

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 3478/2013
With
OA 3479/2013
OA 3480/2013
OA 3482/2013
OA 3484/2013
OA 3485/2013
OA 3486/2013

Reserved on: 29.08.2016
Pronounced on: 6.09.2016

Hon'ble Mr. P.K. Basu, Member (A)

OA 3478/2013

Archana Shastri
W/o Shri Shastri Ramachandran
Aged about 60 years
R/o 25/604, East-End Apartments
Mayur Vihar Phase-I Extn.,
New Delhi-110096

... Applicant

OA 3479/2013

Asha Baxi
W/o Late Shri Himanshu Baxi
R/o B-215, Priyadarshini Vihar,
Delhi-110092

....Applicant

OA 3480/2013

D.K. Batra
S/o Shri R.C. Batra
R/o B-124, Amar Colony,
Lajpat Nagar-IV
Delhi-110024

....Applicant

OA 3482/2013

Rajesh Bheda
S/o Shri Shyamsunder Bheda
R/o 57, While Wood Street,
Malibu Town, Sohna Road,
Gurgaon-122002

....Applicant

OA 3484/2013

Jatin Bhatt
 S/o Shri Panubhai Patel
 R/o B-50, SFS Flats,
 Sheikh Sarai Phase I,
 New Delhi-110070

....Applicant

OA 3485/2013

Sanjay Gupta
 S/o Late Shri R.C. Gupta
 R/o 27, New Campus,
 IIT, Hauz Khas,
 New Delhi-110016

....Applicant

OA 3486/2013

Sangita Shroff
 D/o Shri Rajendra Ramanlal Shroff
 R/o 6, Merchant Park,
 Behind Jain Merchant's Society,
 Paldi, Ahmedabad-380007

....Applicant

(Shri Amit Goel & Ms.Archana Shastri, for applicant in all OAs)

Versus

Union of India & ors.

1. Union of India
 Through the Secretary
 Ministry of Textiles
 Udyog Bhawan,
 Dr. Maulana Azad Road
 New Delhi-110011
2. The Director General
 National Institute of Fashion Technology
 NIFT Campus, Hauzkhas
 New Delhi-110016
3. The Registrar (Establishment)
 National Institute of Fashion Technology
 NIFT Campus, Hauzkhas
 New Delhi-110016

... Respondents

(Sh.Pratap Shanker & Ms.A.Shivani, for respondents in all OAs)

ORDER

Mr. P.K. Basu, Member (A)

OA 3478/2013, OA 2479/2013, OA 3480/2013, OA 3482/2013, OA 3484//2013, OA 3485/2013 and OA 3436/2013, all pertain to the same issue and the prayer is the same namely for payment of gratuity to the applicants. The exact prayer is as follows:

- “(i) release the amount of gratuity payable to the Applicant;
- (ii) pay the interest on the gratuity amount after releasing the same immediately @ 18% p.a.;
- (iii) Award the exemplary cost in favour of the applicant and against the respondents.”

2. The applicants, all belong to teaching faculty in the National Institute of Fashion Technology (NIFT). Gratuity had been denied to them by the respondents on the ground that they had all ‘resigned’ from service and in accordance with Rule 26 (1) of the CCS (Pension) Rules 1972, which was applicable in the case of the applicants, resignation leads to forfeiture of service and hence there is no question of payment of gratuity. While the matter was pending adjudication before us, it was referred to Lok Adalat and the Lok Adalat on 10.01.2015 passed the following order:

“After due deliberation put forth by the parties, it is decided that the respondents shall give a proposal to the BOG of respondents’ organization who shall consider the case of the applicant sympathetically as

a special case especially having due regard to the Legal Services Authorities Act, 1987 within a period of 10 weeks. Thereafter, the said decision of the BOG shall be furnished to the applicant's counsel. List this matter before Court after 10 weeks for appropriate orders."

In compliance with the direction of the Lok Adalat, the matter was placed before the Board of Governors (BoG) of NIFT on 29.10.2015 and the BoG took the following decision:

"AGENDA ITEM NO.3013

APPLICABILITY OF THE PROVISIONS OF THE
GRATUITY ACT 1972

The Board accorded its approval for applicability of the provision of "Payment of Gratuity Act, 1972" retrospectively i.e. w.e.f. 3rd April, 1997 when the "Payment of Gratuity Act, 1972" was made applicable to Educational Institutions. The Board directed that a status note on existing system of provisioning for Gratuity / retirement dues and amounts being so provisioned be placed for information of Board at its next meeting."

Once this decision was taken by the BoG, the respondents released gratuity according to the provisions of the Gratuity Act 1972 and except the applicant in OA 3479/2013, in the other cases the applicants were paid Rs.3.5 lakhs towards gratuity. In the case of the applicant in OA 3479/2013, Rupees 10 lakhs were paid as gratuity. This was so because while the other six applicants retired before 24.10.2010, the date on which the government increased the maximum limit of gratuity under the Payment of Gratuity Act, 1972 from Rs. 3.5 lakh to Rs.10 lakhs.

3. The learned counsel for the applicants argued that Rule 14 of the Payment of Gratuity Act, 1972 provides as follows:

"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."

It is argued that based on this Rule, gratuity is payable even on resignation as payment of gratuity under this Act is payable even on resignation. Moreover, the respondents have not sought any exemption under Rule 5, which, inter alia, states as follows:

"5. Power to exempt.- 1[(1) The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act if, in the opinion of the appropriate Government, the employees in such establishment, factory, mine, oilfield, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act."

4. It is further stated that as per Rule 48-A of CCS (Pension) Rules, any government servant can retire on completion of 20 years of qualifying service and the applicants in OA 3478/2013 and OA 3479/2013 had completed 20 years of qualifying service, therefore, they were entitled to seek voluntary retirement but were forced to resign by the respondents.

5. Learned counsel for the applicants further stated that for delayed payment of gratuity, interest is payable at the rate of

9%, which should also be paid in the case of all six applicants (other than the applicant in OA 3479/2013). The quantum of gratuity has also to be enhanced as per provisions of CCS (Pension) Rules under which the limit of gratuity after 1.01.2006 has been raised to Rs.10 lakhs and all the applicants have retired after 1.01.2006.

6. Learned counsel for the applicants also stated that in OA 3478/2013, the applicant had gone on deputation as Principal, Govt. College of Art, Chandigarh after obtaining due permission on lien. However, later the respondents cancelled her lien and treated her as having resigned from the date she went on deputation. According to the learned counsel, in this case since the applicant had proceeded on deputation after due permission and having applied through proper channel, there was no question of treating her as having resigned.

7. Learned counsel for the applicants further drew our attention to one particular case namely Shri S.D. Swaminarayan, Ex. Registrar, NIFT-Bhopal Centre (Annexure II to rejoinder) who has been paid gratuity with less than 10 years of service and on resignation vide order dated 11.09.2009 by the respondents. Therefore, the respondents cannot discriminate between its employees.

8. Learned counsel for the applicants also relied upon judgment of the Hon'ble Bombay High Court in W.P. No.2668/2002 with connected petitions, **Jeevan Kashinath**

Patil and others Vs. State of Maharashtra and others, in

which the Hon'ble High Court held as follows:

"26. This submission of the respondent/ State is not acceptable as the challenge is to the constitutionality of the Rule. An employee who resign cannot and should not be treated differently from an employee who superannuates in respect of the encashable credit of leave. The classification of resigned employee as a different class from one who is superannuated to the extent of encashable credit of leave is concerned is a classification done without any basis. In any case the respondent State has not been able to point out any objective being achieved by such classification. Thus Rule 67 (3) of Leave Rules 1981 is manifestly arbitrary as being violation of Art. 14 of the Constitution of India to the extent it limits the benefit to half of such leave to its credit subject to a cap of 150 days on enjoying the benefit of earned leave standing to their credit. This also does not entail an element of penalty being imposed upon the employee for resigning from service. Therefore, for the reasons indicated by us herein above while holding that Rule 46 (1) of the Pension Rules 1982 has to be read down, we find that Rule 67 (3) of the Leave Rules 1981 is unconstitutional.

27. Accordingly, we allow with petition by holding that Rule 46 (1) of the Pension Rules 1981 have to be read down so as to entitle the employees of the State Government to Gratuity in case they resign after completing 5 years of service. We declare that Rule 67 (3) of the Leave Rules 1982 providing for capping on the credit of leave could be encashed being half of such leave to their credit subject to a cap of 150 days to an employee who has resigned from service as unconstitutional."

Reliance was also placed on the following in support of claim that interest has to be paid for delayed payment:

- (i) **Union of India and others Vs. M.R. Shivappa and others**, W.A. No.3602/1997

and 4690/1999 decided by Hon'ble Karnataka High Court.

- (ii) **Municipal Board, Gangapur City and another Vs. Salim Khan and another,** Civil Writ Petition No.2892/1997 decided by Jaipur Bench of Hon'ble Rajasthan High Court.

9. Learned counsel for the respondents argued that once the matter was before the Lok Adalat and based on specific order of the Lok Adalat the question of payment of gratuity was placed before the BoG and the BoG took a view that Payment of Gratuity Act 1972 will be applicable with effect from 3.04.1997, the matter cannot be reopened now going back to CCS (Pension) Rules as now Payment of Gratuity Act 1972 will apply from 3.04.1997, the date from which educational institutions had been included under the Payment of Gratuity Act. The learned counsel also referred to judgment in **Ahmedabad Pvt. Primary Teacher's Association Vs. Administrative Officer and ors,** AIR 2004 SC 1426, where the appellants had challenged the Full Bench judgment of the Hon'ble High Court of Gujarat by which not only their claim for payment of gratuity under the provisions of Payment of Gratuity Act 1972 was rejected but the High Court also decided an important question of law against the teachers as a class that they do not fall within the definition of 'employee' as contained in Section 2 (e) of the aforesaid Act and hence can raise no claim to gratuity. The learned counsel further relied upon **P.T. Thomas Vs. Thomas Job,** Civil

Appeal No.4677/2005 decided on 4.08.2005, where the Hon'ble Supreme Court observed as follows:

"17. The Lok Adalat will pass the award with the consent of the parties, therefore there is no need either to reconsider or review the matter again and again, as the award passed by the Lok Adalat shall be final. Even as under Section 96 of C.P.C. that "no appeal shall lie from a decree passed by the Court with the consent of the parties". The award of the Lok Adalat is an order by the Lok Adalat under the consent of the parties, and it shall be deemed to be a decree of the Civil Court, therefore an appeal shall not lie from the award of the Lok Adalat as under Section 96 C.P.C.".

10. It is, therefore, argued that once the Lok Adalat has passed an order with the consent of the parties, that matter cannot be reopened. In this regard, the learned counsel for the respondents also referred to **Sailendra Narayan Bhanja Deo Vs. The State of Orissa**, (1956) 1 SCR 72, where it has been held that a judgment by consent or default is as effective an estoppel between the parties as a judgment whereby the Court exercises its mind on a contested case. In fact, the judgment in **Sailendra Narayan Bhanja Deo** has been cited by the Hon'ble Supreme Court in **P.T. Thomas** (supra). Reliance was also placed on the following judgments:

- (i) **Govt. of NCT & ors. Vs. Amar Singh**, W.P.(C) 5428/2013 decided by the Hon'ble High Court of Delhi on 7.11.2013, where it has been held that respondent having resigned from service would forfeit his past

service, which was not qualified service for pension;

- (ii) **Raj Kumar and ors. Vs. Union of India and anr.**, Writ Petition (Civil) No.569/2001; **Union of India and ors. Vs. Rakesh Kumar etc.**, Appeal (Civil) No.6166/1999 and **Union of India & ors. Vs. Madhu E.V. and anr.**, Civil Appeal No (s) 9647-9650/2003 - All these judgments relate to Border Security Force and are based on different facts and circumstances, thus would not be applicable here.

11. As regards the case of Shri Swaminarayan, it is clarified by respondents in their reply that his case was different. He had retired from service in terms of Rule 26 (2) of CCS (Pension) Rules 1972.

12. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments cited by either side.

13. The initial dispute arose because the applicants were treated as having resigned from service and in view of Rule 26 (1) of CCS (Pension) Rules 1972, which provides for forfeiture of gratuity on resignation, they were denied gratuity. While this OA was pending, the matter was referred to the Lok Adalat. With the consent of the parties, the Lok Adalat passed an order. Based on that, the BoG of NIFT took a decision on 29.10.2015

to adopt Payment of Gratuity Act, 1972 to be implemented retrospectively from 3.04.1997, the date on which educational institutions were brought within the purview of the Payment of Gratuity Act 1972.

14. Based on the decision of the BoG, the respondents paid Rs.3.5 lakhs as gratuity to six of the applicants (other than the applicant in OA 3479/2013) as that was the provision for the amount to be paid as gratuity under the Payment of Gratuity Act. However, the applicant in OA 3479/2013, who retired after the amendment in the Payment of Gratuity Act raising the limit of payment of gratuity to Rs. 10 lakhs, was paid Rs.10 lakhs.

15. The question to be resolved is whether there is any illegality in the action of the respondents to apply Payment of Gratuity Act 1972 to its employees when originally they were covered under CCS (Pension) Rules 1972. If they are covered under CCS (Pension) Rules 1972, then according to the learned counsel for the applicants, two things happen. First, in view of the judgment of the Hon'ble Bombay High Court in Jeevan Kashinath Patil (supra), gratuity is payable even on resignation and second, since all the applicants retired after 1.01.2006, they are all entitled to gratuity amount of Rs.10 lakhs as with effect from 1.01.2006 the gratuity amount under CCS (Pension) Rules 1972 has been raised to Rs.10 lakhs. The facts show that the dispute was referred to Lok Adalat, which passed an order dated 10.01.2015 with the consent of the parties. The matter was referred to the BoG of NIFT as a consequence of the order of the

Lok Adalat. The BoG took a decision to apply Payment of Gratuity Act 1972 to the employees of NIFT with effect from 3.04.1997. Therefore, the respondents stand is that in view of the judgment of the Hon'ble Supreme Court in P.T. Thomas (supra), the applicants cannot raise the issue already settled by the Lok Adalat. Having given its consent for the matter to be referred to the BoG of NIFT, I do not see any justification for the applicants now to claim that the respondents should not go by the decision of the BoG and to decide the cases based on the provisions of CCS (Pension) Rules 1972 in the light of judgments of the Hon'ble Supreme Court in P.T. Thomas (supra) and Sailendra Narayan Bhanja Deo (supra) and judgment of the Hon'ble High Court in Amar Singh (supra). As regards Shri Swaminarayan's case, there is indeed some discrepancy. While the order dated 11.09.2009 mentions 'resignation', the respondents in their reply state 'retired'. Be that as it may, the applicant cannot claim negative equality [**Union of India and another Vs. International Trading Co. and another**, (2003) 5 SCC 437].

16. As regards payment of interest for delayed payment, respondents could only take a decision after the matter was decided by the Lok Adalat and thereafter by the BoG. The Lok Adalat decided the matter on 10.01.2015 and the BoG took the decision on 29.10.2015. Thereafter, gratuity was released. Therefore, I do not find any justification in the prayer for grant

of interest either. The OAs, therefore, do not succeed and are dismissed. No costs.

(P.K. Basu)
Member (A)

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