



CNR No. MHIC040002262022

Filed on	:	08.07.2022
Registered on	:	08.07.2022
Decided on	:	14.11.2022
Duration		Y M D 00 04 06

**Appellate authority under the Payment of
Gratuity Act in the
Industrial Court, Maharashtra
Appeal (PGA) No. 7 of 2022**

Shri. Gurusingh Sabha & Ors.
Guru Nanak Marg, Rambaug -4,
Chikanghar, Kalyan - 421301.

Appellants/Org.
Respondents

v/s.

Mrs. Krishna Mitra,
501, Govardhan Enclave,
Building no. 5, Gauripada,
Kalyan - 421 301.

Respondents/
Org.Applicant

Coram: **SHRI. M. S. GANORKAR, MEMBER.**

Appearances: Shri. A. K. Gupta, Ld. Advocate for the
Appellants.
Shri. S. P. Mulshi, Ld. Advocate for the
Opponents

-: J U D G M E N T :-
(Delivered on 14th November, 2022)

1. This appeal is filed by Shri Gurusingh Sabha challenging the order in Application (PGA) No. 10 of 2020 all by the Controlling Authority under the Payment of Gratuity Act on it on 3rd of December 2021.

2. Respondents, who is the original applicant filed an application under section 4(1)(B) of Payment of Gratuity Act, 1972. Applicant Mrs. Sheraly Haridas was an employee of Guru Nanak English High School Rambag, Kalyan. The management of the school, that is original opponent no. 1 is religious minority institution and has been recognised as such by the Government of Maharashtra. The opponent No. 2 in the application is in-charge of the school run by opponent no. 1. Applicant was an employee of the opponent no. 1 school. She retired from her service after completing 27 years of continuous service with opponent no. 1 trust. She is entitled to get benefit of gratuity under section 4 of Payment of Gratuity Act, 1972.

3. Applicant submitted that she was appointed as primary teacher in the year 1992 vide order of appointment dated 15th June, 1992. In the year 1993, she was promoted as Assistant Teacher. She retired on 1st of May 2019. The opponents did not allow her to take leave by saying that they were

going to give her extension in service. The school management neither allowed applicant to take leave nor paid her in lieu of the leave.

4. The school management had given applicant cheque of amount of Rs. 1,21,608/- dated 15th June 2019. At that time applicant had asked for calculations about gratuity amount as she suspected the same to be much less than the actual amount. She was not given the details by the school management. She recorded her protest on the cheque amount and till today she has not deposited the cheque and opponents are well aware about it. At the time of taking her signature, applicant was assured that details of calculations in respect of gratuity would be given to her within the period of 2 weeks, but she did not receive any such details. Applicant along with her colleague approached the opponents vide letter dated 26th June 2019, 6th July 2019, 17th July 2019 and 2nd August 2019. The school management neither replied these letters nor made payment of gratuity.

5. Applicant submitted that on 13th October 2019 she with her colleague Mrs. Sherly Haridas met Shri Sharanjit Singh Minhas (Secretary), Shri Harbir Singh Hayer (President) and requested them to pay due amount of gratuity, balance amount of leave

encashment. They refused to pay the amount of applicant and her colleague. Hence, applicant on 25th October, 2019 issued notice to opponents. The school management issued cheque of Rs. 1,21,608/- dated 15th June 2019, which was much less than due amount of gratuity of Rs.1,96,440/-. Hence, applicant is claiming the amount of gratuity along with 18% interest.

6. Applicant submitted that her monthly wages was Rs. 16,248/-, basic wages was Rs. 9,008/-, dearness allowance is Rs.3,603/-. She was in service for 27 years. The gratuity amount comes to be Rs.1,96,440/-. Opponents with malafide intention deprived applicant from getting the amount of gratuity, hence opponents are liable to pay interest at the rate of 18% per annum. Hence, present applicant filed this application under section 4 of Payment of the Gratuity act.

7. Opponents filed a say at exhibit C-4 of the trial court record. They submitted that the application is false, baseless and not maintainable in a law and deserves to be rejected. There is no cause of action to file this application. The application is filed with intention to harass the opponents. They admitted that she was working as a teacher in the

school run by opponent no.1 trust. She retired from service after completing 27 years of continuous service. They admitted the averments in respect of the service of the Applicant. They denied that the school management neither allowed applicant to avail her balance leaves nor paid the amount of leave encashment by giving her assurance of extension in the service. They admitted that opponent no. 1 had given cheque of amount of Rs.1,21,608/- dated 15th June 2019. They submitted that cheque was not deposited with the bank by the applicant with intention to grab more amount from opponents. The applicant ought to have deposited the cheque in her bank and if any balance amount was due, same should have been initially claimed. The correspondence made by the applicant with opponents is not disputed by them. Opponents specifically denied that the applicant met Chairman and Secretary of the trust and they behaved rudely with her. They denied that they received letter dated 25th October 2019. Opponents submitted that the cheque of Rs.1,21,608/- was given to the applicant towards full and final settlement of the gratuity amount. Opponents denied that gratuity amount comes to Rs.1,96,440/-. The said amount is deliberately miscalculated by the applicant. The applicant deliberately did not deposit the cheque

given by the opponents towards payment of gratuity amount and falsely claiming interest at the rate of 18% per annum. It is the fault of applicant not to deposit the cheque and for that opponents cannot be penalised by awarding interest. Opponents prayed for rejection of the application.

8. The trial court partly allowed the application and directed opponents to pay gratuity amount to the tune of Rs.1,96,440/- to the applicant with interest at the rate of 10% per annum from the date on which gratuity became due that is one month after her retirement that is from 1st June, 2019 till realisation of entire amount. Being aggrieved by the order of the trial court the opponents preferred this appeal on following grounds: -

1. The appellant is a trust which runs a private school under Maharashtra Employees of Private School (Condition of Service Regulations) Act, 1972. The terms of conditions of the private school governance benefits including gratuity which are laid down in the rules made under section 4(1) of the Maharashtra at number III. So this Court is not having jurisdiction to entertain the application for payment of gratuity. The school Tribunal is vested with the jurisdiction to entertain such application.

2. Appellant submitted that the applicant did not encash the cheque of the gratuity amount given to her, hence she is not entitled to claim interest on the amount of gratuity. The trial court wrongly awarded interest in favour of the applicant. The order of trial court is erroneous and bad in law and deserves to be set aside. The application under Payment of Gratuity Act deserves to be rejected.

9. After going through the trial court record and submissions of both parties, following points arise for my determination and I have given my findings against each of them for the reasons given below.

	POINTS	FINDINGS
1.	Whether the order of trial for is erroneous or bad in law?	Partly in affirmative
2.	Whether the controlling authority under Payment of Gratuity Act is not having jurisdiction to entertain the application ?	In negative
3.	Whether the order of trial court needs interference ?	Yes.
4.	What order ?	As per final order.

REASONS

10. The appellants challenged the order of Trial Court on two grounds. The first ground is that Controlling Authority under Payment of Gratuity Act is not having jurisdiction to try this case as School Tribunal is vested with the jurisdiction to entertain the case of gratuity of the teachers. So order of the Trial Court is without jurisdiction.

11. Learned counsel for appellants submitted that as per section 9 of the Maharashtra Employees of Private School (Conditiona of Service) Regulations Act, 1977 and employee of private school, who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the Management or who is superseded by the Management while making an appointment to any post by promotion and who is aggrieved, shall have a right of appeal and may appeal against any such order or supersession to the Tribunal constituted under section 8. Learned counsel submitted that by special enactment in respect of teachers of private shcool, the general enactment of filing application to competent authority is barred. He further submitted that the word "establishment" is not defined under Payment of Gratuity Act and same is defined under Bombay

Shops and Establishment Act. There is amendment in Shops and Establishment Act and Educational Institution is deleted from the definition of establishment. Hence, this Court is not having jurisdiction to entertain the application. He further submitted that as per the judgment of Hon'ble Supreme Court reported in **Ahmadabad Private Teachers Association Vs. Administrative Officer and Ors. - Civil Appeal No. 6369/2021**. The Hon'ble Supreme Court held that the legislature was alive to various kinds of definitions of the word "employee" contained in various previous labour enactments when the Act was passed in 1972. If it intended to cover in the definition of "employee" all kinds of employees, it could have as well used such wide language as is contained in Section 2(f) of the Employees' Provident Funds Act, 1952 which defines "employee" to mean any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment. This language does not cover teachers. Hence, they are not entitled for the gratuity. He also relied on judgment of Hon'ble Supreme Court - **Civil Appeal No. 2530/2012 - Birla Institute of Technology Vs. The State of Jharkhand and Ors.** He submitted that as competent authority is not having

jurisdiction to entertain the application for gratuity filed by teachers of private school, hence, the application deserves to be rejected and the Learned Trial Court entertained the application filed by respondent / original applicant, hence, the order of Trial Court deserves to be set aside.

12. Learned counsel for respondent submitted that in the judgment of **Birla Institute of Technology Vs. The State of Jharkhand and Ors.,** the order passed in the case of **Ahmadabad Private Teachers Association Vs. Administrative Officer and Ors.,** primary teachers is overruled by the larger bench. So the **Ahmadabad Private Teachers Association Vs. Administrative Officer and Ors.** case is not a good law and in case of **Birla Institute of Technology** the Hon'ble Supreme Court held that the teachers of private school are also entitled for the gratuity.

13. I have gone through the judgment cited by the appellants. The Hon'ble Supreme Court in the authority of **Birla Institute of Technology** clearly held that the teachers of private schools are entitled for the gratuity as per the Payment of Gratuity Act. Moreover, the appellants contended that the

Controlling Authority is not having jurisdiction to entertain the application for gratuity filed by the teachers of private school and School Tribunal is having jurisdiction. If the section 9 of Maharashtra Employees of Private School (Condition of Service Regulations) Act, 1977 is gone through, then there is provisions of appeal provided to a teacher who is aggrieved by the order passed by the management in respect of suspension, but section 9 does not speak about the payment of gratuity to retired teachers. Hence, by the provisions of Maharashtra Employees of Private School (Condition of Service Regulations) Act, 1977 the jurisdiction of Controlling Authority as per the provisions of Payment of Gratuity Act is not expressly or impliedly barred. The appellants raised issue of jurisdiction for the first time in appeal. In their written statement before the Controlling Authority, this point of jurisdiction is not raised. Hence, the Trial Court did not have opportunity to decide this issue. It is settled position of law that issue of jurisdiction is to be raised at the earliest. The issue of jurisdiction if necessary can be decided as per the preliminary issue. Directly for the first time in appeal, the issue of jurisdiction cannot be raised. Hence, the issue of jurisdiction raised by the appellants in appeal is not proper and the Controlling Authority under the Payment of Gratuity

Act is having jurisdiction to entertain the application for getting gratuity filed by the teachers of private school.

14. The other point raised by the appellants is that the appellants had given the cheque of Rs.1,21,608/- to the applicant towards the full and final settlement of gratuity amount. The respondent did not encash that cheque and started writing letter that the gratuity amount of Rs.1,21,608/- is not proper. The respondent admitted the same in her cross examination. The learned counsel submitted that if that amount is not proper as per the applicant, then she could have filed the case or recovery of balance amount. But the applicant avoided to encash the cheque and the Trial Court had granted interest on that amount to the applicant. It is the fault of applicant not to encash the cheque and for that appellants cannot be penalized. Learned counsel for the appellants submitted that on 15.06.2019 the cheque was given to the applicant. Then she calculated the amount of gratuity as per her own calculation and started writing letter to the appellants. Why she did not deposit the cheque of Rs.1,21,608/-. This was not explained by her and in her evidence she made improvement and stated that appellants asked her not to encash the cheque. This

statement is totally false. He submitted that the applicant is not entitled for the interest on the amount of Rs.1,21,608/-. The order of Trial Court on the point of interest be set aside.

15. Learned counsel for applicant / respondent submitted that the applicant in her examination states that the appellants asked her not to encash the cheque till the correct amount of gratuity is calculated and finalized. She wrote number of letters to the appellants claiming the amount of gratuity to the tune of Rs.1,96,440/-. As per the instructions of the appellants, the cheque was not deposited by the applicant. Hence, the Trial Court rightly awarded the interest on the whole amount. The order of the Trial Court is proper and needs no interference.

16. I have gone through the pleadings of the applicant and also her evidence. In her evidence, she stated that the management has given her cheque of Rs.1,21,608/- on 15.06.2019. But the total amount of gratuity came to be Rs.1,96,440/-. The management orally asked her not to deposit the cheque till correct amount of gratuity is decided. But what is stated in evidence by the applicant is not appearing in the pleadings. In her pleadings she submitted that orally management assured her to

replace the cheque. The management had given cheque of Rs.1,21,608/- to the applicant. This fact is admitted by the applicant. She did not plead that management asked her not to encash the cheque. Only it is appearing in the pleadings that management assured her to replace the cheque. The management voluntarily had given the cheque to the applicant. It means that cheque was given for encashment. The applicant / respondent was not satisfied with the amount given by the management. Hence, she did not encash the cheque. So the applicant was guilty of not presenting the cheque for encashment to her bank. Had it been the case that amount offered by the school management towards the gratuity is less than the actual amount of gratuity, then the applicant was at liberty to file the application for remaining amount of the gratuity. So in such circumstances, the appellant school management cannot be penalized by awarding interest on the amount which the appellant has tendered to the applicant teacher towards the payment of gratuity by cheque dated 15.06.2019. The Trial Court failed to appreciate that and awarded interest on the whole amount of Rs.1,96,440/-. So order of the Trial Court awarding interest on the whole of the amount is erroneous. In my view, the applicant / respondent is entitled to claim interest @

10% on amount of Rs.1,96,440/- minus Rs.1,21,608/- i.e. on amount of Rs.74,832/- only. Hence, I answer point no. 1 partly in affirmative and point no. 2 that is in respect of jurisdiction in the negative.

17. As I have held that the Trial Court heard in granting the interest to the applicant / respondent on amount of Rs. 1,96,440/-. I have also held that the amount of Rs. 1,21,608/- was tendered by the appellants to respondent, but the respondent did not encash that cheque and started writing letter to the school management alleging that amount is not properly calculated. Hence, in such circumstances the applicant / respondent is not having right to claim interest on amount of Rs. 1,21,608/- and only entitled to claim interest on amount of Rs.74,832/-. Hence, the order of Trial Court required to be modified. Hence, the amount of gratuity of Rs.1,96,440/- alongwith interest thereon till filing of appeal is deposited by the appellants in the Court. The amount of gratuity i.e. Rs.1,96,440/- is already paid to the applicant / respondent and she will retain the same. Only applicant is required to pay the interest @ 10% p.a. on amount of Rs.74,832/- from 01.06.2019 till the amount is deposited in the Court. Hence, I proceed to pass following order.

:- O R D E R :-

1. Appeal is partly allowed.
2. The applicant / respondent is entitled for the amount of gratuity of Rs.1,96,440/- from the opponents. The opponents shall pay the amount of gratuity to the applicant and pay simple interest @ 10% p.a. to the applicant on the amount of Rs.74,832/- from 01.06.2019 till the date the amount is deposited in Court.

(M.S. GANORKAR)

Place :- Thane

I/c. Member,

Date :- 14.11.2022

Industrial Tribunal, Thane.

Argued on	: 14.11.2022
Judgment dictated on	: 14.11.2022
Judgment transcribed on	: 15.11.2022
Judgment checked & signed on	: 18.11.2022

Rsr- T.O.15112022****