the amount of gratuity from 03.04.1997. To this extent, the respondent has beta the case of the applicant. However, I'm of

the considered opinion that amendment has been carried out from 03.04.1997 to include all other establishments and the respondent school is covered within the ambit of other establishments. In Section 13-A of the Principal Act, it has been incorporated that the Payment of Gratuity Amendment Act, 2009 as amended shall be in force at all material times and Gratuity shall be paid accordingly. The Provisions of Section 13-A is reproduced below for ready reference:

“13-A. Validation of payment of gratuity-

Notwithstanding anything contained in any judgment, decree or order of any court, for the period commencement on and from the 3rd day of April, 1997 and ending on the day on which the Payment of Gratuity (Amendment) Act, 2009, receives the assent of the President, the gratuity shall be payable to an employee in pursuance of the notification of the Government of India in the Ministry of Labour and Employment vide number S.O. 1080, dated the 3rd day of April, 1997 and the said notification shall be valid and shall be deemed always to have been valid as if the Payment of Gratuity (Amendment) Act, 2009 had been in force at all material times and the gratuity shall be payable accordingly:

Provided that nothing contained in this section shall extend, or be construed to extend, to affect any person with any punishment or penalty whatsoever by reason of the non-payment by him of the gratuity during the period specified in this section which shall become due in pursuance of the said notification.”

From the perusal of the above, it is clear that the provisions of The Payment of Gratuity (Amendment) Act, 2009 shall be deemed to have been valid and in force at all material times. Therefore, the stand of the respondent that the applicant shall be entitled to gratuity from 03.04.1997 is and misconceived approach on the part of the respondent. Infact the applicant shall be deemed to be covered and shall be covered for the purpose of payment of gratuity under the Payment of Gratuity Act, 1972 as amended upto date for the entire length of service and shall be competent to receive gratuity for the entire period of service. The amended act is applicable on the respondent establishment for all intents and purposes to the existing employees who are on rolls as on 03.04.1997. Accordingly, I assess the amount of Rs. 3,76,740/- (Three Lacs Seventy Six Thousand Seven Hundred Forty only) as gratuity amount.

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Keeping in view her monthly wage of Rs 23322/- as per sub section 2 of section 4 of Payment of Gratuity Act, 1972. The applicant is also entitled to interest @ 12% per annum on the said gratuity amount with effect from 01.04.2012 till date of actual realization. Respondent is directed to deposit the said awarded amount of gratuity along with interest in this court within 30 days. I passed the award accordingly. The applicant is also entitled to seek the refund of the same. It is ordered accordingly. No order as to costs.”

In this way, the Controlling Authority held respondent No. 1 entitled for an amount of Rs. 3,76,740/- as gratuity amount and also interest @ 12% per annum on the said gratuity amount w.e.f. 01.04.2012 till its actual realization.

5. Challenging the said order before the Appellate Authority, nothing substantial was pleaded or countered by the petitioner-school, and, therefore, the only question which was left for examination for the Appellate Authority was regarding applicability of the 1972 Act, which was answered against the petitioner-school. Rather, the Appellate Authority observed in specific that under Section 7(7) of the 1972 Act, it is mandatory to deposit complete amount alongwith interest, whereas the petitioner-school deposited only Rs. 3,76,740/-, vide Cheque No. 080737, dated 08.06.2013. The amount awarded towards interest by the Controlling Authority, was not deposited while filing appeal and, therefore, the Appellate Authority concluded that the appeal itself is not maintainable in view of mandatory provisions of Section 7(7) of the 1972 Act. Finding recorded by the Appellate Authority in regard to maintainability, is reproduced for convenience and reference:-

“.....From the perusal of record, it is clear that the Learned Controlling Authority assessed the gratuity of Rs. 3,76,740/-

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and also awarded interest @ 12% per annum on the said amount of gratuity w.e.f. 1.4.2012 till the date of actual realization. The appellant have deposited only Rs. 3,76,740/- vide cheque no. 080737 dated 8.6.2013 and the interest as awarded by the learned Controlling Authority has not been deposited. Thus the present appeal is not maintainable in view of the mandatory provisions of section 7(7) of the Payment of Gratuity Act 1972. ”

Accordingly, the order passed by the Controlling Authority was upheld.

6. This Court could have denied to entertain the present writ petition, but still, for the purpose of examining certain legal issues raised by the petitioner-school through present writ petition, the same has come up for adjudication today for final disposal, after about 10 years of its filing.

7. Mr. Alok Jain, learned counsel for the petitioner-school, relied upon the pleadings now raised in the writ petition, and submits that Digamber Jain Society for Child Welfare is running various schools in the name of 'Modern School' in the States of Haryana, Uttar Pradesh and New Delhi, including the petitioner-school. Further submits that tenure of service of respondent No. 1 in the petitioner-school at Faridabad was not continuous, rather she was transferred to Modern School, Plot No. 2, Sector 1, Vaishali, District Ghaziabad, Uttar Pradesh, on 12.04.2004, and worked there upto 30.06.2005. She was again transferred to petitioner-school at Faridabad w.e.f. 01.07.2005 and worked there till the date of her retirement i.e. 31.03.2012. Pleading in this regard, contained in para No. 3 of the writ petition, reads as under:-

“3. That Respondent No. 1 has during her tenure of Service had not continuously worked in the Petitioner School at Faridabad but was transferred in the School at Vaishali,

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District Ghaziabad (Uttar Pradesh) on 12.04.2004 and continued to work there till 30.06.2005. Respondent No. 1 was again transferred to Petitioner School at Faridabad with effect from 01.07.2005 and retired on 31.03.2012.”

On this basis, learned counsel submits that the impugned order dated 23.04.2013 (Annexure P-10), passed by the Controlling Authority is without jurisdiction because the employee i.e. respondent No. 1 had worked at places which are located in two different States. Therefore, her right to claim gratuity, if any, could only be adjudicated by the Central Controlling Authority under the Act. Thus, both the impugned orders are claimed to be without jurisdiction.

8. On the other hand, learned counsel for respondent No. 1 submits that the petitioner-school has tried to built a new case before this Court. Even as per own admission of the petitioner-school, respondent No.1 had retired on 31.03.2012 and application (Annexure P-1), claiming gratuity under the 1972 Act, was filed before the Controlling Authority on 05.09.2012. Immediately thereafter, written statement was filed by the petitioner-school, wherein neither any such objection is raised nor the service period, as is sought to be projected now, was detailed. The names of the places where respondent No. 1 remained posted, has not been explained in the written statement. Even, no ground of jurisdiction and maintainability of the claim application under the 1972 Act, before the Controlling Authority, had been raised by the petitioner-school.

Not only this, the witness – Saurabh Jain (RW-1), who appeared on behalf of the petitioner-school, has also not uttered a single word in regard to lack of jurisdiction with the Controlling Authority. Learned

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counsel for respondent No. 1, thus, submits that now raised objection regarding jurisdiction, is an after thought and not sustainable.

9. Learned counsel for respondent No. 1 also argued that the 1972 Act is a welfare legislation, which has been enacted with a view to grant benefit to the workers, a weaker section in industrial adjudicatory process, and while interpreting the provisions of such beneficial legislation, even if another view was possible, a liberal view is required to be taken. In support of his submission, learned counsel has placed reliance on a judgment of Hon'ble Apex Court in the case of **M.C. Chamaraju v. Hind Nippon Rural Industrial (P) Ltd.**, R.S.J. 2007 (4) SCC 417.

10. On the contrary, learned counsel for the petitioner-school while relying upon the judgment of Bombay High Court in the case of **M/s. Rhone Poulenc (India) Ltd. v. Mrs. Anjali Devrukhar and others**, 2005 (3) LLJ 166, submits that where there is a preliminary objection to the application in regard to the jurisdiction, same has to be adhered to. He, thus, submits that in the facts of the present case, the claim application filed by respondent No. 1 is required to be adjudicated by the Controlling Authority appointed by the Central Government.

11. This Court has examined the facts of the cited case i.e. **M/s. Rhone Poulenc (India) Ltd.** (supra), para No. 3 of which clearly shows that preliminary objection to the application, raising an objection to the jurisdiction of Controlling Authority appointed by the State Government, was raised by the petitioner before Bombay High Court. However, as per the facts of the case in hand, the petitioner-school never raised any such objection at any stage either before the Controlling Authority or the

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Appellate Authority, as has been noticed in detail here-above. Thus, the judgment cited by learned counsel for the petitioner would not be applicable to the facts of the present case.

12. Other than this, learned counsel for the petitioner-school also placed reliance on the judgment of Madras High Court (Madurai Bench) in the case of **M/s Tamil Nadu Cements Corporation v. The Assistant Commissioner of Controlling Authority, under Payment of Gratuity Act, Madurai and another**, 2018 LabLR 385 : Law Finder Doc Id # 1000453, on the issue of jurisdiction, but the same is also not applicable to the facts of the present case, because from a bare reading of the opening para of the said judgment, where facts have been narrated, it comes to fore that at a very preliminary stage, an objection regarding maintainability was raised, which was entertained.

Thus, the principle of law culled out by Bombay High Court and Madras High Court, in cases relied upon by the petitioner-school, cannot be made applicable to the facts of the present case.

13. Otherwise also, as already discussed, the purpose of the 1972 Act is to provide benefit/fruit of complete service in the shape of gratuity, at the time of retirement, when one has to re-settle in life for survival in future. Such a benefit cannot be delayed at the instance of the employer, on technical objections, such as jurisdiction etc., that too after a decade, because the same may defeat the very purpose of beneficial legislation and purpose of law. Same view has already been taken by Hon'ble the Apex Court in the case of **M.C. Chamaraju (supra)**.

14. To meet out the objection of jurisdiction, as is sought to be raised by the petitioner-school in the present writ petition, this Court would like to quote the provisions of Section 7 of the 1972 Act, which provides as under:-

“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 determine.

(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.

(3A) 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.

(4)(a) If there is any dispute to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or 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.

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found

to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit -

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses.

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days:

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be

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deposited under sub-section (4), or deposits with the appellate authority such amount.

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify, or reverse the decision of the controlling authority.”

From a bare reading of the above reproduced statutory provisions of Section 7 of the 1972 Act, it is imperative and obligatory for the employer to pay the gratuity amount within 30 days of the retirement. Meaning thereby that it is a mandatory obligation for the employer to make payment of the complete gratuity amount within 30 days.

15. Once it is statutory duty of the employer, who un-disputedly in the present case is the petitioner-school; only by stating that it has its branch in other States also, can not raise any such formal objection, of jurisdiction etc. qua the Controlling Authority, which only is meant to decide the right of the employee for gratuity amount. In any case, the petitioner-school could not be in a position to controvert the right of respondent No. 1 in a better way by raising objection in the present case, as the material facts have not been disputed in the written statement. Otherwise also, in paragraph No. 3 of the writ petition, after a decade, it has been mentioned that respondent No. 1 was transferred from Faridabad, Haryana, to Vaishali, District Ghaziabad, Uttar Pradesh, where she remained posted from 12.04.2004 to 30.06.2005, i.e. 1 year, 2 months and 18 days only.

16. Thus, the objection of jurisdiction is motivated and hyper technical, and the same has been raised with a purpose to defeat the object of the 1972 Act and the legal right of respondent No. 1. Accordingly, by maintaining the findings recorded by the Controlling as well as Appellate

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Authority, the objection raised by the petitioner-school in the present writ petition, is hereby rejected.

17. Before parting with the judgment, it also requires to be mentioned that at the time of filing the present writ petition in the year 2014, the petitioner-school also raised the issue with regard to applicability of amendment made in the 1972 Act, i.e. whether the teachers are entitled for the gratuity with retrospective effect from 3.4.1997 or even prior thereto. Since the said issue has been settled by Hon’ble the Supreme Court in the case of **Independent Schools Federation of India v. Union of India, 2022 Lab. I.C. 4156**, the same has not been pressed by learned Counsel for the petitioner-school, at the time of addressing arguments.

18. As a result of the above discussion, present writ petition fails and the same is hereby dismissed. Pending miscellaneous applications are also disposed of accordingly.

(SANJAY VASHISTH)
JUDGE

April 24, 2024
Pkapoor

Whether speaking/reasoned	✓ Yes/No
Whether reportable?	✓ Yes/No