

(2013) 07 DEL CK 0189

In the Delhi High Court

Case No : Writ Petition (C) No. 2099 of 2012

Anuradha Gulati

APPELLANT

Vs

Directorate of Education and Another

RESPONDENT

Date of Decision : 09-07-2013

Acts Referred:

Payment of Gratuity Act, 1972 — Section 13A, 4, 4(1)(b), 4(2)

Citation : (2013) 139 FLR 383

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Pranav Sapra and Mr. Susheel Bhartiya, for the Appellant; Sangeeta Sondhi, for R-1, Mr. Anil Aggarwal and Ms. Alpana Pachauri, for R-2, for the Respondent

Judgement

Valmiki J Mehta, J.—This writ petition is filed by one Ms. Anuradha Gulati, who was a teacher in the respondent no. 2-Queen Mary's School. Petitioner resigned from service on 19.8.1997. Petitioner seeks payment of gratuity alongwith the interest. Relief is also claimed for leave encashment. Interest on the unpaid amounts under both heads is also prayed. Payment of gratuity is covered by Section 4 of the Payment of Gratuity Act, 1972. By virtue of Section 4(1)(b) a person who resigns from service is entitled to gratuity. Computation of payment of gratuity is in terms of sub-Section 2 of Section 4 and which states that for each year of service 15 days of last drawn salary will be paid as gratuity. For calculating the period of one year any period served in excess of six months will be taken as one year.

2. It is not disputed that the petitioner worked as a teacher with the respondent no. 2-school for 11 years. Therefore, in terms of Section 4(2) petitioner will be entitled to gratuity of 5 1/2 months of last drawn salary in view of the fact that the petitioner had worked for about 11 years. I cannot agree with the contention of the petitioner that 15 days salary is given for six months of service in view of the circular of the Director of Education dated 30.4.2004 because I do not find

anything in the circular which overrides the statutory provision of Section 4(2) of the Payment of Gratuity Act, 1972. Also, a mere circular by a Government department cannot override a specific statutory provision.

3. I may note that I have had an occasion to consider the aspect of payment of gratuity to school employees in the judgment in the case of Deepak Dua Vs. Directorate of Education & Anr. WP(C) No. 7040/2011 decided on 10.4.2013. In this judgment I have referred to various circulars of the Directorate of Education and the provision of Section 13A which was brought in by the amending Act of 2009 in Payment of Gratuity Act, 1972. This Section 13A clarifies that gratuity did in fact become payable to school employees w.e.f. 3.4.1997.

4. After this writ petition was filed, petitioner has been paid the gratuity equal to 5 1/2 months of salary. Petitioner therefore stands paid the gratuity amount. The only issue remains is that whether petitioner should be entitled to interest. In my opinion, payment of gratuity is not a favour done or bounty given to an employee. Gratuity is paid and payable immediately on retirement as a right for the service rendered to an employer. If the departments delay payment of gratuity, for whatever reasons, an employee cannot be denied interest for the delayed period.

5. In the present case, since gratuity to the petitioner became due after 3.4.1997 because the petitioner resigned on 19.8.1997, petitioner will be entitled to interest at the rate of 7 1/2% per annum simple from 19.8.1997 till 15.07.2012 when the payment of gratuity was made to the petitioner during the pendency.

6. Leave encashment amount has also been paid to the petitioner during the pendency of this petition. In my opinion, so far as leave encashment is concerned, I am not inclined to agree to grant any interest to the petitioner for the reason that I find that the first written communication by petitioner to the authorities is only in the year 2010 viz on 5.1.2010. Leave encashment amount is also only of Rs. 6,422/- and considering all the facts of the case I am not inclined to grant interest on the said amount.

7. I may note that there is inter se lethargy between the Director of Education and school but the inter se lethargy cannot result any delay in payment of gratuity to an employee. Accordingly, the writ petition is allowed and disposed of by granting the petitioner interest on gratuity as stated above and holding the petitioner entitled to interest at 7 1/2% per annum from 19.8.1997 to 15.07.2012. Interest will be paid by the respondents jointly and severally to the extent that 95% will be paid by the Director of Education and 5% by the respondent no. 2-school. I note that the respondent no. 2-school is a government aided school and therefore 95% of the aid is being disbursed by the respondent no. 1 to the respondent no. 2. Parties are left to bear their own costs.