

A.F.R.

Court No. - 34

Case :- WRIT - A No. - 6402 of 2024

Petitioner :- Sehrun Nisha

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- R.B. Singh

Counsel for Respondent :- C.S.C.

Hon'ble J.J. Munir,J.

1. This writ petition is directed against the order dated 02.12.2023 passed by the District Minority Welfare Officer, Prayagraj, rejecting the petitioner's claim to gratuity on the ground that the petitioner has sought voluntary retirement at the age of fifty-seven years, whereas gratuity is payable only to those who opt to retire at the age of sixty years (as distinguished from those who opt to retire at the age of sixty-two years) and also in cases of teachers, who die before attaining the age of sixty years.

2. It is submitted that according to paragraph no. 4(1) of the Government Order dated 14.12.2011, it is provided that like civil service, governed by Article 474 of the Civil Service Regulations, those who do not complete ten years of qualifying service, are not entitled to pension but if they opt to retire at the age of sixty years, they are entitled to gratuity under the rules framed for the teachers serving in the aided Intermediate Colleges.

3. On 26.04.2024, this Court passed the following order:

"The petitioner opted for voluntary retirement at the age of 57 and has been denied his gratuity by the District Minority Welfare Officer on ground that since he had not filled up the option to retire at 60, which is the entitling age to receive gratuity, or 62 years, which disentitles, the petitioner is not entitled to gratuity.

Prima facie the reasoning is absolutely flawed.

Mr. J. N. Maurya, learned Chief Standing Counsel states at this juncture that one opportunity be provided to the

District Minority Welfare Officer, Prayagraj to reconsider the matter.

A week's time is granted for the purpose.

Adjourned to 07.05.2024 as fresh. "

4. An opportunity was provided to the District Minority Welfare Officer, Prayagraj to re-consider the matter. The District Minority Welfare Officer, Prayagraj has skirted the opportunity granted to him by this Court. He has issued a memo dated 03.05.2024, where the stand taken is that gratuity is payable only to such teachers of the aided Intermediate Institutions, who opt to retire at the age of sixty years. He has referred to an objection in this regard raised by the Joint Director (Pension) Prayagraj Division, Prayagraj *vide* his memo dated 09.09.2020 annexed as Annexure no. 3 to his memo dated 03.05.2024, where it is observed:

"श्री मो० अबुल कलाम स्वैच्छिक सेवानिवृत्त प्रधानाचार्य मदरसा हिदायतुल दोंदीपुर प्रयागराज के प्रकरण का परीक्षण किया गया जिसमें उन्होंने यह कमी इंगित की है कि मो० अबुल कलाम की जन्म तिथि 15.08.1962 के आधार पर अस्वस्थता के कारणवश 57 वर्ष 4 माह 16 दिन की आयु पर स्वैच्छिक सेवानिवृत्त हुए हैं। पेंशन प्रपत्र भाग-5 में सेवानिवृत्तिक ग्रेच्युटी का आगणन करते हुए प्रस्तावित किया गया है। संगत/प्रचलित शासनादेशों की प्राविधानित व्यवस्था के अनुरूप 60/62 वर्ष की अधिवर्षता आयु पर सेवानिवृत्त होने वाले शिक्षकों को 58/60 वर्ष की अधिवर्षता पर सेवानिवृत्त होने वाले विकल्पधारी शिक्षक को ही उपादान (ग्रेच्युटी) अनुमन्य है। श्री कलाम उक्त शर्त / प्रतिबन्ध से आच्छादित नहीं है, जिसके कारण उपादान (ग्रेच्युटी) की अनुमन्यता का शासनादेशिक आधार/औचित्य स्पष्ट नहीं है। अतः 60 वर्ष की अधिवर्षता आयु पर सेवानिवृत्त होने वाले शिक्षकों को 58 वर्ष पर विकल्प चयन करने वाले विकल्पधारी शिक्षकों तथा 62 वर्ष की अधिवर्षता आयु वाले शिक्षकों को 60 वर्ष पर विकल्प चयन करने वाले विकल्पधारी शिक्षकों को ही उपादान की सुविधा संगत/प्रचलित शासनादेशों में अनुमन्य है। इसके अतिरिक्त अन्य आयु वर्ष पर सहायता प्राप्त शिक्षण संस्थान से स्वैच्छिक सेवानिवृत्त अध्यापकों को उपादान (ग्रेच्युटी) अनुमन्यता विषयक शासनादेश कार्यालय में अद्यतन उपलब्ध नहीं है। पेशन निदेशालय के पत्र में संगत शासनादेश की प्रति सहित प्रकरण उपलब्ध कराने का उल्लेख किया गया है जिससे प्रकरण परीक्षणोपरांत निस्तारण किया जा सके।"

5. It is on the basis of the aforesaid note put up by the Joint Director (Pension), Prayagraj Division, Prayagraj that the District Minority Welfare Officer, Prayagraj has refused to re-consider his stand that gratuity may be payable to the petitioner though he has prematurely elected to retire at the age of 57 years 4 months and 16 days. For one he may clarify that the age of a retiring employee is never to be reckoned in terms of days and months. It is to be reckoned in terms of the completed age. Thus, so long as an employee does not turn fifty-eight, he is to be regarded as fifty-seven years old. The petitioner, therefore, is an employee, who has

chosen to retire at the age of fifty-seven years. prematurely.

6. The Government Orders, under reference or rules, which these orders reflect or amplify, give effect to a scheme wherein a teacher, who serves for an extended tenure up to sixty-two years is deprived of his gratuity to which he would be entitled, if he were to retire at the conventional age of sixty years. He loses gratuity because he serves for two years more beyond the conventional years.

7. Here is a case, where the petitioner has chosen to retire at the age of fifty-seven years, prematurely. The option to retire at the age of sixty years is to be understood in contra-distinction to the option to retire at the unconventional and the higher age of sixty-two; it is not to be understood as an option vesting a teacher with a right to receive gratuity only if he elects to retire at sixty. Retirement at sixty years is not an entitling fact, which leads the employee to acquire a right to receive gratuity, which he otherwise does not have. An employee gets his right to gratuity according to the number of the years that he serves. Rather, if he chooses to serve, as already said, beyond the conventional age of sixty years, he is divested of that right for the extra remuneration of two years in regular service that he receives. The interpretation, based on the relevant Government Orders by the Joint Director (Pension), Prayagraj Division, Prayagraj and the District Minority Welfare Officer, Prayagraj, is the product of what is conventionally called 'treading the beaten path', which shows utter lack of application of mind and non-understanding of principle.

8. In future, the Additional Chief Secretary (Secondary Education), U.P., Lucknow will bear these remarks of ours in mind and pass appropriate orders so that these kind of perverse interpretations are not placed by the officials functioning in the Department of Secondary Education to the prejudice of teachers *vis-a-vis* their valuable right to receive gratuity to which they are otherwise entitled.

9. The Joint Director (Pension), Prayagraj Division, Prayagraj and the District Minority Welfare Officer, Prayagraj shall also take note of this order and will not repeat this kind of interpretation in future, if a similar set of rights were to arise for

consideration.

10. In the result, this petition **succeeds** and is **allowed**. The impugned order dated 02.12.2023, passed by the District Minority Welfare Officer, Prayagraj, is hereby **quashed**. A *mandamus* is issued to the respondents to sanction and calculate gratuity to the petitioner, of course, taking into account the total number of completed years of service rendered by him before prematurely retiring. The reckoning of the petitioner's entitlement to gratuity shall be done within a period of fifteen days hence and gratuity determined shall be paid to the petitioner within next fifteen days thereafter.

12. There shall be no order as to costs.

13. Let this order be communicated to the Additional Chief Secretary (Secondary Education), U.P., Lucknow through the Civil Judge (Senior Division), Lucknow, the Joint Director (Pension), Prayagraj Division, Prayagraj and the District Minority Welfare Officer, Prayagraj through the Civil Judge (Senior Division), Allahabad by the Registrar (Compliance) **within 48 hours**.

Order Date :- 7.5.2024

Deepak