

(2010) 08 DEL CK 0297

In the Delhi High Court

Case No : Writ Petition (C) No. 8069 of 2008

Smt. Mridul Sharma

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 26(1), 49, 49(1)
Constitution of India, 1950 — Article 226, 227
Delhi School Education Act, 1973 — Section 10, 10(1)
Delhi School Education Rules, 1973 — Rule 73(3)
Payment of Gratuity Act, 1972 — Section 14, 4, 7, 7(3)

Citation : (2010) 08 DEL CK 0297

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : S.K. Shukla, for the Appellant; Purnima Maheshwari, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Singh, J.—The present writ petition has been filed by the petitioner under Articles 226 and 227 of the Constitution of India praying for a writ of Mandamus or directions to the respondents to pay gratuity to the petitioner and to issue order/ direction (s) to pay the compound interest @ 12% from 17.11.2000 till the actual date of payment.

2. The brief facts of the case are that the petitioner was appointed as a TGT (Science), trained graduate teacher at the Satya Wati Sood Girls Sr. Sec School Nizamuddin East, New Delhi on 27.02.1989 and thereafter from 01.06.1999 to 30.06.2001 attended service training programs from time to time. In the year 2002, her husband was posted out of Delhi and therefore to be with her family she took E.O.L (Extra Ordinary Leave without pay) from 01.04.2002 to 16.11.2004 although her leave was granted upto 31.03.2005. The petitioner on the insistence of the Principal submitted her resignation on 17.11.2004 in which she had clearly written as under:

I am enclosing my claim for pension and retirement benefits in triplicate for necessary action

3. Vide letter No. SA/98/1/2005/366 dated 15.12.2005 the petitioner was directed to deposit three months notice period salary with the resignation letter. Complying with these instruction the petitioner deposited Rs. 34,500/- (Rupees Thirty four thousand and five hundred only) in the State Bank of India R.K. Puram, New Delhi vide challan No. 3 on 22.05.2006. As per the petitioner, she contacted the respondent No. 4 many times over the phone and also personally while she was in Delhi for to get her Provident Fund and Retirement benefits released but she did not get any response. Her last representation dated 05.06.2007 was sent to all the respondents on their official address by speed post but still there was no response from the respondents.

4. The petitioner on 26.07.2007 filed an appeal in Delhi School Tribunal bearing Appeal No. 25/2007 and on 03.09.2007 received an Account Payee cheque of Rs. 1,24,260.60p/- on account of final withdrawal of her Provident Fund. The appeal filed before Delhi School Tribunal was withdrawn in view of the judgment in the case of Sonica Jaggi Vs. Lt. Governor and Others, wherein it was observed as under:

It is nowhere suggested in the Kathuria Public School case that the fixation of salary can be subject matter of an appeal before the Tribunal.

5. The petitioner filed the present writ petition requesting for directions to be issued to the respondents for payment of her gratuity in terms of Section 10(1) of Delhi School Education Act, 1973 and in terms of Notification dated 15.10.1975 passed by the Administrator, Union Territory of Delhi.

6. It is not in dispute that the claim raised by the petitioner in the petition is for grant of gratuity. On this aspect, in the case of Ahmedabad Pvt. Primary Teachers" Association Vs. Administrative Officer and Others, the Apex Court of India in para 26 has observed as under:

26. Our conclusion should not be misunderstood that teachers although engaged in very noble profession of educating our young generation should not be given any gratuity benefit. There are already in several States separate statutes, rules and regulations granting gratuity benefits to teachers in educational institutions which are more or less beneficial than the gratuity benefits provided under the Act. It is for the Legislature to take cognizance of situation of such teachers in various establishments where gratuity benefits are not available and think of a separate legislation for them in this regard. That is the subject matter solely of the Legislature to consider and decide.

7. Section 10(1) of Delhi Education Act, 1973 reads as under:

10 salaries of Employees-

(i) the scales of pay and allowance, medical facilities, pension gratuity, provident

fund and other prescribed benefits of the employees of a recognize private school shall not be less than those of the employees of the corresponding status in school run by the Appropriate Authority.

Rule 73(3) of the Delhi School Education Rules reads as under:

73(3) The recurring maintenance grants are:

- (a) Staff grant
- (b) Provident Fund grant
- (c) Pension and retirement benefit grant...

8. Vide order No. 29352995 dated 30.04.04 the Director of Education Govt. of NCT Delhi issued clarification regarding the payment of gratuity on resignation and observed that the provisions of Payment of Gratuity Act, 1972 are applicable to Educational institutions as well as in accordance with Proviso of Section 10(1) of the Delhi Education Act, 1973 and Rule 49(i) of the CCS Pension Rules.

9. The relevant provisions of the payment of Gratuity Act 1972 are:

Section 4(i) Gratuity shall be payable to an employee on the termination of his employment after he had rendered continuo service for not less than five years.

- (a) On his superannuation or
- (b) On his retirement or resignation or

Section 7(3) The employer shall arrange to pay the amount of Gratuity within the thirty days from the date it becomes payable to the person to whom gratuity is payable.

10. In the Counter Affidavit filed by the respondent Nos.1 & 2 it is submitted that as per the Rule 26(1), CCS Pension Rules 1972 the person forfeits her part of service on resignation. The rule reads as under:

26. Forfeiture of Service on Resignation:

(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails the forfeiture of past services.

11. According to the respondents, since the petitioner has resigned from the service on her own she has forfeited her right of past service and therefore, is not entitled to pension, gratuity or terminal benefits.

12. In regard to the gratuity benefit, the notification No. F.4(56)/74 Accts. dated 17.10.1975 was issued by the Education Department, Delhi Administration which made the provisions of the payment of Gratuity Act, 1972 applicable to the educational institution as well as in accordance with proviso of Sub-section (1) of Section 10 of the Delhi School Education Act, 1973 and Rule 49(1) of CCS

Pension Rules. Admittedly, the petitioner was an employee of Satyawati Sood Arya Girls Sr. S. School, Nizamuddin (East), New Delhi which is a government aided school. She was neither a government servant nor a public servant. The provisions of Central Civil Services Pension Rules 1972 are not applicable to the petitioner. The petitioner has challenged the non-payment of gratuity u/s 10 of the Act and on the basis of notification dated 17.10.1975 as referred above. Sections 4, 7 and 14 of the Gratuity Act 1972 are very clear on this aspect. The counter affidavit filed by respondent Nos. 1 and 2 has no force in law. Even during the course of arguments no valid argument has been addressed by the learned Counsel for the respondent Nos. 1 and 2 in order to meet the solution for the petitioner. Under these circumstances it is very clear that the petitioner is entitled for the relief claimed in the petition. The writ petition is accordingly allowed.

13. The respondent Nos. 1 and 2 are directed to release the gratuity for the period from 27.02.1989 to 17.11.2004 along with interest at the rate of 8% p.a. from 18.12.2004 till the date of actual payment to be made by the respondents. The said payment be made directly to the petitioner.

14. No order as to costs.