
(2019) 04 P&H CK 0199

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 192 Of 2016 (O&M)

Sneh Dhingra

APPELLANT

Vs

Managing Committee Public School Bal Bhawan And Ors

RESPONDENT

Date of Decision : 02-04-2019

Acts Referred:

Limitation Act, 1963 — Section 5

Payment Of Gratuity (Amendment) Act, 2009 — Section 2(e)

Citation : (2019) 04 P&H CK 0199

Hon'ble Judges : Ajay Kumar Mittal, J;manjari Nehru Kaul, J

Bench : Division Bench

Advocate : Ram Niwas Sharma, Randhir Singh

Final Decision : Dismissed

Judgement

1. This is an application under Section 5 of Limitation Act for condoning the delay of 105 days in filing the appeal.

After hearing learned counsel for the parties and perusing the application, which is duly supported by an affidavit of the appellant, delay of 105 days in filing the appeal is condoned.

CM stands disposed of.

Main case

In this intra court appeal filed under Clause X of Letters Patent, the appellant has assailed the order dated 17.08.2015 vide which learned Single Judge partly allowed the writ petition by modifying the order dated 10.07.2013 passed by the Appellate Authority to the extent that the gratuity would be payable to the appellant w.e.f. 03.04.1997 and not prior thereto.

2. It would be pertinent to notice the sequence of events leading to the filing of the instant appeal.

3. The appellant was appointed as Social Science Mistress by respondent No.1 on 22.08.1981 and she served as such till 31.01.2006, when she attained the age of superannuation. After her retirement, she moved an application before the Controlling Authority under Payment of Gratuity Act, 1972 (for short 'the Act') for granting her gratuity for the total service period of 24 years i.e. from the date of her appointment till the date of her superannuation. The Controlling Authority vide order dated 29.07.2012 (Annexure P-11) directed the respondents to pay a sum of ` 1,60,712/- as Gratuity along with interest @ 12% per annum for the entire length of service rendered by her. Aggrieved by the said order, respondent No.1 - Managing Committee preferred an appeal before the Appellate Authority under the Act. However, the Appellate Authority vide order dated 10.07.2013 (Annexure P-13) affirmed the findings recorded by the learned Controlling Authority. It was in this background that respondent No.1- Managing Committee approached this Court by way of filing CWP No.23716 of 2013 by pleading that the teachers were not covered under the Act as per clause (e) of Section 2 and the judgment of Apex Court rendered in Ahmedabad Pvt. Primary Teachers Association vs. Administrative Officer and others, AIR 2004 SC 1426.

4. Learned Single Judge vide order dated 17.08.2015 partly allowed the writ petition by observing as under:

"Having perused the file and heard the learned counsel for the parties, this Court is of opinion that both the Courts below have erred in granting gratuity for the period prior to 3.4.1997. Continuous service means service rendered after 3.4.1997 as the right has been created for the first time. His right to gratuity prior to 3.4.1997 would not be a preexisting, accrued or vested right and is therefore not open to award or decree. Any other interpretation would suffer an element of surprise and be onerous and visit a monetary burden on the management they never bargained for during the subsistence of the period of service prior to the applicability of the Act. Consequently, the appellate order is modified to the extent that the gratuity will be payable only w.e.f. 3.4.1997 and not prior thereto.

However, interest will remain payable as ordered @ 12% from 1.2.2006 till actual payment. In case, any amount in excess of the gratuity as now calculated has been paid, it will be adjusted in the final gratuity amount payable under this order to the extent indicated above."

5. Feeling aggrieved, the present appeal has been filed by the appellant.

6. Learned counsel for the appellant submitted that the learned Single Judge had erred in misinterpreting The Payment of Gratuity (Amendment) Act, 2009 (Annexure P-14) made effective from 3rd of April, 1997 as well as Notification dated 03.04.1997 (Annexure P-10) by restricting the Gratuity from 03.04.1997 to 31.01.2006. He submitted that the whole service of 24 years rendered by the appellant should have been reckoned for determining the Gratuity amount. He therefore, prayed that the order passed by the learned Single Judge be modified

accordingly. Learned counsel for the appellant in support of his submissions has placed reliance on the judgment of this Court in Kundan Lal Narang, Octroi Superintendent, Yamunanagar vs. State of Haryana & another, 1987 (1) RSC 337.

7. We have heard learned counsel for the parties and perused the material available on record with their assistance.

8. We are of the considered opinion that the prayer of the appellant that she be granted Gratuity for the entire service period of 24 years cannot be acceded to. The appellant would stand entitled to receive Gratuity only w.e.f. 03.04.1997 i.e. when the Amendment Act came into operation and not since the date of her joining the service i.e. 22.08.1981 because educational institutions were covered only for the first time by the provisions of the Act and notification Annexure P-10 effective from 1997 and not prior thereto as there was no such provision to grant Gratuity to the teachers earlier.

9. It would be relevant to notice that the Parliament enacted the Payment of Gratuity (Amendment) Act, 2009 (No.47 of 2009) wherein the definition of an "employee" in Section 2(e) of the Act was altered and substituted to remove the base of the Supreme Court, in the judgment of Ahmedabad Pvt. Primary Teachers' Association's case(supra). The amendment so made in Section 2(e) of the Act was made applicable from 03.04.1997 only. However, in so far as judgment in Kundan Lal Narang's case(supra) is concerned on which reliance has been placed by learned counsel for the appellant, it may be noticed that the issue therein was different and Annexures P-10 and P-14 were not under consideration as they did not exist then.

10. In view of the discussion made, no ground for interference is made out in the order passed by learned Single Judge. Accordingly, the present appeal is dismissed.