IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.23716 of 2013
Date of Decision: 17.08.2015

The Managing Committee, Public School Bal Bhawan & ors. … Petitioners

Versus

The Controlling Authority & ors. ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. BK Bagri, Advocate,
for the petitioners.

Mr. J.S. Bedi, Addl. A.G., Haryana.

Mr. S.S. Sekhawat, Advocate,
for respondent No.3.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

Educational institutions were covered by the provisions of the Payment of Gratuity Act, 1972 (for short 'the Act') for the first time by a notification dated 3.4.1997 (Annexure P-10). The notification was challenged before the Supreme Court in **Ahmedabad Private Primary Teachers' Association Vs. Administrative Officer and others,** AIR 2004 SC 1426. The Court viewed the extension of the Act by notification to educational institutions in favour of the managements. The Supreme Court held that the teachers employed in educational institutions do not answer to the description of teachers as employees as defined in section 2 (e) the Act. The Supreme Court interpreted the meaning and definition of Section 2(e) of the Act be in conformity with pari materia definitions of employees in other sister labour legislations. The decision was rendered

on January 13, 2004. The notification dated April 3, 1997 was declared not applicable to teachers.

The third respondent was a teacher in the school run by the management- the petitioner before this Court. She was appointed in the year 1981 and served till she retired on attaining the age of superannuation in the year 2006.

In the aftermath of the judgment *Ahmedabad Private Primary Teachers' Association* case, Parliament stepped in and enacted the Payment of Gratuity (Amendment) Act, 2009 (No. 47 of 2009) which received the assent of the President of India on 31st December 2009. This amendment was made in order to remove the base of the Supreme Court in *Ahmedabad Private Teachers' Association's* case. The definition of employee in Section 2(e) was altered and substituted to read as follows:-

> *"(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."*

However, the amendment was not made retrospective from the date of notification i.e. 3.4.1997. Therefore, persons like the third respondent are deemed to be employees w.e.f. 3.4.1997 with a right to receive the amount of gratuity under the amended Act. There is no

gainsaying that the petitioner has a right to receive gratuity calculated on the basis of service rendered for the period post 3.4.1997 and till she retired on 31.1.2006. Therefore, the third respondent would be entitled to gratuity in terms of the Act w.e.f the date of retrospective amendment and from the date the amended Act come into force on 3.4.1997.

It has been argued before me by the third respondent that she should be held entitled for the period of service rendered from 1981 to 3.4.1997, the service being continuous within the meaning of Sub Section 1 of Section 2 (a) of the Act, that is, the service rendered after retroactive commencement of the Act. Thus, the petitioner is entitled to the entire period of service from 1981 for purposes of determining the amount of gratuity payable. The argument though attractive is not acceptable and fails since the amendment Act has been made operational from 3.4.1997 and not prior thereto. It cannot be forgotten that educational institutions were covered for the first time by the provisions of the Act in 1997, there being no such provision from the inception of the Act in 1972 to 1997. Since the specific rights were created in 1997 for a special class of persons and institutions, the original notification also ran only prospectively but was interpreted by the Supreme Court to exclude teachers from the definition of the term employees in Section 2(e) of the Act. I am therefore unable to agree with the learned counsel for respondent No.3 that his client is entitled to count anything more than gratuity calculated from 3.4.1997.

In the present case, the controlling authority under the Act held that the applicant was entitled to the entire length of service

rendered in the school. In appeal, the decision has been affirmed, against which the management is before this Court in the present writ petition.

Having perused the file and heard the learned counsel for the parties, this Court is of opinion that both the Courts below have erred in granting gratuity for the period prior to 3.4.1997. Continuous service means service rendered after 3.4.1997 as the right has been created for the first time. His right to gratuity prior to 3.4.1997 would not be a pre-existing, accrued or vested right and is therefore not open to award or decree. Any other interpretation would suffer an element of surprise and be onerous and visit a monetary burden on the management they never bargained for during the subsistence of the period of service prior to the applicability of the Act.

Consequently, the appellate order is modified to the extent that the gratuity will be payable only w.e.f. 3.4.1997 and not prior thereto. However, interest will remain payable as ordered @ 12% from 1.2.2006 till actual payment. In case, any amount in excess of the gratuity as now calculated has been paid, it will be adjusted in the final gratuity amount payable under this order to the extent indicated above.

The writ petition is thus partially allowed to the extent indicated above.

17.08.2015 **(RAJIV NARAIN RAINA)**
monika **JUDGE**