

IN THE COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 395 of 2017 (M/S)

G.B.Pant UniversityPetitioner
Versus

Appellate Authority & othersRespondent

With

Writ Petition No. 396 of 2017 (M/S)

G.B.Pant UniversityPetitioner
Versus

Appellate Authority & othersRespondents

With

Writ Petition No. 404 of 2017 (M/S)

G.B.Pant UniversityPetitioner
Versus

Appellate Authority & othersRespondents

With

Writ Petition No. 416 of 2017 (M/S)

G.B.Pant UniversityPetitioner
Versus

Appellate Authority & othersRespondents

With

Writ Petition No. 412 of 2017 (M/S)

G.B.Pant UniversityPetitioner
Versus

Appellate Authority & othersRespondents

With

Writ Petition No. 424 of 2017 (M/S)

G.B.Pant UniversityPetitioner
Versus
 Appellate Authority & othersRespondents
With

Writ Petition No. 392 of 2017 (M/S)

G.B.Pant UniversityPetitioner
Versus
 Appellate Authority & othersRespondents
With

Writ Petition No. 393 of 2017 (M/S)

G.B.Pant UniversityPetitioner
Versus
 Appellate Authority & othersRespondents
With

Writ Petition No. 390 of 2017 (M/S)

G.B.Pant UniversityPetitioner
Versus
 Appellate Authority & othersRespondents
With

Writ Petition No. 415 of 2017 (M/S)

G.B.Pant UniversityPetitioner
Versus
 Appellate Authority & othersRespondents
With

Writ Petition No. 391 of 2017 (M/S)

G.B.Pant UniversityPetitioner

Versus

Appellate Authority & othersRespondents

With

Writ Petition No. 410 of 2017 (M/S)

G.B.Pant UniversityPetitioner

Versus

Appellate Authority & othersRespondents

With

Writ Petition No. 414 of 2017 (M/S)

G.B.Pant UniversityPetitioner

Versus

Appellate Authority & othersRespondents

With

Writ Petition No. 388 of 2017 (M/S)

G.B.Pant UniversityPetitioner

Versus

Appellate Authority & othersRespondents

With

Writ Petition No. 407 of 2017 (M/S)

G.B.Pant UniversityPetitioner

Versus

Appellate Authority & othersRespondents

With

Writ Petition No. 389 of 2017 (M/S)

G.B.Pant UniversityPetitioner

Versus

Appellate Authority & othersRespondents

With

Writ Petition No. 413 of 2017 (M/S)

G.B.Pant UniversityPetitioner

Versus

Appellate Authority & othersRespondents

With

Writ Petition No. 409 of 2017 (M/S)

G.B.Pant UniversityPetitioner

Versus

Appellate Authority & othersRespondents

With

Writ Petition No. 421 of 2017 (M/S)

G.B.Pant UniversityPetitioner

Versus

Appellate Authority & othersRespondents

With

Writ Petition No. 405 of 2017 (M/S)

G.B.Pant UniversityPetitioner

Versus

Appellate Authority & othersRespondents

With

Writ Petition No. 401 of 2017 (M/S)

G.B.Pant UniversityPetitioner

Versus

Appellate Authority & othersRespondents

With

Writ Petition No. 394 of 2017 (M/S)

G.B.Pant UniversityPetitioner

Versus

Appellate Authority & othersRespondents

With

Writ Petition No. 398 of 2017 (M/S)

G.B.Pant UniversityPetitioner

Versus

Appellate Authority & othersRespondents

With

Writ Petition No. 397 of 2017 (M/S)

G.B.Pant UniversityPetitioner

Versus

Appellate Authority & othersRespondents

With

Writ Petition No. 418 of 2017 (M/S)

G.B.Pant UniversityPetitioner

Versus

Appellate Authority & othersRespondents

With

Writ Petition No. 402 of 2017 (M/S)

G.B.Pant UniversityPetitioner

Versus

Appellate Authority & othersRespondents

With

Writ Petition No. 419 of 2017 (M/S)

G.B.Pant UniversityPetitioner

Versus

Appellate Authority & othersRespondents

With

Writ Petition No. 403 of 2017 (M/S)

G.B.Pant UniversityPetitioner

Versus

Appellate Authority & othersRespondents

Present:

Mr. Rajendra Dobhal, Senior Advocate, assisted by Mr. Shubhang Dobhal, Advocate for the petitioner.

Mr.R.C.Arya, Standing Counsel for respondent nos. 1 & 2.

Mr. T.A. Khan, Senior Advocate assisted by Mr. Aditya Kumar Arya, Advocate for respondent no.3.

Hon'ble Sharad Kumar Sharma, J. (Oral)

An interesting question which crops up for consideration for this Court in this bunch of petition is the precise scrutiny of the judgment and orders dated 22.11.2016 passed under the Payment of Gratuity Act, 1972, by the Appellate Forum, while exercising powers under sub-

section (7) of Section 7 of the Act, as passed in Appeal No. 01 of 2014, Vice Chancellor, G.B.Pant University of Agriculture and Technology, Pant Nagar vs. Controlling Authority, as well as, the order dated 19.01.2013 passed by, the Controlling Authority under the Payment of Gratuity Act, 1972 in Case No. 4 of 2006, (this case number has to read independently in relation to other connected petition which are too being decided by the present judgment) Damodar Mathpal vs. G.B.Pant University of Agriculture and Technology, Pantnagar, while exercising powers under Section 4 of Payment of Gratuity Act, 1972

so far it relates to :

- (a) Whether the benefit under the Payment of Gratuity Act, 1972 would be available to the employees of the petitioner/University?
- (b) As to what would be the effect of there being no exemption from applicability of Act under Section 5 read with Section 14 of the Act?
- (c) Up to which extent the beneficial legislation could be enforced on the employees of the University?

2. Under the statute of University framed under the Act of 1958, age of the retirement of an employee as it has been prescribed by the statute is contained in it has been provided in sub-clause (2) & (3) of Clause 6 of the Statute which reads as under:-

6. AGE OF RETIREMENT

- (i)
- (ii) *For those employee who are appointed before 1.1.84 and who in accordance with G.O. No. 1009/12.08.400-(19)/84 dated 10.09.84 and G.O. No. 4026/12.08.400(19)/84 dated 19.12.84 opt for the benefits of pension death-cum-retirement gratuity family pension and general provident fund, the age of superannuation shall be 58 years.*
- (iii) *For the employees who are appointed before 1.1.84 and who in accordance with G.O. No. 1009/12.08.400(19)/84 dated 10.09.84, and G.O. No. 4026/12-08-400(19)/84 dated 19.12.84 opt for the benefits of pension, family pension and General Provident Fund, the age of superannuation shall be 60 years.*

3. It provides that all those employees who were appointed on or before 01.01.1984 and who opted for the existing into service upto 60 years University Contributory Fund, they would be superannuating on attainment of the age of 60 years. In it's sub-clause (2) of Clause 6, it provides that employees who were appointed prior to in accordance with the Government Order dated 10.09.1984, as well as, the Government Order dated 19.12.1984, and who

opt for the benefit of pension would be opting **“pension death-cum- retirement gratuity family pension and general provident fund, age of superannuation shall be 58 years.”** It further provides that in its sub-clause (3) of Clause 6 with which this bunch of petition relates to, is that all those employees who opt for 60 years retirement under the Government Order dated 19.12.1984 for the benefit of pension, family pension and general provident fund, their age of superannuation would be 60 years. This clause did not speak about gratuity.

4. The learned counsel for the petitioner has drawn attention of this Court towards Government Order dated 19.12.1984 (as annexed as Annexure-1 to the writ petition), wherein in accordance with sub-clause (2) of Clause 2 the provisions happens to be a *para materia* provision of sub-clause (3) of Clause 6 of the Statute. The resultant affect on an employee opting to retire at the age of 60 years, according to the learned counsel for the petitioner he contends would be entitled for the pension, family pension and general provident fund, what he endeavors to convey to the Court is that by a logical

interpretation of sub-clause (2) of the clause 2 of the Government Order dated 19.12.1984 and sub-clause 3 of clause 6 of the Statute, would be that such an employee who opts for under the Government Order on 19.12.1984 and whose age of retirement becomes 60 years would not be entitled for the gratuity under the Payment of Gratuity Act.

5. Another limb of argument of the learned counsel for the petitioner is that in view of the provisions contained under Chapter-19 of the statute governing the service conditions in its Clause 8 (r), it deals with the gratuity rules which would govern the grant of gratuity to the employees of the University. What he tries to submit is that in view of the definition of employees as given under Section 2(e) of the Act, which is quoted hereunder:-

"[(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;]"

6. But what is to be seen is that Chapter XIX which deals with conditions of payment of Gratuity to the employees of University does not deal with the condition of GO 19.12.1984, what he submitted that since respondents do not fall in purview of definition of employees under Section 2(e), their gratuity would be payable as per provisions of Chapter 19 of the Statute and not as per Payment of Gratuity Act, 1972, and they would not fall in the ambit of employees given under the definition. The case of the petitioner is that employees of the university would not be governed by the provisions of Payment of Gratuity Act, in the light of the fact that their conditions for the grant of gratuity and for the purposes of determining their entitlement would be governed by the definition of employees given under the statute and the provisions contained under Chapter 19 which deals with conditions of payment of gratuity, which itself contains certain riders, as would be apparent from provisions of Chapter 19 of the Statute, reads as under:-

SECTION 28(r) 1. Employees of the University whose maximum salary is less than RS. 40 per mensem and who are not entitle to the benefits of the University Provident Fund, may be granted gratuity according to the following scales:

(a) no gratuity shall be paid to a servant of ten year's standing or less;

(b) if a servant has served for more than ten years, but has not served for more than twenty years, a gratuity of one month's pay for each completed year of approved service may be paid to the servant himself, if he has been permitted to retire from the service of the University on account of his incapacity to continue in its service; or may be paid to his family if he dies while in the service of the University;

(c) if a servant has served in the University for more than twenty years, a gratuity at the rate of one month's pay for each of the first twenty completed years of approved service and one and a half month's pay for each completed year of approved service in excess thereof may be paid to the servant himself, if he has been permitted to retire from the service of the University on the ground of incapacity or may be paid to his family if he dies while in the service of the University;

(d) no gratuity shall be paid to a servant or to his family except in cases where the servant leaves the service of the University with the permission of the Board given on the ground that he is incapable of continuing in the service of the University of where the servant dies while still in the service of the University;

(e) the expression "Family" means those person who in the opinion of the Board were dependent on the servant at the time when he died.

7. This Court is not in agreement with the argument extended by the learned counsel for the petitioner the reason being that if he extends the arguments that the definition under Section 2(e) of the employees as given under the Act would be attracted then in that event his argument with regard to the applicability of the gratuity rules provided under the statute becomes a wayward

argument, because if their statute provides the applicability of gratuity under the certain pre-existing conditions to the employee it means that the gratuity has been made applicable, but only subject to a rider attached to the conditions provided under Chapter-19, may it be that it is for the employees defined under the statute thus the applicability of gratuity is not completely ousted. Hence, the concept of employees given under Payment of Gratuity Act would not be completely eradicated.

8. As already observed that the definition of employees as was amended in the Statute given under Clause 6 (2) and (3) refers to G.O. dated 10.09.1984 and 19.12.1984, which qualified the definition of employees and has drawn a distinction for the optees of 58 years and 60 years and entitlement for certain benefits referred in it. But apart from the fact, it does not out the experience of benefit of payment of gratuity, but since, Chapter XIX of the statute which deals with the conditions for grant of gratuity does not out the employees falling under Clause 6 (3) of Statute, this Court feels that payment of gratuity

is not completely ousted from employees but it only speaks of conditions.

9. As per the Government Order passed by the erstwhile State of Uttar Pradesh being Government Order No. 4026/12.8.400(19)84, dated 10.12.1984, the age of retirement of the employee of the University was extended to sixty years subject to the conditions of giving an option. The argument extended in relation to the applicability of the Act by borrowing the definition of Section 2(e) of the Payment of Gratuity Act, 1972, it is pertinent to point out that both the authorities while considering the controversy had decided the matter by the order dated 19.01.2013 and 22.11.2016 holding thereof that in view of the Notification issued by the Government of India No. 5-42013/1/95-ss-II dated 03.04.1997 the provision of the Payment of Gratuity Act, 1972, confers the right to the employees to be entitled for gratuity in relation to the employees of the University. Both the courts have rightly held under the provisions of Section 1 (3) of the Payment of Gratuity Act, 1972. It is always open to the Government of India to apply the provisions of the Act by making declaration

under the Act. The Court held that in view of the provisions contained under Section 4 (ii) of U.P. Agriculture and Technology University Act, 1958, the Act would apply to the employees of the University as it deals with all the branches of the study particularly, agriculture, research etc. The Hon'ble Apex Court while dealing with the arguments pertaining to the application of Section 2(e) on the educational institutions has held in a judgment rendered and reported in **2004 (100 FLR) page 606, Ahmedabad Private Primary Teachers' Association and Administrative Officer and others**, in its para 12, 13 and 16 that the provision of the said Act would be applicable on the education institutions, subject it is provided by Statute. Para 12, 13 and 16 of the judgment are quoted hereunder :-

"12. It is not disputed that by notification dated 3rd April, 1997, issued in exercise of powers under Section 1(3)(c) of the Payment of Gratuity Act, 1972, the Gratuity Act is extended to educational institutions in which ten or more persons are employed or were employed on any day preceding 12 months. The relevant part of the notification reads as under :-

*APPLICABILITY OF THE PAYMENT
OF GRATUITY ACT, 1972*

IN

EDUCATIONAL INSTITUTIONS

'NOTIFICATION NO. 5-42013/1/95-SS II. DATED 3RD APRIL, 1997.- In exercise of the powers conferred by Clause (c) of Sub-clause (3) of Section 1 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies the educational institutions in which ten or more persons are employed or were employed on any day preceding 12 months as a class of establishment's to which the said Act shall apply with effect from the date of publication of this notification.

Provided that nothing contained in this notification shall affect the operation of the notification of the Ministry of Labour S.O. 239 dated 8th January, 1982'.

13. An educational institution, therefore, is an 'establishment' notified under Section 1(3)(c) of the Payment of Gratuity Act, 1972. On behalf of the Municipal Corporation, it is contended that the only beneficial effect of the Notification issued under Section 1(3)(c) of the Act of 1972, is that such non-teaching staff of educational institutions as answer the description of any of the employments contained in the definition Clause 2(e), would be covered by the provisions of the Act. The teaching staff being not covered by the definition of 'employee' can get no advantage merely because by notification 'educational institutions' as establishments are covered by the provisions of the Act.

16. Our conclusion should not be misunderstood that teachers although engaged in very noble profession of educating our young generation should not be given any gratuity benefit. There are already in several States separate statutes, rules and regulations granting

gratuity benefits to teachers in educational institutions which are more or less beneficial than the gratuity benefits provided under the Act. It is for the Legislature to take cognizance of situation of such teachers in various establishments where gratuity benefits are not available and think of a separate legislation for them in this regard. That is the subject matter solely of the Legislature to consider and decide."

10. In another judgment reported in 1975 (30 FLR) page 283 ***Sukhdev Singh vs. Bhagatram Sardar Singh*** has held the life insurance company through which is a creation of the statute, i.e., Life Insurance Corporation Act, the provisions of Payment of Gratuity Act, 1972, would be applicable. Another remarkable judgment which has been rendered by the High Court of Andhra Pradesh, the Hon'ble High Court has held that for the purpose of excluding the applicability of the Payment of Gratuity Act, 1972, from an institution created under an Act would only be when the applicability is made upon the employees who fall within the definition of a public civil post and thus other employees appointed in any other organization or institution created under an Act the provisions of Payment of Gratuity Act, 1972, will apply. The said ratio was based upon the fact that the special provision will always prevail over the general

law, and that too particularly in the instant case when it relates to the Payment of Gratuity Act, 1972, which is a social beneficial legislation it will have precedence over local laws. The present case too the University has been created under the Act, and it caters wide social responsibilities as would be apparent from the object of the Act of 1958.

11. On scrutiny of the ratio as propounded by the various judgments pertaining to the applicability to the Payment of Gratuity Act, 1972, it could be inferred that the employees of Govind Ballabh Pant Agricultural and Technological University, which is created under the U.P. Agriculture and Technology University Act, 1958, is an autonomous body and in view of the provisions contained under Section 2(e) of the Act, the Act of 1972 would apply.

12. The Controlling Authority in its impugned decision dated 19.01.2013 has observed as under:-

“Application of the Payment of Gratuity, 1972, in Education Institutions Notification No. 5-42013/1/95-ss-II dated 3th April 1972-in exercise of the power conferred by Cl.(c)of sub-clause (3) of section 1 of the Payment of Gratuity Act, 1972, (39 of

1972) the central Government hereby specifies the education institution in which ten or more persons are employed or were employed on any preceding 12 months as a class of establishments to which the said Act shall apply with effect from the date of Publication of this notification."

13. The issue could also be scrutinized from another view point as to for what purpose the University was established by an Act. It provides for extending development of agriculture education for the rural public. It further intended to develop rural and agricultural industrial and other business and other allied activities including the research work, particularly in the field of agriculture, also conducting the field and extension programmes. All those activities since have been governed independently that too, by an autonomous activity based on the exclusive programmes floated by the University, its employees will fall to be within the definition of under Section 2 (e) of the Act of 1972.

14. The Hon'ble Apex Court held that while considering the effect of the definition of employees under Section 2(e) that in view of the Notification dated 13.04.1997 issued under Section (3) (c) of Payment of Gratuity Act, 1972,

it has extended the applicability of the Act to educational institutions employing more than ten years.

15. Learned counsel for the petitioner has placed reliance on a judgment rendered by Single Judge of Allahabad High Court, as reported in **2009 (121) FLR page 438, State of U.P. and another and Ram Chandra Ram and another** . Para 6 of the same judgment is quoted hereunder:-

"6. A perusal of the aforesaid definition of the word employee clearly indicates that employee in an establishment, factory, etc. will not include a person who holds a post under a State Government and is governed by any Act or by any Rules which provides for the payment of gratuity. The amount of gratuity under the Act is determined under Section 7 and only a person who is eligible for payment of gratuity can file such an application. Section 4 of the Act contemplates that gratuity shall be payable to an employee on termination of his employment. A conjoint reading of Section 4 read with Section 7 of the said Act coupled with the definition clause of the word 'employee' as defined in Section 2(e) will make it absolutely clear that a Government employee who is governed by separate Act and Rules relating to payment of gratuity is not entitled to file an application under the Payment of Gratuity Act. Consequently, the impugned order passed by the controlling authority cannot be sustained and is quashed. The writ petition is allowed. Any amount deposited by the petitioner, before the controlling authority, is liable to be refunded to the petitioner."

16. The judgment rendered by the Allahabad High Court in the case of **State of U.P. and another Vs. Ram Chandra Ram (Supra)** since had not considered the impact of Section 5 read

with Section 14 of the Act pertaining to the exemption being granted on the prior sanction by the State Government from the applicability of the Act, the said judgment will be of no relevance so far as the petitioners' case is concerned, as the same was per incuriam without considering the effect of Section 5 read with Section 14 of the Act.

17. The ouster from the benefit under the Payment of Gratuity Act, as laid down by the Allahabad High Court is that it applies to an employee in an establishment or a factory and view taken that it will not include a person who holds a post under a State and is governed by any Act or by Rules which provides for the payment of gratuity. The employees of the petitioner's University are the employees who are appointed under the service conditions framed under the Act of 1958. They would not be treated as to be a person holding the post under the State Government, are not public servant holding a civil post though the State may be that under the statute having a deep and pervasive control over the financial aspects of the University. The said judgment was dealing with the maintainability of the application by

government employee whose terms of appointing was governed by a separate acts and rules relating to the payment of gratuity, and were holding a civil post and were public servant, which has disentitle the application under Section 4 of the Act. Apart from the fact that this is not an issue involved in the present case it was not an issue which was argued or pressed by the petitioner before both the authorities either under Section 4 or under Section 7 before appellate authority. The aforesaid proposition has to be taken into consideration in the light of the provisions contained under Section 5 of the Act which deals with the power of exemption from the applicability of the Act.

18. The ratio as propounded pertaining to the interpretation of the word employee *vis a vis* its relation pertaining to the applicability of the Act of 1972, will not be attracted in the instant case for the reason that since the petitioner has already defined its employees on which they themselves have extended the benefit of gratuity, hence he cannot be permitted to borrow the definition of the employees under the Act.

19. There is another aspect of the matter that under the Payment of Gratuity Act and its rules as contained therein, it partakes to be a social beneficial legislation, as it intends to recognize the efficient services which are rendered by an employee to an organization and a benefit in lieu thereof is paid to an employee on his superannuation or death, since being central legislation and merely because an employee has opted under the Government Order dated 19.12.1984, which are administrative in nature he cannot be deprived of the benefit of the payment of gratuity accruing under the central legislation, because there is nothing on record placed by the petitioner either before the court below or before this Court that any exemption from the applicability of the Payment of Gratuity Act has been granted by the State Government as contemplated under Section 5 of the Payment of Gratuity Act, and, thus on a harmonious reading of Section 14 of the Payment of Gratuity Act read with Section 5 of the said act that gratuity would be payable until and unless, it is exempted after an approval by the State Government, as per the procedure provided

21. There is another argument of learned counsel for the petitioner that the benefits payable which are referred in the provisions of

20. By reading of under Section 5 furthermore there is another aspect of the matter. The Hon'ble Apex Court has laid down that once a benefit is extended under the statute, it continues to be granted until and unless it is taken away or is withdrawn in the mode and manner as provided under the law itself, it cannot be inferred by implication that the benefit granted under the statute has been withdrawn until and unless there happens to be a specific exemption granted under the law. There is no such document showing that any exemption is available to the petitioner from the applicability of the Act, as such, it would be deemed that the benefit of payment of gratuity would continue to be applied as the employees of University.

under Section 5 of the Act of 1972. This aspect has not been dealt by the judgment rendered by the Allahabad High Court reported in the case of **State of U.P. and another Vs. Ram Chandra Ram and another (Supra) 2009 (121) FLR 438**

Clause 6 of the Statute pertaining to the optees of age of retirement and its extension to sixty years is with a rider confining to certain benefits since it does not oust the gratuity as per Section 5 read with Section 14 of the Act, it would continued to be paid since being admissible under law. It is established proposition that something which is not exempted by specific terms continues to operate and would be applicable.

22. Learned counsel for the respondent has placed reliance on a judgment reported in **2010 Volume2 SCC page 44** in the case of *Allahabad Bank and Another vs. All India Allahabad Bank Retired Employees Association* which his Lordships of Hon'ble Apex Court have laid down while interpreting the provisions of the Payment of Gratuity Act, in its para -16 has laid down that the Payment of Gratuity Act is a social welfare legislation and liberal consideration has to be given with regard to the directive principles of the State Policy for the purpose of enforcement of a welfare legislation. Para 14, 16 & 19 of the same are quoted hereunder:-

"14. A plain reading of the provisions referred to hereinabove makes it abundantly clear that there is no escape from payment of gratuity under the provisions of the Act unless the establishment is

granted exemption from the operation of the provisions of the Act by the appropriate Government.

16. *We shall proceed to examine the point urged by the learned Counsel for the appellant. Remedial statutes, in contradistinction to penal statutes, are known as welfare, beneficent or social justice oriented legislations. Such welfare statutes always receive a liberal construction. They are required to be so construed so as to secure the relief contemplated by the statute. It is well settled and needs no restatement at our hands that labour and welfare legislation have to be broadly and liberally construed having due regard to the directive principles of State Policy. The Act with which we are concerned for the present is undoubtedly one such welfare oriented legislation meant to confer certain benefits upon the employees working in various establishments in the country.*

19. *Gratuity payable to an employee on the termination of his employment after rendering continuous service for not less than 5 years and on superannuation or retirement or resignation etc. being a statutory right cannot be taken away except in accordance with the provisions of the Act where under an exemption from such payment may be granted only by the appropriate Government under Section 5 of the Act which itself is a conditional power. No exemption could be granted by any Government unless it is established that the employees are in receipt of gratuity or pension benefits which are more favourable than the benefits conferred under the Act.*

23. Further in its para 14 and 19 it has been provided that no exemption of the Payment of Gratuity Act could be granted until and unless it has been exempted by the appropriate government, as the gratuity has been held to be a statutory right, which cannot be taken away except in accordance with the provisions of the Act, whereunder statute itself contemplates the

grant of exemption if made as per the procedure provided in it.

24. There is nothing on record that the exemption has been availed by the petitioner and that too is in strict compliance of Section 5 of the Act. The Hon'ble Apex Court has also considered the impact of Section 14, which provides that provision of the Act will continue to be enforced and effect irrespective of anything contained in consistent in any other statute, meaning thereby since Section 14 contains a non-obstinate clause, the Act would continue to be enforced irrespective of the interpretation which has been argued by the learned counsel for the petitioner in the light of the provisions contained under Chapter 19 of the statute and in the light of the provisions contained under the Government Order dated 19.12.1984.

25. Further another limb of the argument of learned counsel for the petitioner is that once the employee has opted to continue up to 60 years by invoking the benefit of the Government Order dated 19.12.1984 his action would be barred by the principle of submission and acquiescence,

because once he has availed the benefit of extension of service then he is simultaneously bound by the conditions of the benefit likely to be extended in pursuance to the option exercised by him. Although, the issue has been dealt to the said effect in the earlier paragraphs of the judgment, but still it is repeated that since in pursuance to the exercise of benefit of extension of 60 years of age of retirement, the Payment of Gratuity under the Act of 1972, was not intended to deprive gratuity to optees. Hence, exercising of an option will not deprive the private respondent of gratuity until and unless it has been made exempted after a prior approval of the State Government. In that view of the matter, I do not find any error committed by both the courts below.

26. Since lastly an argument has been extended by the learned counsel for the petitioner that the respondent employee cannot take the advantage of their own mistake as they on their own delay, which has been caused by him while invoking of Section 4 of the Payment of Gratuity Act, for the payment of gratuity as such the interest @ 10% each, which has been granted to him is on an

excessive side. The fact that logically respondent cannot be permitted to take the benefit of his own dereliction, hence taking a compassionate view on an over all scrutiny of the controversy the interest awarded @ 10% seems to be on higher side that too petitioner has been harnessed on account of respondents delayed approach, hence, is reduced to @ 6%. The amount if any has been deposited before the Appellate Tribunal under Section 7 of sub-section (7) of the Act would be remitted to the respondent no. 3 as a consequence of this judgment when it is placed before the Appellate Tribunal.

27. Subject to the above observations, the writ petition is dismissed. The judgments impugned order dated 22.11.2016 as well as the order dated 19.01.2013 are affirmed.

28. No order as to costs.

(Sharad Kumar Sharma, J.)

01.11.2017

Nahid

