
(2015) 05 DEL CK 0059

In the Delhi High Court

Case No : Writ Petition (C) No. 6868 of 2012

Shashi Sharma and Others

APPELLANT

Vs

Doon Public School and Others

RESPONDENT

Date of Decision : 21-05-2015

Acts Referred:

Delhi School Education Act, 1973 — Section 10(1), 7
Payment of Gratuity Act, 1972 — Section 13A, 7

Citation : (2015) 05 DEL CK 0059

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : K.P. Gupta, for the Appellant; Rakesh Tikku, Sr. Adv., Manoj V. George and Aakarsh Kamra, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Valmiki J. Mehta, J.

CM No. 8128/2015 (delay of 485 days)

For the reasons stated in the application, delay is condoned.

CM stands disposed of.

Review Petition No. 252/2015

1. This review petition is filed seeking review of the judgment dated 13.11.2013 passed in W.P.(C) No. 6868/2012. The writ petition was filed by five petitioners who were teachers in the respondent No. 1/School/Doon Public School. The claim of the petitioners was predicated on Section 10(1) of the Delhi School Education Act and Rules, 1973 (DSEAR, 1973) and which provision is specifically referred to in para 5 of the writ petition. Petitioners in the writ petition in terms of Section 10(1) of the DSEAR, 1973 sought various reliefs in the form of monetary allowances/payments which have to be made to the petitioners as teachers of the respondent No. 1/School.

2. By the judgment dated 13.11.2013, the writ petition was allowed holding that respondent No. 1/School is liable to pay the monetary emoluments including gratuity. Gratuity was held to be payable in view of the decision in the case of Deepak Dua Vs. Directorate of Education and Anr in W.P.(C) 7040/2011 decided on 10.4.2013.

3. After allowing the writ petition, with respect to calculations of all the amounts claimed by the petitioners, since this was a detailed administrative exercise with the requirement of looking into bulky records of the respondent No. 1/School, this task was specifically cast upon the Director of Education in terms of paras 6 and 7 of the judgment dated 13.11.2013.

4. At this stage, I would like to refer to para 3 of the judgment dated 13.11.2013 and especially the last line thereof, inasmuch as, the arguments in the review petition only turn upon the aspect of liability of payment of gratuity, what amount, what period, and how and which manner the amounts of gratuity payable would be enforceable in favour of the petitioners in the writ petition. Para 3 of the judgment reads as under:-

"3. With respect to entitlement of payment of gratuity to the petitioners the issue is covered by the judgment passed by this Court in the case of Deepak Dua Vs. Directorate of Education and Anr. in WPC 7040/2011 decided on 10.4.2013 which states that Payment of Gratuity Act, 1972 (hereinafter referred to as "the Act") applies to schools and all employees of schools have to get gratuity as per the Act when their services with the school comes to an end. Gratuity would be payable for the period of services and of the amounts as stated in the Act."

(underlining added)

5. A reading of the last line of para 3 makes it clear that gratuity was held to be payable for the entire period of services of the petitioners, and which periods of services have been reproduced in para 1 of the judgment dated 13.11.2013. The period of services of the petitioners with the respondent No. 1/School can be broken up into two parts. First is up to the date of applicability of the Payment of Gratuity Act, 1972 and second part would be after the date of applicability of the Payment of Gratuity Act, 1972.

6. It is an undisputed fact, and a matter of legislative record, that payment of gratuity under the 1972 Act with respect to educational institutions is w.e.f 3.4.1997. Any doubt in this regard to the date of applicability of the Payment of Gratuity Act, 1972 to educational institutions was removed by Section 13A of the Payment of Gratuity Act, 1972 which was brought in by Act 47 of 2009 with retrospective effect from 3.4.1997.

7. On behalf of the review petitioner, two aspects were addressed before this Court. First aspect is the argument of lack of liability of the review petitioner/respondent No. 1/School for payment of gratuity prior to 3.4.1997 on the ground that there was no specific provision for payment of gratuity to employees of

schools in Delhi and Section 10(1) of the DSEAR, 1973 should not be read as fastening liability or creating liability on the schools in Delhi for payment of gratuity prior to 3.4.1997. Post 3.4.1997, i.e post applicability of the Payment of Gratuity Act 1972, it is argued that the amount of gratuity which would be calculated by the Director of Education pursuant to the judgment of this Court dated 13.11.2013 should necessarily be held not to be final in view of Section 7 of the Payment of Gratuity Act, 1972 and which provides the entire mechanism including stating that which is the competent authority which finally decides what is the amount which would be payable to a person in terms of the said 1972 Act.

8. So far as the first argument urged on behalf of the review petitioner/respondent No. 1/School is concerned, that prior to 3.4.1997 when the 1972 Act became applicable the employees of schools should not get gratuity, this argument would merit rejection at the threshold itself in view of the categorical and direct language of Section 10(1) of the DSEAR, 1973. This provision in so many words provides that employees of private schools, whether aided or unaided, would have to at least be paid those monetary emoluments which are payable to employees of government schools, and since government schools were being paid gratuity in terms of the CCS Pension Rules, 1972 before 3.4.1997, there cannot be any doubt that employees of private schools in Delhi till 3.4.1997 would be entitled to gratuity in view of Section 10(1) of the DSEAR, 1973. In fact, the entire writ petition so far as the monetary dues are concerned, was predicated on Section 10(1) of the DSEAR, 1973 Act and was accordingly allowed. Therefore, no review is called for of the judgment dated 13.11.2013, inasmuch as, rights of the petitioners for payment of gratuity prior to 3.4.1997 are concerned, such rights are available to petitioners prior to 3.4.1997 as per Section 10(1) of the DSEAR, 1973. Of course, to conclude I must state that if either of the parties is dissatisfied with the calculation of the amount which is done by the Director of Education pursuant to the judgment dated 13.11.2013, it will always be open to any of the parties to question the decision of the Director of Education in appropriate proceedings.

9. So far as the period post 3.4.1997 is concerned, the payment of gratuity under the 1972 Act clearly applies. Once the 1972 Act applies, all its provisions, including Section 7, will come into play. Section 7 of the 1972 Act contains the aspect that if any dispute arises as to amount which is to be paid because of the 1972 Act, the decision with respect to the dispute will have to be taken by the competent authority acting under Section 7 of the 1972 Act.

10. Therefore, direction by this Court in terms of the judgment dated 13.11.2013 to the Director of Education to calculate the amount of gratuity post 3.4.1997 will really be only an administrative exercise in view of the bulky record which was required to be referred to in order to determine the amounts of gratuity which were to be payable to the petitioners, and which exercise actually could also have been done by the review petitioner/respondent No. 1/School, however, the Director of Education being a neutral authority, the calculation of the amounts

administratively was directed to be done by the Director of Education. Calculation of the amounts administratively, to be done by the Director of Education, was not meant to be and cannot be in substitution or in exercise of the powers of the competent authority under Section 7 of the 1972 Act, inasmuch as, once the statute provides a particular authority to exercise a particular power, this Court could not have directed that the decision of the Director of Education on the issue of amount of payment of gratuity would be taken as final and that the review petitioner/respondent No. 1/School was prevented from exercising its right under Section 7 of the 1972 Act. Therefore, the last line of para 3 of the judgment dated 13.11.2013 becomes relevant because last nine words of this para 3 makes it clear that liability of review petitioner is only for the amounts as stated in the 1972 Act i.e if there are disputes raised on any count by the review petitioner/respondent No. 1/School with respect to payments of amounts which are so decided by the Director of Education, then finality with respect to the amount, including the dispute as to the period for which the gratuity would be payable, will only be final only on so being decided by the competent authority under Section 7 of the Payment of Gratuity Act, 1972.

11. The review petition is accordingly disposed of with the aforesaid clarifications and observations.