
(2013) 04 DEL CK 0003
In the Delhi High Court
Case No : W.P. (C) No. 7040/2011

Deepak Dua

APPELLANT

Vs

Directorate of Education and Another

RESPONDENT

Date of Decision : 10-04-2013

Acts Referred:

Citation : (2013) 04 DEL CK 0003

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—This writ petition is filed by the petitioner Sh. Deepak Dua claiming the relief of payment of gratuity alongwith interest by his employer/school/respondent no. 2-Salwan Public School. The facts of the case are that the petitioner joined the respondent no. 2-school in the post of Trainee Teacher on 2.8.1999. The petitioner was confirmed at the post of PGT (Mathematics) on 2.8.2000 on successful completion of probation with the respondent no. 2-school. Petitioner resigned from his service w.e.f. 15.7.2009. Since the gratuity as claimed by the petitioner on leaving of his job was not paid, the present petition came to be filed.

2. Counsel for the petitioner has drawn my attention to a very recent circular dated 28.3.2013 passed by the Directorate of Education of the Government of NCT of Delhi. This circular reads as under:-

GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI

DIRECTORATE OF EDUCATION

(ACT-I BRANCH)

OLD SECTT: Delhi-54

NO. DE 15(167)/Act-I/Gratuity/2013 7976-83 Dated: 28/03/13

CIRCULAR

It has come to the notice of the Directorate of Education that some of the schools are not paying Gratuity to their teachers according to instructions given vide this office Circular NO. DE/15(29)/Act/Orders/2008/5144-5161 dated 25-06-2008.

In this regard, attention of all the unaided recognized schools is hereby invited towards the provision of Section 13A of Payment of Gratuity (Amendment) Act, 2009 regarding validation of payment of gratuity and Section 4 of Act 39 of the Payment of Gratuity (Amendment) Act, 2010 which say as under:

Notwithstanding anything contained in any judgment, decree or order of any Court during 3rd April, 1997 of 31st December, 2009, the Gratuity shall be payable to employees of the educational institutions as if the Payment of Gratuity(Amendment) Act 2009 had been in force at all material times and the gratuity shall be payable accordingly.

Section 4 of Act 39 of the Payment of Gratuity (Amendment) Act, 2010 (15 of 2010) vide Notification dated 17th May, 2010 has enhanced the maximum limit of the gratuity to Rs. Ten Lakhs w.e.f. 24th May, 2010.

Hence, Management Committee of all the unaided recognized schools are hereby once again directed to make payment of terminal benefits including gratuity to their employees strictly as per guidelines issued vide this office circular dated 25-06-2008 keeping in view of Section 13A of Payment of Gratuity (Amendment) Act, 2009 regarding validation of payment of gratuity and Section 4 of Act 39 of the Payment of Gratuity (Amendment) Act, 2010.

This issues with the prior approval of the competent authority.

Sd/-

3. Counsel for the petitioner has also drawn my attention to the notification dated 3.4.1997 of the Ministry of Labour and Employment extending the Applicability of Payment of Gratuity Act, 1972 to Educational Institutions, and which power was exercised as per Section 1(3)(c) of the Payment of Gratuity Act, 1972. This notification reads as under;-

In exercise of the powers conferred by clause (c) of sub-section (3) of section 1 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies the educational institutions in which ten or more persons are employed, or were employed, on any day of the preceding 12 months, as a class of establishments to which the said Act shall apply with effect from the date of publication of this notification.

Provided that nothing contained in this notification shall affect the operation of the Notification of the Ministry of Labour, No. S.O. 239, dated 8th January, 1982.

4. It is Section 13A of the Payment of Gratuity Act, 1972, which directs validation of payment of gratuity, for the sake of convenience hence Section 13A of the

Payment of Gratuity Act, 1972 is reproduced below:-

13A. Validation of payment of gratuity.-Notwithstanding anything contained in any judgment, decree or order of any court, for the period commencing on and from the 3rd day of April, 1997 and ending on the day on which the Payment of Gratuity (Amendment) Act, 2009 (47 of 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 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.

5. In view of the provision of Section 13A read with the notification dated 3.4.1997 of the Ministry of Labour and the circular of the Directorate of Education dated 28.3.2013, it cannot be disputed that the respondent no. 2-school will be bound to pay gratuity to the petitioner under the Payment of Gratuity Act, 1972 for the service which was rendered by the petitioner in the respondent no. 2-school.

6. Accordingly, this writ petition is allowed and the respondent no. 2 is directed to calculate the gratuity payable to the petitioner for the service rendered by the petitioner in the respondent no. 2-school within a period of four weeks from today. This calculation be communicated to the petitioner through counsel and who will give response to calculations if there are objections to the same, within a period of two weeks thereafter. The amount which is payable in law to the petitioner be paid by the respondent no. 2-school within a period of three months from today. Petitioner will be entitled to interest at 9% per annum simple for the period for which the present petition was pending and for further period of three months from today in which the total amount due to the petitioner be paid. In case the entire arrears alongwith interest are not paid within a period of three months from today, the petitioner will be entitled to interest thereafter at 12% per annum simple. The writ petition is allowed and disposed of accordingly, leaving the parties to bear their own costs.