

(2015) 01 DEL CK 0157
In the Delhi High Court
Case No : Writ Petition (C) No. 50/2015

University of Delhi

APPELLANT

Vs

Rattan Mala Ahuja

RESPONDENT

Date of Decision : 05-01-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227
Payment of Gratuity Act, 1972 — Section 14, 5

Citation : (2015) 144 FLR 1079 : (2015) 2 SCT 667 : (2015) 1 SLJ 445

Hon'ble Judges : V.P. Vaish, J.

Bench : Single Bench

Advocate : G.K. Pathak, for the Appellant

Final Decision : Dismissed

Judgement

V.P. Vaish, J.

CM 85/2015(exemption)

The exemption application is allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) No.50 /2015

1. By way of this petition under Articles 226/227 of the Constitution of India, the petitioner has impugned the order dated 31.03.2014 passed by learned Appellate Authority and order dated 11.04.2013 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 whereby the appeal filed by the petitioner was dismissed.

2. Mr. Ajay Diggpaul, Advocate enters appearance on advance notice on behalf of respondents No.2,3,5 and 6. Mr. Saurabh Dev Karan Singh, Advocate enters appearance on advance notice on behalf of respondent No.4/UGC.

3. The case of the petitioner is that the petitioner is a Central University which

came into existence by virtue of Delhi University Act, 1922 and the said Act has specific provisions under its Statute 28- A for the payment of gratuity to its employees and the respondent No.4, i.e. University Grants Commission (UGC) , with the approval of respondents No.5, i.e., Ministry of HRD introduced the provisions of payment of gratuity to the employees of Delhi University through Central Universities Retirement Benefit Rules, 1967. The employees of the petitioner are, thus, governed by the said provisions under its Statute 28-A for payment of gratuity and accordingly, the employees of the petitioner are being paid gratuity as per the same along with the Rules as aforesaid read with CCS Pension Rules.

4. The respondent No.1 is an ex-employee of the petitioner who retired on 30.11.2003 and was accordingly paid a sum of Rs.2,22,342/- towards gratuity, under Statute 28-A read with Central Universities Retirement Benefit Rules, 1967 and CCS Pension Rules, i.e., as per the provisions for payment of gratuity applicable to the petitioner.

5. The respondent No.2 is Controlling Authority under Payment of Gratuity Act, 1972, before whom respondent No.1 moved an application for grant of difference of gratuity amount claiming under the Payment of Gratuity Act 1972. Vide impugned order dated 11.04.2013, respondent No.2/Controlling Authority gave a finding that the payment of Gratuity Act is applicable to the petitioner and, thus, the respondent No.1 was entitled to receive a sum of Rs.96,394/- towards balance gratuity and the petitioner was directed to pay the said amount with simple interest at the rate of 10% per annum within thirty days from the date of receipt of the order.

6. Learned counsel for the petitioner urges that Section 14 of the Payment of Gratuity Act is not applicable in view of Statute 28-A of Delhi University Act, 1922 for the purpose of gratuity.

7. Before adverting to the facts of the present case, it is necessary to reproduce relevant Section 14 of the Payment of Gratuity Act, 1972 which reads as under:-

"14. Act to override other enactments, etc."The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."

8. The Apex Court in Allahabad Bank and Another Vs. All India Allahabad Bank Retired Emps. Assn., , observed as under:-

"14. A plain reading of the provisions referred to hereinabove makes it abundantly clear that there is no escape from payment of gratuity under the provisions of the Act unless the establishment is granted exemption from the operation of the provisions of the Act by the appropriate Government.

31. No establishment can decide for itself that employees in such establishments were in receipt of gratuity or pensionary benefits not less

favourable than the benefits conferred under the Act.....

32. This Court in *Municipal Corporation of Delhi Vs. Dharam Prakash Sharma and Another*, observed:

"2. The mere fact that the gratuity is provided for under the Pension Rules will not disentitle him to get the payment of gratuity under the Payment of Gratuity Act. In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect....."

9. In another case *Y.K. Singla Vs. Punjab National Bank and Others*, , the Hon"ble Supreme Court of India had observed:-

"22.A perusal of Section 14 leaves no room for any doubt that a superior status has been vested in the provisions of the Gratuity Act vis-? -vis any other enactment (including any other instrument or contract) inconsistent therewith. Therefore, insofar as the entitlement of an employee to gratuity is concerned, it is apparent that in cases where gratuity of an employee is not regulated under the provisions of the Gratuity Act, the legislature having vested superiority to the provisions of the Gratuity Act over all other provisions/enactments (including any instrument or contract having the force of law) , the provisions of the Gratuity Act cannot be ignored. The term "instrument" and the phrase "instrument or contract having the force of law" shall most definitely be deemed to include the 1995 Regulations, which regulate the payment of gratuity to the appellant."

10. A similar question came up for consideration before this Court in *W.P.(Civil) No.5138/2014* titled as "*University of Delhi v. Sharwan Kumar Gupta and Others*" wherein it was held:-

"16. The Payment of Gratuity Act, 1972 is a complete code in itself. It is clear from the law and the judgments mentioned above that Provisions of Payment of Gratuity Act, 1972 shall have overriding effect on all other provisions relating to Gratuity.

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18. If the contention of the petitioner is accepted that *Delhi University Act, 1922* and State ordinances are statutory in nature, however, Section 14 of *Payment of Gratuity Act, 1972*, has overriding effect over the other Acts, Statutes and Regulations.

19. Admittedly, the petitioner has taken up the case for exemption under Section 5, which is pending with the Central Government, however, not granted to the petitioner till date. Therefore, in my considered opinion, till this exemption is not granted, the petitioner is governed by the provisions of this Act.

20. It is also admitted fact that the petitioner granted gratuity to some of its employees, after the order was passed by the Controlling Authority. If the plea of the petitioner is accepted that the respondent no. 1 in all the petitions are not

entitled for gratuity under the Payment of Gratuity Act, 1972, then it tantamount to discrimination and inequality before Law, which violates Article 14 of the Constitution.

21. The Petitioner is an educational institution and employing more than 10 persons. The exemption under Section 5 of the Payment of Gratuity Act, 1972, has not yet been granted to it. The payment has already been made to some employees of the petitioner under the Payment of Gratuity Act, 1972".

11. Applying the aforesaid law to the facts of the present case, the petition is without any merit. Accordingly, the petition is dismissed in limine.

CM 84/2015 (stay)

The application is dismissed as infructuous.