NC: 2025:KHC:9660
WP No. 8984 of 2016
C/W WP No. 29278 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

WRIT PETITION NO. 8984 OF 2016 (L-PG)

C/W

WRIT PETITION NO. 29278 OF 2018 (L-PG)

IN WP No. 8984/2016

BETWEEN:

SRI SIDDHARTHA INSTITUTE OF TECHNOLOGY
MARALURU, TUMKUR TALUK AND DISTRICT,
REP. BY ITS PRINCIPAL
SRI M.A.VEERAIAH.

…PETITIONER

(BY SRI CHANDRAKANTH R.GOULAY., ADVOCATE)

AND:

Digitally signed by BASALINGAPPA SHIVARAJ DHUTTARGAON
Location: HIGH COURT OF KARNATAKA

1. THE UNION OF INDIA,
   DEPARTMENT OF MINISTRY
   OF LAW & JUSTICE, GOVERNMENT OF INDIA,
   4TH FLOOR, 'A' WING,SHASTRI BHAVAN, NEW DELHI
   REP. BY ITS SECRETARY.

2. THE UNION OF INDIA
   DEPARTMENT OF LABOUR &
   EMPLOYMENT,GOVERNMENT OF INDIA,
   RAFI MARG, NEW DELHI,
   REPD. BY ITS SECRETARY.
3. THE ASSISTANT LABOUR
   COMMISSIONER AND THE
   CONTROLLING AUTHORITY,
   BANGALORE DIVISION - 1,

RAJANNA ROAD, PEENYA FIRST STAGE,
TUMKUR ROAD, BANGALORE - 560 058.

4. SRI S.N.KESHAVAMURTHY
SINCE DECEASED BY LR SMT. UMA B.R.
W/O LATE S.N.KESHAVAMURTHY
65/1, T-2, S.V.M MANSION
3RD, CROSS MAIN ROAD,
SUBBANNA GARDEN, VIJAYANAGAR,
BENGLAURU – 560 040.

…RESPONDENTS

(BY SRI KUMAR M.N., A.S.G.I, FOR C.G.C, FOR R1;
SRI GURU SWAMY B.S., A.G.A. FOR R3;
SRI T.S.ANANTHARAM, ADVOCATE FOR LRS OF R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT, ORDER OR DIRECTION DECLARING SUB-SECTION 2 OF SECTION 1 OF THE PAYMENT OF GRATUITY (AMENDMENT) ACT, 2009 AS UNCONSTITUTIONAL FOR GIVING RETROSPECTIVE EFFECT TO THE PAYMENT OF GRATUITY (AMENDMENT) ACT, 2009, AS PER ANNEXURE-A AND ISSUE A DIRECTION DECLARING SECTION 13-A NEWLY INSERTED BY SECTION 3 OF THE PAYMENT OF GRATUITY (AMENDMENT) ACT, 2009 IN THE PAYMENT OF GRATUITY ACT, 1972 AS UNCONSTITUTIONAL FOR ARBITRARILY VALIDATING THE NOTIFICATION DATED 03.04.1997 WITH RETROSPECTIVE EFFECT WITH EFFECT FROM 03.04.1997 AND FOR UNDOING THE JUDGMENTS PASSED BY ANY COURT OF LAW DURING THIS PERIOD AS PER ANNEXURE-'A' AND ETC.

IN WP NO. 29278/2018

BETWEEN:

SIDDHARTHA INSTITUTE OF TECHNOLOGY
MARLUR, TUMKUR – 572 105.
TUMKUR DISTRICT REP BY ITS PRINCIPAL.

...PETITIONER

(BY SRI CHANDRAKANTH R.GOULAY., ADVOCATE)

AND:

1. SRI M.A.NAGESH
   AGED MAJOR, RESIDENT OF
   SAHANA NILAYA
   4TH CROSS, BASAVA BHAVAN ROAD
   SIDDARMESHWARA EXTENSION
   TUMKUR – 572 103.

2. THE ASSISTANT LABOUR COMMISSIONER
   AND CONTROLLING AUTHORITY FOR
   PAYMENT OF GRATUITY ACT 1972
   DIVISION NO.1, KARMIKABHAVAN,
   BANNERGHATTA ROAD,
   BENGALURU – 560 029.

...RESPONDENTS

(BY SRI A.J.SRINIVASAN., ADVOCATE FOR R1;
SRI GURU SWAMY B.J., ASGI FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI QUASHING THE IMPUGNED ORDER BEARING NO.PGA/CR-147/2013-14 PASSED BY THE 2ND RESPONDENT DATED 28.07.2016 AS PER ANNEXURE-A AS ARBITRARY, ILLEGAL AND VOID AND IN VIOLATION OF PRINCIPLES OF NATURAL JUSTICE OFFENDING ARTICLES 14 AND 16 CONSTITUTION OF INDIA AND ETC.

THIS WRIT PETITIONS, COMING ON FOR PRELIMINARY HEARING IN 'B" GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

ORAL ORDER

WP No.8984/2016:

This petition is filed assailing the constitutional validity of sub-section (2) of Section 1 of Payment of

Gratuity (Amendment) Act, 2009. In terms of said amendment, definition of employee was amended. The validity of Section 13-A inserted by Section 3 of Payment of Gratuity (Amendment) Act, 2009 is also called in question.

2. The prayer 'C' in the writ petition is to set aside the order dated 29.10.2014 passed by the Controlling Authority and to quash the order dated 20.08.2015 passed by Appellate Authority. The prayer 'E' is to quash the proceeding said to be pending before the third respondent on an application filed by fourth respondent. It is noticed that the document relating to the said proceedings is not furnished before this Court.

3. Learned counsel appearing for respondents No.1 and 2 would submit that the challenge to the constitutional validity mounted by the very petitioner in Writ Petition No.2145/2013 has failed and the writ appeal filed against the said order is dismissed in Writ Appeal No.687/2018. It is further submitted by the learned counsel for respondents No.1 and 2 that the Apex Court has also

upheld the constitutional validity of the said provision in the case of ***Independent Schools' Federation of India vs Union of India[1].*** Thus, he would contend that the writ petition in respect of prayer 'A' and 'B' is not maintainable.

4. On the other hand, learned counsel for the petitioner fairly submits that the challenge to the constitutional validity of the aforementioned provisions has failed and the provisions are said to be constitutional.

5. On perusal of the aforementioned judgment, it is evident that the Court has upheld the constitutional validity of aforementioned provisions. Accordingly, the prayers 'A' and 'B' do not survive for consideration. Accordingly, rejected. As far as prayer 'C' is concerned, it is to be noticed that the petitioner has assailed the order passed by the Controlling Authority which directed payment of gratuity of Rs.11,09,704/- in the first instance. The appeal is filed before the Appellate Authority contending that under the Payment of Gratuity Act, 1972

[1] ***(2022) 3 SCC onLine 1113***

there is no provision to pass an order for payment of gratuity in excess of Rs.10,00,000/-. During the pendency of the said appeal, the order passed by the Controlling Authority was corrected and payment is restricted to Rs.10,00,000/-. Under these circumstances, the appeal was withdrawn on the submission made by the petitioner. If that is the position, writ petition is also not maintainable challenging the order for payment of gratuity of Rs.10,00,000/-. Since the petitioner has not questioned the order directing payment of Rs.10,00,000/- towards gratuity and appeal was only in respect of an amount in excess of Rs.10,00,000/-, the petitioner cannot question the order challenging order directing payment of Rs.10,00,000/- towards gratuity.

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6. This petition is filed assailing the order dated 28.07.2016 passed by the second respondent - Controlling Authority acting under the provisions of the Payment of Gratuity Act, 1972. The Controlling Authority has accepted

the claim made by the employee and directed payment of Rs.5,98,015/- towards gratuity and also directed payment of interest as provided under the Act of 1972.

7. Admittedly, this order is appealable under sub-section (7) of Section 7 of Act of 1972. The said provision provides for filing an appeal within 60 days from the date of the order and further provides for condonation of delay of another 60 days and in case the appeal is not filed within 120 days, then the right to appeal is taken away and there is no provision to condone the delay.

8. The petition is filed without filing an appeal. Only ground urged in the petition is that, "Whether a teacher in an unaided school is covered under the provisions of Act of 1972?" is pending consideration before the Apex Court.

9. The Apex Court in ***Independent Schools' Federation of India vs Union of India, reported in***

(2022) 3 SCC OnLine 1113, has taken a view that the teachers are also covered under the Act of 1972.

10. This Court has considered the said contention. Payment of Gratuity is governed by the Payment of Gratuity Act, 1972. There is no dispute that the petitioner is the employer and contesting respondent No.1 is the employee. The contesting respondent was paid wages and he has fulfilled minimum number of prescribed years in terms of Section 4 of Act of 1972 to be eligible for payment of gratuity. Thus, the claim of the petitioner is covered under the Payment of Gratuity Act, 1972.

Accordingly, the Writ Petitions are ***dismissed***.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

brn
List No.: 19 Sl No.: 1