
(2008) 09 GAU CK 0039
In the Gauhati High Court
Case No : Writ Petition (C) No. 5331 of 2003

Dr. Muhibul Islam

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

Assam Aided Colleges (Under Deficit System) Employees Gratuity Rules, 1972 — Rule 3(1), 3(4)

Citation : (2009) 2 GLR 672 : (2009) 1 GLT 359

Hon'ble Judges : Jasti Chelameswar, C.J.;Hrishikesh Roy, J

Bench : Division Bench

Advocate : G.N. Sahewalla, A.K. Goswami, P. Bora, Md. Islam and B. Sharma, for the Appellant; V.M. Thomas, for the Respondent

Final Decision : Dismissed

Judgement

Hrishikesh Roy, J.—Heard Mr. G.N. Sahewalla, learned senior Counsel appearing for the Petitioner, Mr. V.M. Thomas, learned Govt. Advocate appears for the Respondents.

2. The Petitioner, who served as a Lecturer of Sivasagar College, Joysagar for about 23 years and resigned from his post to join as a Reader of Dibrugarh University, is before this Court to challenge the order dated 5.9.2000 whereby his claim for gratuity for the service rendered as a lecturer in the said govt. aided college was denied to the writ Petitioner under the provisions of the "Assam Aided Colleges (under deficit system) Employees Gratuity Rules, 1972 ("the Gratuity Rules")".

3. Under Rule 3(1) of the Gratuity rules, a confirmed employee on completion of five years of service is eligible to payment of gratuity on his superannuation, retirement or discharge as a result of retrenchment from service.

However under Sub-rule (4) of Rule 3, no gratuity is payable on discontinuance of service by resignation or dismissal or removal.

4. It is contended on behalf of the writ Petitioner that under the Payment of Gratuity Act, 1972, no provision has been made for denial of gratuity to an employee who is otherwise eligible, on resignation tendered by such employee. By referring to the provisions of Gratuity Act, it is contended by Mr. Sahewalla that denial of gratuity to a Lecturer who has resigned from his service, notwithstanding 23 years of regular service rendered by him, would be arbitrary and such denial is not legally permissible.

5. It appears that specific rules have been notified to make available the benefit of gratuity to College employees serving in aided Colleges of Assam and obviously payment of gratuity is to be considered in light of the rules enacted for the purpose. The rules itself provide that in case of resignation, dismissal or removal etc. no gratuity shall be paid whereas gratuity would be payable to an eligible person who ceases to be an employee on his superannuation, retirement or discharge as a result of retrenchment.

6. The money payable towards gratuity is to be incurred by the employer and there is no financial contribution of the employee towards payment of gratuity. Obviously the benefit of gratuity is given for committed service rendered by an employee and when an employee's services get discontinued because of resignation, dismissal or removal, the service relationship between the employee and the employer ceases on account of the act of the employee and not because of any natural process of reaching the age of superannuation or because of some compulsion of the employer leading to retrenchment of the employee.

7. Therefore, there is a distinct difference between the employee who ceases to be in service on account of superannuation or retrenchment and an employee who ceases to be in service on account of resignation or dismissal/removal. In the later case the employer does not receive committed service from the employee. Therefore, the denial of gratuity to the Petitioner who ceases to be an employee because of resignation tendered by him, cannot be said to be a discriminatory act, vis-a-vis, otherwise eligible employee who does not voluntarily give up their services.

8. The Govt. of Assam has also enacted specific Rules to provide the benefit of gratuity and the bar place through provisions of Rule 3(4) of the Gratuity rules, in our view cannot be considered to be arbitrary and discriminatory. A separate class of employees like the Petitioner who would not be entitled to benefit of gratuity has been envisaged under Rule 3(4) of the Gratuity rules and since this class of employee cannot be considered to be at par with those employees under Rule 3(1) of the Gratuity rules, even the provisions of the rules cannot be considered to be discriminatory and arbitrary.

9. In view of above, we find no merit in the instant writ petition and the same is accordingly dismissed.