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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 16348/2024**

JAWED SOHAIL

.....Petitioner

Through: Mr. Anuj Aggarwal, Ms. Kritika Matta, Ms. Divya Aggarwal, Mr. Shubham Bahl, Mr. Pradeep Kumar and Ms. Aashna Khan, Advocates.

versus

**SYED ABID HUSSAIN SENIOR SECONDARY SCHOOL
& ORS.**

.....Respondents

Through: Mr. Pritish Sabharwal, Standing Counsel with Ms Shweta Singh, Advocate for JMI. Mr. Yeeshu Jain, ASC with Ms. Jyoti Tyagi and Mr. Hitanshu Mishra, Advocates for DOE.

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+ **W.P.(C) 16364/2024**

ISLAHUDDIN KHAN

.....Petitioner

Through: Mr. Anuj Aggarwal, Ms. Kritika Matta, Ms. Divya Aggarwal, Mr. Shubham Bahl, Mr. Pradeep Kumar and Ms. Aashna Khan, Advocates.

versus

**SYED ABID HUSSAIN SENIOR SECONDARY SCHOOL
& ORS.**

.....Respondents

Through: Mr. Pritish Sabharwal, Standing Counsel with Ms Shweta Singh, Advocate for JMI. Mrs. Avnish Ahlawat, SC with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates for DoE.



CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

ORDER
26.11.2024

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CM APPL. 69008/2024 in W.P.(C) 16348/2024

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CM APPL. 69030/2024 in W.P.(C) 16364/2024

3. Allowed, subject to all just exceptions.
4. Application stands disposed of.

W.P.(C) 16348/2024 & W.P.(C) 16364/2024

5. These writ petitions have been preferred on behalf of the Petitioner under Article 226 of the Constitution of India assailing orders dated 03.09.2024 and 30.08.2024, whereby requests of the Petitioners for payment of gratuity were rejected on the ground that their claims are not covered under the Payment of Gratuity Act, 1972 ('1972 Act'). Direction is sought to the Respondents to release the gratuity and leave encashment due to the Petitioners along with interest @ 18% per annum.

6. Petitioner in W.P.(C) 16348/2024 was appointed as PGT (Political Science) with Respondent No. 1 on 04.11.1991 pursuant to an open advertisement and through the process of interview. Petitioner in W.P.(C) 16364/2024 was appointed as PGT (Commerce) through the process of interview on 08.02.1994 pursuant to an open advertisement. Case of the Petitioners is that the impugned orders rejecting their claims for gratuity are non-speaking and unreasoned orders and not a single reason is disclosed to deny the benefit of gratuity to the Petitioners, save and except, stating that



their cases are not covered under the 1972 Act.

7. It is urged that Petitioners have worked with Respondent No. 1/School for over 20 years uninterruptedly and are entitled to payment of gratuity under Section 4 of the 1972 Act. Relying on the judgment of this Court in ***Janardan Sharma v. GNCT of Delhi Through its Chief Secretary and Others, 2021 SCC OnLine Del 3895***, it is argued that even a contractual employee is entitled to gratuity under the said Act as Petitioners are ‘employees’ within the meaning of Section 2(e) of the 1972 Act. Petitioners have been unlawfully denied the benefit of leave encashment without any basis or justification. It is argued that Respondents are paying leave encashment to employees of other schools which are aided/funded by the UGC and even Jamia Millia Islamia University has been making payments of leave encashment to one set of employees. Petitioners have superannuated and are without any employment and non-payment of gratuity/leave encashment is prejudicing them.

8. Issue notice.

9. Counsels, as above, accept notice on behalf of the respective Respondents.

10. Mr. Sabharwal, learned Standing Counsel for JMI justifies the impugned orders on the ground that the Petitioners have not rendered continuous service as there was a break in service each time their contracts were renewed. Section 4 of the 1972 Act enables payment of gratuity only if the employee has rendered continuous service for not less than 05 years. This submission is strenuously opposed by learned counsel for the Petitioners who submits that Petitioners were appointed after a due process of selection and pursuant to an open advertisement. Their employment was



regular *albeit* the School was treating them as contractual employees and in any case, after the judgment of this Court in ***Janardan Sharma (supra)***, even assuming that Petitioners were contract employees, they will be entitled to gratuity under the 1972 Act.

11. Heard learned counsels for the respective parties.

12. There is merit in the contentions of learned counsel for the Petitioners that the impugned orders are non-speaking and unreasoned. Representations of the Petitioners have been rejected on the sole ground that as per the legal opinion of Chief Legal Advisor, JMI, their request cannot be acceded to as their cases are not covered under the 1972 Act. Importance of passing a reasoned and speaking order cannot be overemphasised. The least that an employee needs to know is the reason that has weighed with an employer for rejecting what he thinks is a legitimate claim. Moreover, it is only when reasons are indicated that the Court while adjudicating the rival claims of the parties to the *lis* will be in a position to test the validity of a decision. The impugned orders are far from speaking orders and therefore, this Court is unable to discern the reason why the cases of the Petitioners are not covered under the 1972 Act.

There is also merit in the contention of the Respondents that after pronouncement of the judgment by this Court in the case of ***Janardan Sharma (supra)***, it is not open to the Respondents to deny the claim of gratuity solely on the ground that Petitioners are contractual employees *albeit* this status of the Petitioners is also disputed by them. In ***Janardan Sharma (supra)***, this Court has examined the definition of the word ‘employee’ under Section 2(e) of the 1972 Act and relying on the judgment of the Supreme Court in ***Birla Institute of Technology v. State of***



Jharkhand and Others, (2019) 4 SCC 513, held that even part time vocational teachers are entitled to gratuity, as the Act does not draw a distinction between a full-time/part time/*ad hoc* employee. Learned counsel for the Petitioners has also placed reliance on the judgments of this Court in W.P. (C) 13761/2022 and others, titled '*Anuradha Seem v. Directorate of Education*', decided on 17.11.2022 and *Irfan Ali and Others v. Urdu Academy and Others, 2023 SCC OnLine Del 3724*.

13. In my considered view, the claims raised by the Petitioners require a re-examination in light of Section 2(e) of 1972 Act read with Section 4 of the said Act as also the judgments in *Janardan Sharma (supra)*, *Anuradha Seem (supra)* and *Irfan Ali (supra)*. Accordingly, without entering into the merits of the cases, writ petitions are disposed of with a direction to Respondents No. 1 and 2 to look into the grievances ventilated by the Petitioners and take a decision in light of the provisions of the Act as well as the judgments aforementioned. Decision shall be taken within eight weeks from the receipt of the order. Needless to state a reasoned and speaking order shall be passed by Respondents No. 1 and 2 which shall be communicated to the Petitioners, who will be at liberty to take recourse to legal remedies in case of surviving grievances.

JYOTI SINGH, J

NOVEMBER 26, 2024/shivam