

**(2003) 04 AP CK 0079**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 20418 of 1995**

Sushila Thomas

APPELLANT

Vs

H.M.T. Welfare and Cultural Organisation and Others

RESPONDENT

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**Date of Decision : 10-04-2003**

**Acts Referred:**

Andhra Pradesh Education Act, 1982 — Section 20, 33E  
Andhra Pradesh Registered Schools (Establishment, Recognition, Registration and Regulation) Rules, 1987 — Rule 15

**Citation : (2003) 3 ALD 574 : (2003) 4 ALT 432**

**Hon'ble Judges : C.V. Ramulu, J**

**Bench : Single Bench**

**Advocate : P.B. Vijay Kumar, for the Appellant; K. Chinna Babu and K. Sreekala, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

C.V. Ramulu, J.—This writ petition is filed seeking a Mandamus directing the respondents to pay gratuity and other terminal benefits with interest at 24% per annum from the date of retirement of the petitioner.

2. According to the petitioner, she worked in the 2nd respondent-School from 8-10-1973 to 27-3-1994. At the time of her appointment, the Management had undertaken to extend her all the benefits available under the State Government Rules. The 2nd respondent-school is managed and run by the 3rd respondent, which is a public sector undertaking. The entire expenditure of the school is borne by the 3rd respondent alone. She retired on attaining age of superannuation on 27-3-1994. She was paid all the terminal benefits on her retirement, but not gratuity. According to her, the teachers working in the Government schools and all the recognised schools are entitled for gratuity. She made representation to the Management requesting them to pay the gratuity. However, all her efforts went in vain. She also sent a registered notice to Respondents 1 and 2. The Management gave a very evasive reply, which is not

tenable. Teachers subsequently retired in the very same school have been paid pension besides gratuity. The respondents having extracted the work from her are not justified in denying the gratuity. Gratuity is the vested right of an employee and is not a bounty or charity. She is eligible to receive gratuity from the respondent-School on her retirement.

3. As seen from the reply notice dated 10-3-1995 given by the 1st respondent, the school has not admitted nor agreed to extend the benefits under the State Government Rules as alleged by the petitioner in her notice. There is no obligation on the part of the respondents to pay gratuity to all the retired employees nor there are any instructions in this regard issued by the Government to the school as alleged by her. Further, there is no provision for payment of gratuity and the petitioner is neither eligible nor entitled to make any claim at this distance of time. She was fully aware of the rule position in this regard and thus the 1st respondent acting illegally or arbitrarily does not arise. Further, the question of paying any interest much less at the rate of 24% per annum does not arise.

4. No counter-affidavit has been filed on behalf of the 1st respondent, though appearance is made. Insofar as respondents 2 to 4 are concerned, though notices were served, no representation is made nor is there any appearance on their behalf.

5. The petitioner has placed her confirmation of appointment order dated 12-3-1975 to show that she is eligible for other allowances as admissible under the State Government Rules in the grade of Rs. 96-6-144-8-200 subject to certain conditions enumerated therein. Further, it is stated that the school is registered under the Andhra Pradesh Education Act (for short "the Act") and the Rules governing the payment of gratuity are also enumerated separately for the private registered and unaided schools and as such, she is entitled for gratuity as per those Rules. Further, the Counsel for the petitioner stated that even for the Teachers working in the Private Management Schools also the Payment of Gratuity Act, 1972 is applicable, apart from being governed by the rules made under the Act. In this regard, the learned Counsel for the petitioner placed reliance on a judgment reported in Tara Chand Chokdayat and Others Vs. State of Rajasthan and Another, wherein it is categorically held that the Teachers in educational institutions receiving grant-in-aid are entitled to gratuity as contemplated under the Payment of Gratuity Act, 1972 itself. Thus arguing for the petitioner, learned Counsel stated that either way the petitioner is entitled for gratuity on her retirement as per the services rendered by her in the 2nd respondent-School. The petitioner also placed reliance on a Governmental Order issued by the Government of Andhra Pradesh in G.O.(P)No. 234, Finance and Planning (FW.Pen-I) Department, dated 1-6-1993 showing the procedure for fixing of quantum of gratuity.

6. This Court need not go into those details. The only aspect which needs to be examined is whether the petitioner as a Teacher of a private unaided and

registered school is entitled to claim gratuity either under the Payment of Gratuity Act, 1972 or under the A.P. Education Act and the Rules made thereunder. Rule 18 of the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules, 1993, which is relevant for this case reads as under:

"18. Criteria for fixing fee structure and allocation of revenue earned as fee :--

(1) .....

(2).....

(3).....;

(4) The fees collected from the students shall be allocated as to meet the following requirements:

(a) to (d).....

(e) 15% of the fees collected shall be earmarked as management's contribution towards staff benefits like Gratuity, Teachers Provident Fund, Group Insurance Scheme etc.

7. From the above rule, it is clear that out of the fees collected from the students, 15% shall be earmarked as management's contribution towards staff benefits like gratuity etc. Apart from that, the respondent-Management being an educational institution, is cast upon certain/statutory duties to be followed under the rules and regulations framed by the Government of Andhra Pradesh. The respondent-institution may not be treated as an institution on par with Governmental educational institution functioning under the State of Andhra Pradesh for the purpose of pension etc., but the petitioner is definitely, entitled for the gratuity, as, as stated above, there is a duty cast on the management, under Rule 18 to earmark 15% out of the fee collected towards the contribution of the management, for the purpose of payment of gratuity etc.

8. In fact, various provisions of the A.P. Education Act and the Rules made thereunder obligate every recognised school to follow certain conditions as mandatory for its registration. It is necessary to extract Sections 20 and 33E of the Act, which read thus.

"20. Permission for establishment of educational institutions:--

(1) and (2).....

(3) Any educational agency applying for permission under Sub-section (2) shall,-

(a) before the permission is granted, satisfy the authority concerned,--

(i) that there is need for providing educational facilities to the people in the locality:

(ii) that there is adequate financial provision for continued and efficient

maintenance for the institution as prescribed by the competent authority;

(iii) that the institution is proposed to be located in sanitary and healthy surroundings;

(b) .....

(c) within the period specified by the authority concerned in the order granting permission,--

(i) appoint teaching staff qualified according to the rules made by the Government in this behalf;

(ii) satisfy the other requirements laid down by this Act and the rules and orders made thereunder failing which it shall be competent for the said authority to cancel the permission.

(4) .....

33E. Conditions of service of staff :--The teaching and non-teaching staff of the registered schools shall be entitled to receive such salaries and allowances and shall be subject to such conditions of service as may be prescribed."

9. Rule 15 of the Andhra Pradesh Registered Schools (Establishment, Recognition, Registration and Regulation) Rules, 1987 reads as follows:

"15. Appointment of teaching and non-teaching staff:--

(a) and (b).....

(c) The conditions of service other than the scales of pay prescribed by the Government for the teaching and non-teaching staff working in the recognized private schools shall also be applicable to the teaching and non-teaching staff appointed in the Registered Schools."

10. From a reading of the said Rule, it is clear that all the service conditions prescribed by Government for teaching and non-teaching staff working in a recognized private school except the prescribed scales of pay shall be applicable to the teaching and non-teaching staff of the Registered School. Thus, it is clear that except the salaries, all other service conditions are one and the same for the Teachers working in Government, aided as well as recognized private schools. Apart from this, from the above sections/rules, it is clear that before permission is granted, the management of the private school is supposed to satisfy the authority concerned as to the need for providing educational facilities and there is adequate financial position for continued and efficient management of the institution. The teaching and non-teaching staff are entitled to receive even salaries and allowances also, subject to such conditions as may be prescribed by the competent authority. If such conditions are not satisfied, the competent authority can cancel the permission granted to establish school. All these provisions go to show that a duty is cast on the management to follow all the service conditions applicable to the Government Teachers except to the scales of

pay. The Government as well as Aided Teachers are entitled for receiving gratuity for the service rendered by them in the schools. Likewise, the petitioner is also entitled for claiming gratuity on par with Government Teachers and the Teachers of aided schools.

11. Even otherwise, the provisions of Payment of Gratuity Act, 1972 are applicable as the school run by the respondents is an establishment as contemplated under the said Act. It may not be necessary to consider whether the respondents are amenable to writ jurisdiction vis-a-vis Article 12 of the Constitution of India or not once it is found that the respondents are cast upon with a duty to follow certain statutory duties and there is violation of such duties, for non-compliance of those provisions a writ can be directly issued. This view is fortified by the judgment of the Division Bench of Himachal Pradesh High Court in Aggarwal B.L. Vs. Himachal Consultancy Organisation and Another, wherein it was held as follows:

"There is no need to consider whether the first respondent is amenable to writ jurisdiction vis-a-vis Article 12 of the Constitution as we are of the opinion that this Court can issue an appropriate writ for non-compliance of the provisions of the Payment of Gratuity Act, which is a welfare legislation."

12. The gratuity, like pension, is a retirement benefit for long and continuous service as a provision for old age. It is earned as a matter of right on fulfilling conditions subject to which it is earned. It is not a gratuitous payment depending upon the discrimination, sweet will or fancy of the employer. Gratuity is not only a retiral benefit, but is also a reward for good, efficient and faithful service rendered for a considerable period.

13. The petitioner had accrued a right in her favour, entitling her, for payment of gratuity, which could not be denied in the manner as has been done by the respondents. In Tarachand's case (supra), the Rajasthan High Court held that the School Teachers in educational institutions receiving grant-in-aid are also entitled to gratuity and pension at the rates admissible to Teachers in the Government educational institutions. Thus, an institution receives grant-in-aid or not, the employees of such institutions are entitled for gratuity according to their eligibility, may not be on par with Government Teachers or Aided Teachers.

14. Be it noted that the petitioner asserted that the Teachers, who retired from service of the respondent-school later to her, were also paid gratuity, whereas she is denied of the same. No counter-affidavit is filed and there is no denial of the said assertion made by the petitioner in the affidavit filed in support of the Writ Petition.

15. It is also not in dispute that the 2nd respondent-School is a registered one and the Management in the very confirmation order of appointment has categorically stated that the petitioner is entitled for other allowances etc., as per State Government Rules. In this view of the matter, this Court is of the considered opinion that the petitioner cannot be denied gratuity and she is

entitled to claim gratuity as a matter of right. Therefore, the respondents are directed to pay the amount in respect of gratuity for which the petitioner is entitled, within a period of two months from the date of receipt of a copy of this order.

16. Accordingly, the Writ Petition is allowed. No order as to costs.