

Case :- SPECIAL APPEAL No. - 41 of 2025

Appellant :- Bindra Prasad Patel

Respondent :- State Of Up And 3 Others

Counsel for Appellant :- Quazi Mohammad

Akaram, Shoar Mohammad Khan

Counsel for Respondent :- Kushmondeya Shahi

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Praveen Kumar Giri, J.

(Delivered by: Justice Ashwani Kumar Mishra)

1. This intra court appeal arises out of a composite judgment passed by learned Single Judge in a bunch of writ petitions, including Writ-A No.5588 of 2023, whereby petitioner's claim for payment of gratuity is rejected.

2. The petitioner-appellant in the present case was employed as Headmaster in a junior high school. He (petitioner) received National Teachers' Award which entitled him to two years extension in service. The age of superannuation was otherwise 62 years under the applicable rules. As such, the appellant has superannuated on 31.3.2017 after availing session's benefit at the age of 64 years. The writ petition came to be filed by the appellant with the prayer to direct the District Basic Education Officer, Prayagraj to release gratuity to him alongwith interest. It is this claim which came to be rejected by the learned Single Judge.

3. In order to appreciate the controversy raised in the matter it would be necessary to refer to the background in which the dispute has arisen. The State of Uttar Pradesh

enacted U.P. Basic Education Act, 1972 (hereinafter referred to as the 'Act of 1972') primarily for establishing a Board of Basic Education (hereinafter referred to as the 'Board') and for matters connected therewith. The Board is a body corporate having perpetual succession and common seal and has the power to acquire and hold property. Its constitution and powers are specified in the Act of 1972. The 'Board' has established various educational institutions upto Junior High School level (hereinafter referred to as 'Basic Institutions'). The appointment and conditions of service of the teachers of the Basic Institutions are governed by statutory service regulations, namely U.P. Basic Education (Teacher) Service Rules, 1981 (hereinafter referred to as the 'Rules of 1981'). The Rules of 1981 contained no provision regarding payment of pension or gratuity.

4. Payment of pension to a teacher in a basic institution was earlier governed by the Triple Benefit Scheme, 1965 issued under the provisions of U.P. Retirement Benefit Rules, 1961. On 8.3.1978 a Government Order came to be issued by the State of Uttar Pradesh introducing new pension scheme in respect of teachers of educational institution established by the board. This Government Order expressly excluded death-cum-retirement gratuity to the teachers. It also denied benefit of family pension to the dependents of teachers after their death. This Government Order came to be amended vide Government Order dated 31.3.1982. Benefit of family pension was allowed to the dependents of teachers of basic institutions.

However, death-cum-retirement gratuity, continued to be eluded to the teachers of basic institutions.

5. On 23.11.1994 a new government order was issued extending the benefit of gratuity to the teachers and other employees of basic institutions. This benefit, however, was dependent upon an exercise of option by the teacher/employee concerned to retire at the age of 58 years. The age of superannuation was otherwise 60 years. The Government Order dated 23.11.1994 is reproduced hereinafter:-

"58 वर्ष की आयु पर ग्रेच्युटी की सुविधा
संख्या-6369/15-5-93-55/89

प्रेषक,

सेवा में,

श्री सुभाष चन्द्र बहुखण्डी

विशेष सचिव, उत्तर प्रदेश शासन।

शिक्षा (5) अनुभाग

1. शिक्षा निदेशक (बेसिक), उ०प्र० लखनऊ ।

2. शिक्षा निदेशक (मा०), उ०प्र० लखनऊ।

लखनऊ: दिनांक: 23 नवम्बर, 1994

विषय- उत्तर प्रदेश बेसिक शिक्षा परिषद के शिक्षकों/शिक्षणेत्तर कर्मचारियों, तथा सहायता प्राप्त गैर सरकारी जूनियर हाईस्कूलों के शिक्षक एवं शिक्षणेत्तर कर्मचारियों को 58 वर्ष की आयु पर सेवा निवृत्त किये जाये पर ग्रेच्युटी की सुविधा अनुमन्य किया जाना।

महोदय,

उपर्युक्त विषयक सचिव उत्तर प्रदेश बेसिक शिक्षा परिषद, इलाहाबाद के पत्रांक बे०शि०प०/पेंशन 3166/92-93 दिनांक 30-10-1992 के सन्दर्भ में मुझे यह कहने का निर्देश हुआ है कि उत्तर प्रदेश बेसिक शिक्षा परिषद के अध्यापकों एवं शिक्षणेत्तर कर्मचारियों सहायता प्राप्त गैर सरकारी जूनियर हाईस्कूलों शिक्षकों एवं शिक्षणेत्तर कर्मचारियों को माध्यमिक शिक्षको की भांति 58 वर्ष की आयु पर सेवा निवृत्त होने का विकल्प देने की स्थिति में ग्रेच्युटी की सुविधा दिये जाने की मांग की है। सम्यक विचारोंपरान्त श्री राज्यपाल यह आदेश प्रदान किये हैं कि जिस प्रकार राज्य सहायता प्राप्त माध्यमिक विद्यालयों के शिक्षकों को 58 वर्ष की आयु पर सेवा निवृत्त होने का विकल्प देने पर राजकीय कर्मचारियों की भांति ग्रेच्युटी की सुविधा अनुमन्य है, उसी प्रकार उ०प्र० बेसिक शिक्षा परिषद के अध्यापकों एवं शिक्षणेत्तर कर्मचारियों, सहायता प्राप्त गैर सरकारी माध्यमिक विद्यालयों के शिक्षणेत्तर कर्मचारियों की 68 वर्ष की आयु में सेवानिवृत्त होने की दशा में ग्रेच्युटी की सुविधा प्रदान की

जाये। यह सुविधा उन्ही अध्यापकों एवं कर्मचारियों को अनुमन्य होगी जो 58 वर्ष की आयु पर सेवा निवृत्त होने का विकल्प निर्धारित प्रपत्र पर प्रस्तुत होने एवं यह सुविधा उपरोक्त वर्णित सभी शिक्षकों/कर्मचारियों पर इन आदेशों के जारी होने की तिथि से लागू होगी।

2. मुझे यह भी कहना है कि प्रश्नगत लाभ उन्ही अध्यापकों / कर्मचारियों को अनुमन्य होगा जो संलग्न निर्धारित प्रपत्र पर शासनादेश जारी होने के दिनांक से 90 दिन के अन्दर दो प्रतियों में संस्था में माध्यम से पेन्शन स्वीकृत करने वाले अधिकारी के पास अपना विकल्प पत्र प्रेषित करेंगे। निर्धारित तिथि तक विकल्प पत्र न प्रस्तुत किये जाने पर यह स्वतः मान लिया जाएगा कि सम्बन्धित अध्यापक या कर्मचारी इस राजाज्ञा में स्वीकृत सुविधा का लाभप्राप्त नहीं करना चाहता। एक बार प्रस्तुत किया गया विकल्प अन्तिम तथा अपरिवर्तनीय होगा।

3. बेसिक शिक्षा परिषदीय शिक्षक / शिक्षणेत्तर कर्मचारियों, सहायता प्राप्त गैर सरकारी जूनियर हाईस्कूलों के शिक्षक एवं शिक्षणेत्तर कर्मचारियों तथा सहायता प्राप्त गैर सरकारी उच्चतर माध्यमिक विद्यालयों के शिक्षणेत्तर कर्मचारियों के विकल्प की पहली प्रति पेन्शन स्वीकृत अधिकारी के प्रति हस्ताक्षरों के बाद उसकी सेवा पुस्तिका में चिपकायी जायेगी। दूसरी प्रति पेन्शन स्वीकृत अधिकारी के प्रति हस्ताक्षरों के बाद उससे अगले उच्च अधिकारी के कार्यालय में सुरक्षित रखी जायेगी।

4. यह आदेश वित्त विभाग की उनके अ० श० सं० ई-11/3483/X-94 दिनांक 23 नवम्बर, 1994 द्वारा प्राप्त सहमति से निर्गत किये जा रहे था।

भवदीय

सुभाष चन्द्र बहुखण्डी

विशेष सचिव।”

6. A subsequent Government Order came to be issued on 10.6.2001, permitting the teacher/employees of the basic institutions to revise the option to retire upto 1st July of the year of their superannuation. This Government Order was prospective and is reproduced hereinafter:-

“140] शिक्षा अनुभाग-5 संख्या-5491/15-5-2002-212/2001, दिनांक 10 जून, 2002

प्रेषक,

दिनेश चन्द्र कनौजिया,

विशेष सचिव,

उत्तर प्रदेश शासन,

इलाहाबाद।

सेवा में,

शिक्षा निदेशक, (बेसिक) एवं अध्यक्ष,

उत्तर प्रदेश बेसिक शिक्षा परिषद्,

इलाहाबाद।

विषय : उत्तर प्रदेश बेसिक शिक्षा परिषदीय शिक्षक/ शिक्षणेत्तर कर्मचारियों के सेवानिवृत्तिक लाभों में परिवर्तन हेतु विकल्प की सुविधा दिये जाने के संबंध में नीति निर्धारण।

महोदय,

उपर्युक्त विषयक शासनादेश संख्या-6369/15-5-93-55/89, दिनांक 23-11-1994 के अनुक्रम में मुझे यह कहने का निदेश हुआ है कि उक्त शासनादेश द्वारा प्रदत्त विकल्प को सुविधा के लाभ से वंचित रह गये बेसिक शिक्षा परिषद् शिक्षक/शिक्षणेत्तर कर्मचारियों के संबंध में विकल्प परिवर्तन की सुविधा प्रदान किये जाने की मांग पर सम्यक विद्यारोपरान्त श्री राज्यपाल यह आदेश प्रदान करते हैं कि उ.प्र. बेसिक शिक्षा परिषदीय शिक्षकों/ शिक्षणेत्तर कर्मचारियों द्वारा सेवानिवृत्ति के एक वर्ष अर्थात् जिस शैक्षिक सत्र में उनकी सेवानिवृत्ति होगी, उसको पहली जुलाई तक विकल्प परिवर्तन कर सकते हैं। किन्तु ऐसे कर्मचारी जो 58 वर्ष की आयु पर सेवानिवृत्ति का विकल्प देते हैं, को सेवानिवृत्ति के पूर्व तक विकल्प परिवर्तन की सुविधा अनुमन्य होगी। यह व्यवस्था इस शासनादेश के जारी होने की तिथि से लागू होगी।

2. यह आदेश वित्त विभाग के अशासकीय संख्या-ई-11/753 वस-2002, दिनांक 4-6-2002 में प्राप्त उनकी सहमति से जारी किये जा रहे हैं।

भवदीय

(दिनेश चन्द्र कनौजिया)

विशेष सचिव।”

7. The age of superannuation of teachers/employees of basic institutions was enhanced to 62 years from erstwhile 60 years vide Government Order dated 4.2.2004. The entitlement to receive gratuity on opting to retire at the age of 58 years was altered to 60 years. Teachers and employees who were continuing in service on account of sessions benefit were also extended the benefit of gratuity under the scheme. Rules of 1981 were also directed to be amended accordingly within a month. The Government Order dated 4.2.2004 is reproduced hereinafter:-

“बेसिक एवं सहायता प्राप्त उच्च प्राथमिक विद्यालयों के शिक्षकों की सेवा निवृत्ति

आयु 60/62 वर्ष

संख्या 289/79-6-04-28(5)/2004

प्रेषक,

सेवा में,

श्री हरिराज किशोर

सचिव,

उत्तर प्रदेश शासन।

शिक्षा निदेशक (बेसिक)

उत्तर प्रदेश लखनऊ।

शिक्षा अनुभाग-6

लखनऊ: दिनांक 4 फरवरी, 2004

विषय: परिषदीय प्राथमिक विद्यालय, परिषदीय उच्च प्राथमिक विद्यालय तथा उच्च प्राथमिक विद्यालयों से अध्यापकों की अधिवर्षता आयु वर्तमान 60 वर्ष से 62 वर्ष किये जाने के सम्बन्ध में। महोदय,

शासन द्वारा सम्यक विचारोपरान्त यह निर्णय लिया गया है कि परिषदीय प्राथमिक विद्यालय, परिषदीय उच्च प्राथमिक विद्यालय तथा सहायता प्राप्त उच्च प्राथमिक विद्यालयों में शासन द्वारा सृजित पदों पर नियमानुसार कार्यरत अध्यापकों की वर्तमान अधिवर्षता आयु में वृद्धि कर दी जाये।

अतः श्री राज्यपाल महोदय तात्कालिक प्रभाव से परिषदीय प्राथमिक विद्यालय, परिषदीय उच्च प्राथमिक विद्यालय तथा सहायता प्राप्त उच्च प्राथमिक विद्यालयों में शासन द्वारा सृजित पदों पर नियमानुसार कार्यरत अध्यापकों की वर्तमान अधिवर्षता आयु को 60 वर्ष से बढ़ाकर 62 वर्ष किये जाने की सहर्ष स्वीकृति प्रदान करते हैं। फलस्वरूप 58 वर्ष की अधिवर्षता आयु पर मिलने वाले सेवा नैवृत्तिक लाभ अब 60 वर्ष की अधिवर्षता आयु पर तथा 60 वर्ष की अधिवर्षता आयु पर मिलने वाले सेवा नैवृत्तिक लाभ 62 वर्ष की अधिवर्षता आयु पर अनुमन्य होंगे।

श्री राज्यपाल महोदय यह भी आदेश प्रदान करते हैं कि जो शिक्षक जुलाई, 2003 के पश्चात् अधिवर्षता आयु पूर्ण कर सत्रान्त लाम पर चल रहे हैं उन्हें भी अधिवर्षता आयु वृद्धि: सम्बन्धी लाभ प्रदान किया जायेगा।

इस सम्बन्ध में पूर्व में निर्गत समस्त शासनादेश उक्त सीमा तक संशोधित समझे जायेंगे तथा उनकी शेष शर्तें यथावत् रहेंगी।

उत्तर प्रदेश बेसिक शिक्षा (अध्यापक) सेवा नियमावली, 1981 के संगत नियमों में आवश्यक संशोधन की कार्यवाही शासनादेश जारी होने के तीस दिन के अन्दर सुनिश्चित कर ली जायेगी।

यह आदेश वित्त विभाग के अशासकीय पत्र संख्या यू०ओ०ई० -11-207/2004 दिनांक 04-2-2004 में प्राप्त सहमति के अन्तर्गत निर्गत किये जा रहे हैं।

भवदीय

ह०/- हरिराज किशोर,

सचिव।”

8. On acceptance of the recommendation made by Pay Committee U.P., 2008, with effect from 1.1.2006, the rate of gratuity was revised upto Rs. 10 lakhs. This scheme relating to payment of gratuity to the teachers and other employees of basic institutions continues to subsist, with

subsequent revision of rate on acceptance of later Pay Committee Reports etc.

9. A controversy arose in respect of claim of gratuity for the teachers who had not exercised the option to retire at the age of 58/60 years but died before it. In Writ-A No.40568 of 2016 (Noor Jahan vs. State of U.P. and 4 others) the claim of the widow of deceased teacher namely, Noor Jahan, for payment of gratuity was allowed on 4.1.2018. This judgment of learned Single Judge was followed in Writ-A No.17399 of 2019 (Usha Rani vs. State of U.P. and others). The judgment in Usha Rani (supra) was unsuccessfully challenged in special appeal. The State Government then challenged the Division Bench judgment in Usha Rani (supra) before the Supreme Court in Special Leave to Appeal (C) No(s).19089 of 2021, which was dismissed vide following orders passed on 29.4.2022:-

"Learned counsel for the petitioners does not want to press the instant petition.

We find no reason to interfere in the order impugned in our jurisdiction under Article 136 of the Constitution.

Accordingly, the Special Leave Petition is dismissed.

We direct the State Authority to make the payment of gratuity in terms of order of the High Court impugned in the instant proceedings to the respondent within a period of four weeks from today failing which that amount shall carry further interest at the rate of 18% p.a. until payment and a report of compliance be sent to this Court.

Pending application(s), if any, shall stand disposed of."

10. In District Basic Education and another vs. Shivkali and others 2021 (10) ADJ 23 (DB) a Division Bench of this Court crystallised the issue on the above aspect and held as under in para 11 to 13 of the judgment:-

"11. The issue that arises for our consideration is whether an employee who, by a certain a date, could exercise an option to retire early to avail the benefit of gratuity, dies before that date, and prior to his death had not exercised that option, should his heirs be denied the benefit of death gratuity which, atherwise, would have been available to them had that employee died at that age after exercising the option.

12. To have an answer to the issue we would have to examine as to- (a) what had been the purpose of conferment of such benefit on exercise of the option; and (b) whether the Government Orders that conferred the benefit had fixed a time period by which that option was to be exercised, if so, whether the incumbent i.e. first respondent's husband had crossed the time limit by which he could have exercised that option. In so far as the purpose of conferring such benefit is concerned the same is obvious, which is to provide social security to those who forego two years of additional service. There could be a latent purpose as well, which is to encourage people to seek early retirement may be to streamline the organization. Be that as it may, it is a beneficial provision to accord social security to the employee and his or her dependents therefore, an interpretation that promotes and serves the purpose for which it is crafted must be preferred. Under the circumstances, whatever the purpose might be, the same is subserved where the nature exercises the option on behalf of the incumbent by letting him not survive even upto the last day by which he could have exercised the option. Therefore, denying the heirs/dependents of such an incumbent the benefit of social security that, otherwise, would have been available to them had the incumbent exercised his option would defeat the very purpose for which the policy was made. Thus, to ensure that the policy serves its purpose fully, in our view, where a last date for exercise of the option is yet to arrive and before that date the incumbent dies, without exercising his option, his dependents should not be deprived of the benefit which they would have been otherwise entitled to had the incumbent exercised his option.

13. In so far as the contention of the learned counsel for the appellants that by Government Order dated June 10, 2002 the option could have been exercised only upto first day of July in which the incumbent was to attain the age of 58 years is concerned, the same is not acceptable. Because a plain reading of the Government Order dated June 10, 2002 would reflect that it is in two parts. The first part is in respect of fixing the last date for exercise of option to retire early to avail the benefits of early retirement whereas the second relates to the last date

for change of the option submitted earlier. In the first part, the age of retirement is not mentioned. What is stated in the first part is that those who could not exercise their option to avail the benefits under the earlier Government Order dated 23.11.1994 may exercise their option by the first day of July of the year in which they attain the age of superannuation. The second part gives option to those, who had already opted to retire at the age of 58 years, to change their option before they retire. Meaning thereby that if suppose a person has given an option to retire at the age of 58 years, before he attains the age of 58 years, he can change the option. Thus, as by Government Order dated February 4, 2004 the age of superannuation was enhanced from 60 years to 62 years by specifically providing that the benefits that were available on retirement at the age of 58 years would now be available upon completion of the age of 60 years and those that were to be available at the age of 60 years, would now be available on completion of the age of 62 years, by necessary implication, the option that could earlier be exercised upto the first day of July in which the incumbent was to attain the age of 58 years became exercisable upto the first day of July in which the incumbent would attain the age of 60 years."

11. It is in the above backdrop that the claim of appellant for payment of gratuity required consideration. Undisputedly, the appellant did not exercise any option to retire at the age of 60 years and thereby claim gratuity. In fact the appellant continued to work uptill the age of superannuation i.e. 62 years. His working in fact was upto 64 years. In such circumstances, claim of the appellant for payment of gratuity under the applicable scheme for gratuity, enforced in the Basic Institutions, is clearly not made out.

12. Learned counsel for the appellant has, however, pressed appellant's claim for gratuity on the basis of provisions contained in the Payment of Gratuity Act, 1972. Learned counsel has placed Section 1(3) of the Payment of Gratuity Act, 1972 as also the notification issued by

Ministry of Labour, dated April 3, 1997, whereby the Central Government has extended the provisions of the Payment of Gratuity Act, 1972 (hereinafter referred to as the 'Gratuity Act, 1972') upon the educational institution in which 10 or more persons are employed or were employed on any day preceding 12 months as a class of establishment to which the act applied, with effect from the date of publication of notification.

13. A controversy arose in respect of the teachers of private schools regarding applicability of the provisions of the Act of 1972. This issue came to be resolved by the Supreme Court in Ahmedabad Private Primary Teachers' Association Vs. Administrative Officer and others, (2004) 1 SCC 755. In this judgment the Full Bench Judgment of Gujrat High Court rendered in Special Civil Application No. 5272 of 1987 holding the teachers of private schools not to be covered under the Act was affirmed. Only the employees (other than teachers) were held covered by the Gratuity Act, 1972.

14. The Gratuity Act, 1972 was later amended vide Payment of Gratuity (Amendment) Act, 2009. The constitutional validity of the amending act was challenged before the Supreme Court. The issue came to be resolved by the Hon'ble Supreme Court in Independent Schools' Federation of India (Registered) Vs. Union of India and another, 2022 SCC OnLine SC 1113. The challenge to the amendment made in the Gratuity Act, 1972 vide 2009 Amendment, by private schools, was rejected. The Court held as under in paragraph 19:-

"19. The provisions of the PAG Act, even post the retrospective amendments, will apply only to those teachers who were in service as on 3rd April 1997, and at the time of termination have rendered service of not less than 5 years. The period of 5 years may be partly before 3rd April 1997, as the date on which the person was employed does not determine the applicability of the PAG Act. The date of termination of service, in the form of superannuation, retirement, or resignation, or death or disablement due to accident or disease, should be post the enforcement date, which in the present case is 3rd April 1997. The entire length of service, including the service period prior to 3rd April 1997, is to be counted for the purpose of computing the entitlement condition of 5 years of service. This is the correct effect of the ratio and decision in Management of Goodyear India Limited. (supra) and the decisions explaining retroactive effect of a statute. This legal position would be equally true and correct when the PAG Act was first enforced with effect from 16th September 1972, and when Notification No. S-42013/1/95-SS.(II) under Section 1(3)(c) of the PAG Act was issued and enforced with effect from 3rd April, 1997. It would be the position in case of all notifications issued under Section 1(3)(c) of the PAG Act, unless a contrary intention is expressed, which is not the situation in the present case and thus need not be examined."

15. Reliance is placed by learned counsel for the appellant on the aforesaid judgment to contend that the provisions of the Gratuity Act, 1972 would be applicable upon the basic institutions and the denial of gratuity to appellant is bad in law. Learned counsel has also placed reliance upon Section 14 of the Gratuity Act, 1972 to contend that the provisions of the Gratuity Act, 1972 or any rule made thereunder will have overriding effect, inasmuch as, any inconsistent provision therewith would be invalid. Learned counsel further submits that the scheme for payment of gratuity applicable upon the basic institutions do not extend benefits as are available under the Gratuity Act, 1972, inasmuch as, the payment of gratuity under the applicable scheme is available only if the teacher opts to retire two years prior to attaining the

age of superannuation whereas gratuity under the Gratuity Act, 1972 is available on attaining the age of superannuation. Submission is that superior benefits extended to the teacher under the Gratuity Act, 1972 cannot be denied to him.

16. Sri Quazi Mohammad Akaram, learned counsel for the appellant also places reliance upon a judgment of Lucknow Bench of this Court in Writ – A No. 5724 of 2024 (University College Ret. Teachers Welfare Asso. Lko. Thru. Its President Dr. S.S. Chauhan and another Vs. State of U.P. and others) to contend that the gratuity will be payable to the teachers of basic institution.

17. Per contra, Sri Sri Kushmondeya Shahi learned counsel appearing for the respondent Board and the Basic Institution submits that the provisions of the Gratuity Act, 1972 will not be applicable upon the teachers of basic institution in view of the definition of '*employee*' contained in Section 2(e) of the Gratuity Act, 1972. He also places reliance upon judgment of Supreme Court in Biharilal Dobray Vs. Roshan Lal Dobray, (1984) 1 SCC 551 to contend that a teacher of basic institution holds a post under the State Government and since is governed by scheme framed by the State for payment of gratuity to such teachers, as such, the Gratuity Act, 1972 would not be applicable. Sri Shahi, therefore, contends that the provisions of the Gratuity Act, 1972 cannot be pressed into service by the appellant to claim gratuity.

18. On the basis of rival submissions made by the respective counsel for the parties the moot question that

arises for our consideration, in the facts of the present case, is as to whether a teacher of a basic institution would be covered within the definition of *employee*, as is contained under Section 2(e) of the Gratuity Act, 1972 so as to extend the benefit of gratuity thereunder to such teacher?

19. Section 2(e) of the Gratuity Act, 1972 is reproduced hereinafter:-

"Section 2(e) *"employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity."*

20. Employee under the Gratuity Act, 1972 would be a person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

21. Appellant's claim for benefit under the Gratuity Act, 1972 is primarily resisted on the ground that the appellant holds a post under the State Government and since is

governed by scheme for payment of gratuity, framed by the State as such he would be excluded from the purview of Section 2(e) of the Gratuity Act, 1972. Benefit of gratuity under the Gratuity Act, 1972 would thus not be available to the appellant.

22. We are, therefore, required to consider as to whether (i) a teacher employed in a basic institution holds a post under State Government and (ii) is governed by any other Act or by any Rules providing for payment of gratuity?

23. On the first aspect relating to a teacher of a basic institution holding a post under State Government is concerned, the issue is no longer *res-integra*. In *Biharilal Dobray* (supra) a question arose before the Supreme Court as to whether an Assistant Teacher of a Basic Primary School run by U.P. Board of Basic Education under U.P. Basic Education Act, 1972 was holding office of profit under the State Government so as to incur disqualification under Article 191(1)(a) of the Constitution of India. The Court examined the provisions of the Act of 1972 to determine the status of board constituted under the Act of 1972. The statement of objects and reasons of the Act of 1972 were noticed by the Court in paragraph 12 of the judgment. In paragraph 13, the Court noted the functions of the Board as were set out in Section 4 of the Act of 1972. After elaborately examining the scheme of the Act the Hon'ble Supreme Court rejected the argument of the respondent that an Assistant Teacher appointed in the institution set up by the Board is not holding an office of profit. In Paragraphs 23 and 24, the Court held as under:-

"23. The contention of the respondent is that the Board being an authority subject to the control of the Government cannot be considered as the Government itself as otherwise Article 58(4) and Article 66(4) of the Constitution which refer to the Government as well as other authority subject to the control of any Government would have to be treated as suffering from the vice of redundancy. It is further argued that when the Constitution itself has made a distinction between the Government and other authority subject to the control of the Government, in the absence of any reference to any other authority subject to the control of the Government in Article 191(1)(a) of the Constitution, the holding of an office of profit under the Board which is only an authority under the control of the Government would not amount to a disqualification. The argument is indeed quite attractive. But it is difficult to accept it having regard to the provisions of the Act and the rules. We have already shown that the Board is not an authority which is truly independent of the Government and that every employee of the Board is in fact holding his office under the Government. This is not even a case of attempting to pierce the veil and trying to find out the true nature of something after uncovering it but a case where its true nature i.e. the subordination of the Board and its employees to the Government is writ large on the face of the Act and the rules made thereunder.

24. Having considered all aspects of the question in the light of the high purposes underlying Article 191(1)(a) of the Constitution, we are of the view that the respondent was holding an office of profit under the State Government and his nomination was rightly rejected by the Returning Officer. The judgment of the High Court is, therefore, liable to be reversed."

24. Judgment of Supreme Court in *Biharilal Dobray* (supra) has held the field for the last more than four decades. We have, therefore, no hesitation in coming to the conclusion that a headmaster or assistant teacher appointed in an educational institution established by the Board holds a post under the State Government. The first issue is answered, accordingly.

25. This takes us to the second part of the appellant's contention that the scheme for payment of gratuity framed in respect of teachers of basic institution since is not

governed by any other Act or by any Rules providing for payment of gratuity, as such, the Teacher of a basic institution would not be excluded from the ambit of Gratuity Act, 1972. For excluding a person from the definition of employee under Section 2(e) of the Gratuity Act, 1972 such person in addition to holding a post under Central or State Government must also be governed by a scheme for gratuity under any other Act or Rules.

26. What is important is that such employee holding a post under Central or State Government must be governed by any other scheme providing for payment of gratuity under any other Act or Rules. The Act or Rules whereunder such scheme for gratuity is framed is not specified.

27. Ordinarily, a scheme for payment of gratuity would be made under any Act or Rules when it comes to a person holding a post under Central or State Government is concerned. Non specification of Act or Rules in the exclusion clause contained in Section 2(e) and the use of expression "*any other act or by any rules*" essentially conveys that such scheme for payment of gratuity must be backed by requisite force of law.

28. Reference to scheme for gratuity made under any other act or by any rules conveys expressions of wide magnitude. It cannot be restricted only to scheme for gratuity made under any specific Act or Rules, *per se*. Such scheme for gratuity for a person holding post under State Government can also be by way of Rules made in exercise of executive powers of State. This is so as the power with the State Government to frame scheme for

payment of gratuity by way of executive instructions would be co-extensive with the legislative powers of State. (See: Article 162 of the Constitution of India). The argument of appellant's counsel that scheme for gratuity framed by the State in respect of teachers of basic institution since are not under any other Act or by any specific Rules made under any Act, therefore, the benefits under Gratuity Act, 1972 would be available to the appellant cannot be accepted.

29. We, accordingly, hold that a teacher (including Headmaster) of a basic institution cannot be held to be an *employee* under Section 2(e) of the Gratuity Act, 1972. The benefits available to an employee under the Gratuity Act, 1972 would thus not be available to such a teacher. The claim of appellant for extending the benefit of gratuity under the Gratuity Act, 1972, accordingly, fails.

30. Special Appeal is, therefore, dismissed.

Order Date :- 8.7.2025

RA/Ranjeet

(Praveen Kumar Giri,J.)

(Ashwani Kumar Mishra,J.)