

Court No. - 19

Case :- WRIT - A No. - 292 of 2025

Petitioner :- Prof. Syed Shafeeque Ahmad Ashrafi

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Higher Education And 3 Others

Counsel for Petitioner :- Rakesh Kumar Chaudhary, Ayush Chaudhary

Counsel for Respondent :- C.S.C., Shubham Tripathi

Hon'ble Manish Mathur, J.

1. Heard learned counsel for petitioner, learned State Counsel for opposite party nos.1 to 3 and Mr. Shubham Tripathi, learned counsel for opposite party no.4.

2. Petition has been filed challenging Clause 4(1) of the Government Order dated 22.06.2018 as well as communication of rejection dated 02.12.2024. Further prayer for payment of gratuity to petitioner alongwith interest from the date of superannuation till the date of actual payment in terms of judgment and order passed by this Court dated 01.10.2024 in Writ-A No.5724 of 2024 and other connected matters as well as judgment and order dated 30.04.2024 rendered by the Hon'ble Supreme Court in SLP (C) No.23788 of 2014 has been sought.

3. In terms of submissions advanced by learned counsel for parties and perusal of material on record, particularly judgment rendered in **Writ-A No.5724 of 2024, University College Retired Teachers Welfare Association, Lucknow and Another versus State of U.P. and Others**, it appears that although the Government Orders under challenge in the aforesaid petitions and the present one are different but pertain to same cause of action.

4. The Government Order under challenge as well as the

Government Order dated 30.03.1983 and 04.02.2004, which was under challenge in Writ-A No.5724 of 2024 pertains to denial of gratuity to such teachers who opted to continue in service after prescribed age of superannuation. The Government Orders provided that such gratuity would be payable only to those teachers who opted to retire at the age of 58 years and upon whom provisions of Payment of Gratuity Act, 1972 were made applicable but was denied to those who continued in service up to the age of 60 years, ostensibly for the reason that in such cases, 2 years additional service benefits were opted for.

5. Relevant paragraphs of the aforesaid judgment are as follows:-

"Question No. 1-

16. Whether the petitioners would be covered under definition of the term 'employee' under Section 2(e) of the Act, 1972 and would now be entitled for gratuity?

Question No. 2-

17. Whether, even if covered under the aforesaid definition, they are liable to be excluded in terms of option already availed of under Government Order dated 30.03.1983 upon applicability of principles of acquiescence/estoppel?

27. From a consideration of the aforesaid facts and circumstances, it is thus evident that subsequent to the Government Order dated 30.03.1983, the situation underwent a sea change with amendment being incorporated in Section 2(e) of the Act, 1972, whereunder teachers as a class were brought under definition of the term 'employee'.

30. In view of aforesaid facts and circumstances, it is discernible that no distinction being indicated in the amendment to Section 2(e) of the Act, 1972 pertaining to teachers of affiliated Colleges or Primary and other Schools, no such distinction as is being advocated by learned counsel for opposite parties can be construed. A perusal of the Amending Act will make it evident that teachers as a class have been brought under the definition of 'employee' by means of the Amending Act and would form a single class irrespective of whether they belong to Primary, Secondary or Degree Colleges etc.

31. It is also noticeable that since the amendment incorporated in the Act of 1972 has been notified with effect from 03.04.1997, it has been made retrospective in nature and would cover all such teachers who are covered by the aforesaid Amending Act of 2009.

33. Considering aforesaid facts and discussions, the question no.1 is answered in favour of petitioners that they would be covered in the definition of 'employee' under Section 2(e) of the Act, 1972.

Answer No.2

34. With regard to aforesaid question, it is quite evident that at the time of notification of Government Order dated 30.03.1983, teachers as a class were not included in the definition of 'employee' under Section 2(e) of the Act, 1972 and therefore, they were sought to be brought within the aforesaid scope for payment of gratuity with a rider that such provision of gratuity would be applicable only in case teachers opted to superannuate at the age of 58 years with such benefit being declined to those who opted to continue in service till the age of 60 years.

37. As indicated here-in-above, the situation underwent a sea change with the advent of Amending Act No.47 of 2009 whereby the Government Order dated 30.03.1983 lost all significance since teachers were now covered statutorily under the Act, 1972 w.e.f. 03.04.1997.

38. It is also worth noticing that exemption from applicability of the Act, 1972 is contemplated under Section 5 of the aforesaid Act, particularly in view of non-obstante Clause under Section 14 of the aforesaid Act, which clearly states that the provisions of Act would continue to be in force irrespective of anything contained which is inconsistent with any other provisions.

39. It is not the case of opposite parties that they have been exempted from applicability of the Act, 1972 in terms of Section 5 thereof and therefore, in the considered opinion of this Court, the mandatory conditions of Section 14 of the Act, 1972 would automatically apply. It is also worth stating that in terms of statutory provisions under Section 5 read with Section 14 of the Act, 1972, the provisions of Government Order dated 30.03.1983 would become redundant since it is a settled law that provisions of statute would have primacy over any executive instruction such as a Government Order.

40. In view of specific statutory provisions of the Act, 1972, particularly Sections 5 and 14 thereof, the Act would prevail over the Government Order dated 30.03.1983.

41. In the considered opinion of this Court, the aspect of option therefore also would lose any relevance since principles of acquiescence and estoppel do not apply against statute as has been held by the Hon'ble Supreme Court in the case of State of U.P. versus U.P. Rajya Khanij Vikas Nigam Sangharsh Samiti & others (2008) 12 SCC 675.

46. Considering aforesaid answers to the questions, Government Orders dated 30.03.1983 and 04.02.2004 are hereby quashed to the extent of denial of gratuity benefits to such Teachers who exercised their option to continue in service for the extended period.

47. Opposite parties are directed to ensure payment of gratuity to the petitioners alongwith interest @ 6% per annum on such arrears with effect from the date of their superannuation till the date of actual payment. Compliance of the aforesaid directions shall be made by the opposite

parties positively within a period of six months from the date a certified copy of this order is served upon the concerned authorities.

48. Resultantly, the petition succeeds and is allowed. Parties to bear their own costs."

6. Upon examination of aforesaid judgment and order dated 01.10.2024, in the considered opinion of this Court, the same is squarely applicable in the present facts and circumstances although in the present dispute, the enhancement of the age is from 60 to 62 years. Additionally, it is also seen that petitioner is a teacher who was appointed as a Lecturer/ Assistant Professor in St. John's College, Agra, which was affiliated to Dr. B.R. Ambedkar University, Agra on 07.01.1992 and superannuated on 30.06.2024 from the post of Professor in Khwaja Moinudding Chishti Language University, Lucknow and has been denied gratuity benefits on the same analogy which was under challenge in the judgement indicated here-in-above.

7. Learned counsel for parties admit that till date the judgment and order dated 01.10.2024 passed in Writ-A No.5724 of 2024 has not been challenged in appeal.

8. In terms thereof, Clause 4(1) of the Government Order dated 22.06.2018 as well as communication dated 02.12.2024 is hereby quashed by issuance of the writ in the nature of certiorari. The present petitioner shall also be governed by the directions issued by this Court in the judgment and order dated 01.10.2024.

9. Opposite parties are directed to ensure payment of gratuity to the petitioner alongwith interest @ 6% per annum on such arrears with effect from the date of his superannuation till the date of actual payment. Compliance of the aforesaid directions shall be made by the opposite parties positively within a period

of six months from the date a certified copy of this order is served upon the concerned authorities.

10. Resultantly, the petition succeeds and is **allowed** at the admission stage itself.

11. Parties to bear their own costs.

Order Date :- 16.1.2025

Mohd. Sharif