



2024:DHC:7072



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 13th August, 2024

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W.P.(C) 487/2019

MALVINDER KAUR

.....Petitioner

Through: Ms. Jaswant Mann, Advocate.

versus

DIRECTOR OF EDUCATION
& ORS

.....Respondents

Through: Ms. Latika Choudhury, Advocate for
Respondent No.1/DOE.Mr. Abinash Kumar Mishra, Advocate for
Respondents No.2 and 3.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Articles 226 and 227 of the Constitution of India for issuance of a writ in the nature of *mandamus* directing Respondent No.2/Guru Harkishan Public Schools Society and Respondent No.3/Guru Harkishan Public School (hereinafter referred to as the 'School') to pay to the Petitioner her terminal benefits as well as arrears of pay revision as per recommendations of 6th Central Pay Commission ('CPC') along with interest.

2. Brief facts to the extent necessary and as averred in the petition are that on 12.02.2004, School appointed the Petitioner as a Teacher on a consolidated pay of Rs.5,000/- per month. On 08.07.2004, Petitioner was

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informed that she was appointed as a Primary Teacher ('PRT') and she was placed on probation for one year w.e.f. 01.07.2004. Petitioner's services were confirmed on 23.09.2005. 6th CPC recommendations were implemented by the Government of India w.e.f 01.01.2006 and Directorate of Education ('DoE') passed an order on 11.02.2009 directing all recognised private schools, both aided and unaided, including Respondent No.3, to implement the recommendations.

3. It is averred that on 22.11.2009, Petitioner was promoted as TGT w.e.f. 01.11.2006 in the pay scale of Rs.5500-9000, however, instead of recognising the exemplary service of the Petitioner, a show cause notice was issued to her on 02.09.2011 alleging that Petitioner was ineligible for appointment as PRT being overage i.e. more than 46 years at the time of appointment as also that she did not possess the requisite educational qualifications having acquired 'Shiksha Visharad' from Hindi Sahitya Samelan, Allahabad in 2003, an institute not recognised by NCTE. Petitioner replied to the show cause notice on 14.09.2011 refuting the allegations and stating that she was appointed after due scrutiny of her credentials and documents and the allegations were an afterthought.

4. School was not satisfied with Petitioner's response to the show cause notice and suspended her on 12.10.2011. Preliminary inquiry was conducted under Rule 120 of Delhi School Education Act and Rules, 1973 ('DSEAR') to find out whether Petitioner fulfilled the eligibility criteria for appointment as a Teacher under Rule 100 of DSEAR. On 04.01.2012, Memorandum of Charge was issued with three Articles of Charge viz. (a) Petitioner did not possess requisite qualifications for appointment as PRT as she did not have two years diploma/degree of Teacher Education from recognised institution



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or university and had acquired Shiksha Visharad from Hindi Sahitya Samelan, Allahabad in 2003, which was not recognised by NCTE; (b) she was promoted as TGT (English) w.e.f. 01.11.2006 in violation of the Recruitment Rules prescribed and approved by DoE; and (c) in response to show cause notice, Petitioner was unable to defend her case and produce any documentary evidence to support that she was eligible.

5. Petitioner gave a detailed reply to the charge memorandum on 16.01.2012 and raised an objection that the charge sheet was not issued by the Disciplinary Authority and was thus in violation of Rules 118 and 120 of DSEAR and also refuted the allegations made therein. Petitioner filed a writ petition being W.P.(C) No.1632/2012 in this Court challenging the suspension order dated 12.10.2011 as also seeking her outstanding salary. The writ petition was disposed of rejecting the relief of quashing the suspension order but in respect of the charge sheet dated 04.01.2012, it was held that in case the Disciplinary Committee was formed prior to the issue of charge sheet and there was deliberation by the Committee, then the charge sheet would stand, however, if no Disciplinary Committee was constituted prior to the charge sheet dated 04.01.2012 and there was no deliberation before issuing the charge sheet, the charge sheet will stand quashed in terms of Rule 120 of DSEAR. Liberty was granted to the School to issue a fresh charge sheet in consonance with provisions of DSEAR.

6. On 02.08.2013, a fresh Memorandum of Charge was issued by the Disciplinary Committee and the disciplinary proceedings culminated into imposition of penalty of '*removal from service with immediate effect*' vide order dated 10.12.2015. Thereafter on 09.04.2016 Petitioner gave an affidavit to the School that she will not claim salary if she was reinstated. On



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19.11.2018, Petitioner wrote to the School seeking arrears of pay revision and terminal benefits but the admitted position is that termination order was never assailed by the Petitioner and even in the present writ petition, Petitioner has only sought benefits of pay revision under 6th CPC and terminal benefits including Gratuity.

7. Learned counsel for the Petitioner submits that the allegations against the Petitioner that she was ineligible for appointment as PRT and further promotion as TGT were false and motivated, but Petitioner did not want to litigate with the School at that point and accepted the penalty. This does not, however, entitle the School to withhold her Gratuity or other terminal benefits, which are otherwise also payable to an employee on termination from service as also arrears of salary on account of pay revision under 6th CPC, which the School is liable to pay as part of its statutory obligations. In support of the contention that even if the appointment of the Petitioner has been declared as illegal on the ground that Petitioner did not fulfill the eligibility criteria for appointment as PRT, in the absence of possessing requisite educational qualifications, School cannot deprive the Petitioner of the Gratuity payable to her under the Payment of Gratuity Act, 1972 ('Gratuity Act'), counsel for the Petitioner relies on a judgment of the Bombay High Court in *Air India Ltd. v. Dharman K. Patil*, 2021 SCC *OnLine Bom 4129*, wherein the Court observed that under sub-clause (b) of sub-Section (6) of Section 4 of the Gratuity Act, Gratuity can be forfeited either wholly or partially, only in when: (a) termination of an employee is on account of riotous or disorderly conduct or any other act of violence on his part; and/or (b) termination is for any act which constitutes an offence involving moral turpitude and is committed by the employee in the course of



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his employment. It was further observed that the innumerable circumstances touching the issues of illegal appointments obtained by fraud or on account of ineligibility etc. would be alien attributes to the provisions of Section 4(6) and unless any one of the two conditions as provided under sub-clause (b) of Section 4(6) exists, Gratuity cannot be forfeited as an automatic consequence of a removal or a dismissal order.

8. Mr. Mishra, learned counsel appearing on behalf of the School opposes the petition and submits that Petitioner is not entitled to Gratuity or any other terminal benefit and/or arrears of pay revision under 6th CPC. Petitioner's appointment as PRT w.e.f. 01.07.2004 and her subsequent promotion to TGT w.e.f. 01.11.2006 were both illegal as she was ineligible for the appointment. The educational qualifications required for the post of PRT are Senior Secondary (10+2) or Intermediate or its equivalent with 50% marks and two year diploma/certificate course in ETE/JBT or B.El.Ed. or equivalent from a recognised Institution. Educational and other qualifications for the post of TGT are a Bachelor's degree from a recognised University or equivalent with 45% marks in the aggregate and degree/diploma in training education or SAV certificate. Petitioner admittedly acquired Shiksha Visharad from Hindi Sahitya Samelan, Allahabad in 2003, which Institute is not recognised by NCTE. Petitioner's date of birth at the time of appointment was 24.12.1958, meaning thereby that she was overage and hence ineligible as the maximum age as per the Rules was 40 years. In any case, it is not open to the Petitioner to question the legality and validity of the termination order and/or impute motives, since the termination order was never assailed by her and even in the present writ petition, there is no challenge to her termination. Having accepted the



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termination order, Petitioner has admitted that her appointment itself was illegal and *void-ab-initio* and once the appointment itself is invalid, the question of payment of terminal benefits and/or arrears of pay revision does not arise. In support of his contention, Mr. Mishra relies on the judgments of the Supreme Court in ***District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another v. M. Tripura Sundari Devi, (1990) 3 SCC 655; Union of India and Others v. M. Bhaskaran, 1995 Supp (4) SCC 100 and Dulu Deka v. State of Assam and Others, (2023) 9 SCC 749.*** Mr. Mishra further submits that the Petitioner is not entitled to Gratuity under the Gratuity Act inasmuch as Section 2(e) of the Gratuity Act defines ‘employee’ as a person employed for wages in any kind of work, manual or otherwise and cannot include an employee who is ineligible for appointment and whose appointment is *void ab initio*.

9. Heard learned counsels for the parties and examined their submissions.

10. Indisputably, by way of this writ petition, Petitioner only seeks terminal benefits and arrears of salary on account of pay revision under 6th CPC. There is no challenge to the removal order and it is an admitted position between the parties that the penalty of ‘*removal from service*’ imposed on the Petitioner, pursuant to disciplinary proceedings was never assailed by her in the past. During the course of hearing, counsel for the Petitioner restricts the claims to Gratuity and arrears of salary claiming benefit of pay revision under 6th CPC. Therefore, the issue before this Court is in a narrow compass, whether Petitioner is entitled to Gratuity and 6th CPC arrears, keeping in backdrop the fact that Petitioner has accepted her



termination and thus the fact that her appointment as PRT was illegal and *void-ab-initio*.

11. It needs no reiteration that where an appointment of an employee is flagrantly violative of the prescribed Recruitment Rules and thus illegal and invalid in the eyes of law, no substantive right to salary can arise. In this context, I may allude to a few significant observations of the Full Bench of the Patna High Court in ***Rita Mishra and others, etc. etc. v. Director, Primary Education, Bihar and others, etc., AIR 1988 PAT 26(FB)***, as follows:-

“13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow from it.

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In Lazarus Estates Ltd. v. Beasley, (1956) 1 All ER 341 at page 345, Lord Denning observed as under:

“..... I cannot accede to this argument for a moment. No Court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a Court no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever.....”

The aforesaid observations were expressly quoted with approval by their Lordships of the Supreme Court in S. Pratap Singh v. State of Punjab, AIR 1964 SC 72.

17-A. *It is unnecessary to multiply authority and there is no dearth thereof that fraud would thus vitiate even bilateral rights arising from a contract. Once it is so held rights springing from law and status and the high*



pedestal of public employment having a statutory base deserve even greater protection and sanctity. Consequently, it must be held in no uncertain terms that where source of the right is rooted in fraud or established dubious considerations, no right *stricto sensu* for salary could arise and far less be enforceable by way of *manmus* in the writ jurisdiction.

18. Adverting now to the last Category (iii) where the letter of appointment is illegal being flagrantly violative of the statutory procedure prescribed for selection and appointment again the position does not appear to be materially different. It bears repetition and reiteration that the statutory right to salary in public service stems from the legal right to hold the post. If it is once held that the very threshold stage of appointment is illegal then there is in the eye of law no appointment to the post or entry into the public service. The door stands barred and slammed in the face of such an intruder. It was contended forcefully that where the procedural requirements of selection and appointment are statutory and have not been complied with at all, there is no appointment in the eye of law. Consequently, no right of salary *stricto sensu* can arise before the very threshold stage is tainted with illegality. The learned Advocate-General was thus right in the firm stand he took that where the original appointment is void *ab initio* then no question of salary for the post accruing therefrom can possibly arise. Firm reliance was placed by him and, in my view, rightly on *University of Kashmir v. Dr. Mohd. Yasin*, AIR 1974 SC 238 for contending that an appointment contrary to and in opposition to the teeth of the law cannot confer any legal rights. Therein even an appointment contrary to the statutory provision by so high an authority as a Vice-Chancellor of the University was held to be non est and no theory of *factum valet* was allowed to be countenanced with the following categorical observations:—

“The ground urged successfully, as it were, before the High Court, of an implied engagement cannot in our view, be sustained. When a statute creates a body and vests it with authority and circumscribes its powers by specifying limitations, the doctrine of implied engagement dehors the provisions and powers under the Act and would be subversive of the statutory scheme regarding appointments of officers and cannot be countenanced by the Court. Power in this case has been vested in the University Council only and the manner of its exercise has been carefully regulated. Therefore, the appointment of the respondent could be made only by The Council and only in the mode prescribed by the statute. If a Vice-Chancellor by administrative drift allows such employment it cannot be validated on any theory of factum valet. We cannot countenance the alleged continuance of the respondent in the University campus as tantamount to regular service



under the University with the sanction of law. In short, the respondent has no presentable case against the direction to quit.

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We, therefore, declare that Annexure 'A' is void but further hold that the respondent has no right to continue in service and the direction to him that he should leave his post as Professor and head of the Post Graduate History Department is good. The High Court's order of reinstatement is quashed."

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22. However, as a matter of law even assuming (though without remotely holding) that the letter of appointment may have borne an official endorsement or the Headmaster misled by the purported authority of such a document may have allocated some work, it would make no material difference to the legal situation. If once the order of appointment is clearly illegal, the ancillary considerations, so far as the strict right to salary is concerned are of no great relevance. Learned Advocate-General placed reliance on S. 227 of the Contract Act for pinpointing that the ordinary law of agency is not applicable in its totality in State transactions. Particular reliance was placed on Shalimar Paint Colour and Varnish Co. Ltd. v. Chief Secy. to Govt. of Travancore-Cochin, ILR (1954) Trav-Co 453 : AIR 1955 NUC (Trav-Co) 4125 holding that if the State has not authorised its agent then the State cannot possibly be bound therefor. Even nearer home, it is now well settled that the State cannot be bound down by the unauthorised acts of its employee — far from it being so, bound by acts which are Plainly illegal. No concept of promissory estoppel arises against the State if its servants either act beyond the scope of their duty or contrary to its directions or standing administrative instructions. This aspect has been recently examined by the Full Bench in Chetlal Sao v. State of Bihar, 1986 BBCJ 109 : (AIR 1986 Pat 267) wherein after considering both principle and precedents it has been held as under:—

"To conclude on this aspect, the answer to question No.3 is rendered in the negative and it is held that the State is not bound by the doctrine of promissory estoppel for the acts of its subordinates done in violation of its directions or administrative instructions."

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24. To sum up on this aspect, I am inclined to the view that where the very letter of appointment is flagrantly violative of the statutory procedures prescribed for selection and appointment, the same would be illegal and there being no valid appointment in the eye of law, no consequential right to salary stricto sensu would arise. In any case, no writ of mandamus can possibly be claimed in such a situation.



25. Having dealt above with the aspect of the substantive right to salary stricto sensu in the aforesaid situation, one may now embark upon its procedural aspect in detail which appears to me of not only equal but even of greater importance. The writ petitioners herein, irrespective of the invalidity or illegality of the letter of appointment and equally of the termination of their services or otherwise, claimed a writ of mandamus commanding the respondents to pay the salary for the alleged work period in the following terms:—

“It is, therefore, prayed that your Lordships may be graciously pleased to issue rule nisi calling upon the respondents to show cause as to why a writ in the nature of writ of mandamus or any other appropriate writ, order or direction be not issued directing them to pay the salaries of the petitioners and also arrear of salaries due to them.....”

Now the claim for the aforesaid relief goes to the root and scope of a mandamus in the writ jurisdiction. Even at the risk of some prolixity, it becomes necessary to reiterate the same because of the vehement claim raised on behalf of the petitioners and some precedent to the contrary within the Court.

25-A. The primary scope and function of writ of mandamus has been pithily expressed in the phrase that this writ is issued to command and execute; and not to inquire and adjudicate. It is not to establish a legal right but to enforce one. It is only where the legal public duty is clear, unqualified and specific that a writ of mandamus can be truly claimed. It is not to be granted where the claim of the petitioner has, in fact to be first established and adjudicated upon before it can be enforced. As in the present case, a frontal challenge is Laid to the petitioners' claim on every aspect and the averments on their behalf are sought to be controverted at every step. It is manifest that first the petitioners' claim has to be gone into, adjudicated and then established. That obviously is not socpe of a writ of mandamus. Ferris in the Law of Extraordinary Legal Remedies has said:—

“The office of mandamus is to execute, not adjudicate. It does not ascertain or adjust mutual claims or rights between the parties. If the right be doubtful, it must be first established in some other form of action; mandamus will not lie to establish as well as enforce a claim of uncertain merit. It follows, therefore, that mandamus will not be granted where the right is doubtful.”

Equally instructive it is to notice the scope and nature of a writ of mandamus authoritatively described as follows in Halsbury's Laws of England:—



“The order of mandamus is an order of a most extensive remedial nature, and is, in for, a command issuing from the High Court of Justice, directed to any person, corporation, or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty.”

The statement of the law on the scope of mandamus in Corpus Juris Secundum is—

“..... as a writ commanding the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station. It is a proceeding to compel someone to perform some duty which the law imposes on him, and the writ may prohibit the doing of a thing, as well as command it to be done.”

26. It is evident from the authoritative exposition of the law that the sine qua non for the issuance of a writ of mandamus is the existence of a statutory or a public duty devolving upon the person or the body against whom or which the said writ is directed. Equally settled it is that along with this must co-exist a corresponding right in the petitioners who were entitled to claim the enforcement of the said statutory public duty. Unless these two pre-conditions are satisfied, the requisite foundation for the issuance of a writ of mandamus can hardly be said to exist. Applying the twin test in the present context, I am of the view that neither one stands satisfied. The learned counsel for the petitioners were wholly unable to pinpoint even a single statutory provision which imposed upon the respondents any statutory public duty to pay the salary, where the very appointment of the petitioners may well be forged, fraudulent or illegal. Equally no provision can possibly be pointed out which would inhere in the petitioners an established enforceable right to the relief which they seek to claim.

27. I would refrain from enlarging the examination of the issue on principle because it seems to me that the matter is equally well covered by binding precedent on the scope and nature of the jurisdiction in a writ of mandamus it would suffice to recall the following observations of their Lordships in Lekhraj Sathramdas Lalvani v. Dy. Custodian-cum-Managing Officer, Bombay, AIR 1966 SC 334:—

“But even on the assumption that the order of the Deputy Custodian terminating the management of the appellant is illegal, the appellant is not entitled to move the High Court for grant of a writ in the nature of mandamus under Art. 226 of the Constitution. The reason is that a writ of mandamus may be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge that statutory



obligation. The chief function of the writ is to compel the performance of public duties, prescribed by statute and to keep the subordinate tribunals and officers exercising public functions within the limits of their jurisdiction. In the present case, the appointment of the appellant as a Manager by the Custodian by virtue of his power under S. 10(2)(b) of the 1950 Act is contractual in its nature and there is no statutory obligation as between him and the appellant. In our opinion, any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant cannot be enforced by the machinery of a writ under Art. 226 of the Constitution."

It would be manifest from the aforesaid authoritative enunciation that herein the two basic conditions precedent for the issuance of a writ of mandamus are, thus, non-existent.

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46. *In this somewhat exhaustive judgment it is indeed apt if not necessary to collate the basic conclusion arrived at. In the light of the aforesaid discussion it is subsequently held:—*

(1) Where the letter of appointment is a forged one and the appointee is either a party or a privy thereto, then no substantive right to salary can accrue therefrom.

(2) Where the letter of appointment is forged, but the appointee is neither a party nor a privy to the same, even then, no substantive right to statutory salary can arise from a document which is non est or a nullity. It is neither necessary nor desirable to pronounce on the aspect, whether a civil suit for compensation under Section 70, Contract Act for services rendered not gratuitously or any other analogous law would be successfully maintainable.

(3) Where the letter of appointment has been obtained by the appointee fraudulently or for dubious considerations, no substantive right to salary stricto sensu would arise.

(4) Where the letter of appointment is flagrantly violative of the prescribed statutory procedure for selection and appointment to the post, the same would be illegal and there being no valid appointment in the eye of law, no substantive right to salary would arise.

(5) On the procedural aspect, where the basic and material facts are categorically controverted and traversed, the exercise of writ jurisdiction would be inapt and this would be doubly so in the case of a writ of mandamus, which cannot possibly issue on such a slippery base.

(6) Where the petitioners had not come to the portals of a Writ Court with clean hands, they must be relegated to their ordinary remedies.



(7) That Art. 23 of the Constitution is not attracted in a situation of statutory service, where the letter of appointment is forged, fraudulent or illegal.

(8) That the doctrine of equal pay for equal work is not at all attracted to the case.

(9) That Art. 21 of the Constitution or the right of livelihood thereunder has not the remotest analogy to the particular context.

(10) That the *de facto* doctrine of working on a post is distinct and separate and cannot possibly be invoked to sustain any claim for salary *stricto sensu*, where the very appointment thereto is in serious doubt.

46. To finally conclude on the legal aspect the answer to the question posed at the very outset is rendered in the negative and it is held that the public servant is not entitled to a writ of mandamus for the payment of salary to him for any work done in the event of his letter of appointment being forged, fraudulent or illegal.”

12. This view of the Full Bench of the Patna High Court was fully endorsed and affirmed by the Supreme Court in ***R. Vishwanathan Pillai v. State of Kerala and Others*, (2004) 2 SCC 105**, as follows:-

“17. The point was again examined by a Full Bench of the Patna High Court in *Rita Mishra v. Director, Primary Education, Bihar* [AIR 1988 Pat 26 : 1988 Lab IC 907 : 1987 BBCJ 701 (FB)] . The question posed before the Full Bench was whether a public servant was entitled to payment of salary to him for the work done despite the fact that his letter of appointment was forged, fraudulent or illegal. The Full Bench held: (AIR p. 32, para 13)

“13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of the law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow from it.”

18. We agree with the view taken by the Patna High Court in the aforesaid cases.”

13. In ***State of Bihar and Others v. Devendra Sharma*, (2020) 15 SCC 466**, the Supreme Court restated and reaffirmed that the right to salary



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stricto sensu springs from a legal right to validly hold a post for which salary is claimed and is a right consequential to a valid appointment to such post. Therefore, where the very root is non-existent, there cannot subsist a branch in the shape of a claim to salary. It was held that the rights to salary, pension and other service benefits are entirely statutory in nature in public service and once it is found that the very appointment is illegal and *non-est* in the eyes of law, no statutory entitlement for salary or pension and other monetary benefits can arise. Relevant paragraph is as under:-

“36. We do not find any merit in the said argument. A Full Bench of the High Court in Rita Mishra v. Director, Primary Education [Rita Mishra v. Director, Primary Education, 1987 SCC OnLine Pat 159 : AIR 1988 Pat 26 : 1988 Lab IC 907 : 1987 BBCJ 701] while dealing with appointment in the Education Department claiming salary despite the fact that letter of appointment was forged, fraudulent or illegal, declined such claim. It was held that the right to salary stricto sensu springs from a legal right to validly hold the post for which salary is claimed. It is a right consequential to a valid appointment to such post. Therefore, where the very root is non-existent, there cannot subsist a branch thereof in the shape of a claim to salary. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of the law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise.”

14. Recently, in ***Dulu Deka (supra)***, the Supreme Court held that once the appointment of the Appellant was declared illegal and *void-ab-initio* and cancelled by the Respondent, Appellant could not legally continue in service thereafter, unless the cancellation order is set aside. The Supreme Court noted that the Appellant had never challenged the order cancelling her appointment and thus had no legal right to continue in service and no claim for payment of salary could be made for any period. In light of these principles laid down by the Supreme Court and the Full Bench of the Patna



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High Court, there can be no doubt that once the very appointment of the Petitioner was held to be illegal and therefore *void-ab-initio*, she cannot lay a claim to arrears of pay revision under 6th CPC, more so, when the termination order has been accepted by her.

15. Coming to the claim of Gratuity, this Court is of the view that Petitioner is not entitled to the said relief. Section 4 of the Gratuity Act entitles an employee on termination of his employment to claim Gratuity, after he or she has rendered continuous service for not less than five years. Termination is qualified to mean termination of employment on superannuation or retirement or resignation or death or disablement due to accident or disease. 'Employee' has been defined under Section 2(e) to mean any person, (other than an apprentice), who is employed for wages, whether the terms of employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of factory, mine etc. The expression 'employee' therefore can only mean an employee whose appointment is legal and valid and not one whose appointment has been held to be illegal and *void-ab-initio*, for any reason including ineligibility for appointment. The argument of learned counsel for the Petitioner, relying on the judgment of Bombay High Court in *Air India Ltd. (supra)*, is that an employer can forfeit Gratuity under Section 4(6) of the Gratuity Act only in two eventualities: (a) where the services of the employee have been terminated for any act or omission or negligence, causing damage or loss to or destruction of property belonging to the employer to the extent of damage or loss caused; or (b) if the services have been terminated for a riotous or disorderly conduct or any other act of violence or for an act which constitutes an offence involving moral turpitude



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committed in the course of employment. With due respect, I am unable to persuade myself to follow the said view. Gratuity Act is a social welfare legislation and 'Gratuity', as the expression indicates, is a gratuitous payment given to the employee as a kind of financial assistance to tide over post-retiral hardships. In its etymological sense, it is a reward or a gift for service rendered by an employee and the only inevitable conclusion that this Court can reach, upon a conjoint reading of Section 2(e) and Section 4 of the Gratuity Act, is that the legislation envisions payment of Gratuity to an employee legally appointed and Section 4(6) is an enabling provision which empowers the employer to forfeit the Gratuity of a legally and validly appointed employee for his actionable wrong. Moreover, the Supreme Court in *R. Vishwanathan Pillai (supra)*, *Devendra Sharma (supra)* and *Dulu Deka (supra)*, has held in no certain terms that rights to salary, pension and other statutory benefits spring from a valid and legal appointment to the post and once it is found that the very appointment is illegal and *non-est* in the eyes of law, no statutory entitlement for salary or consequential rights of pension etc. can arise and there is no trace of doubt that Gratuity is a statutory benefit arising for the service rendered by an employee, appointed as per the applicable Rules/Regulations.

16. For all the aforesaid reasons, this writ petition is dismissed being devoid of merit. It is, however, made clear that whatever payments have been made to the Petitioner till the date of her termination will not be recovered as a consequence of any finding or observation in this judgment.

JYOTI SINGH, J

AUGUST 13, 2024/B.S. Rohella/shivam