



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

SPECIAL LEAVE PETITION (C) NO.19436 OF 2024

VIKRAM BHALCHANDRA GHONGADE

..PETITIONER

VERSUS

**THE HEADMISTRESS GIRLS
HIGH SCHOOL AND JUNIOR
COLLEGE, ANJI (MOTHI),
TAH. AND DISTT. WARDHA & ORS.**

...RESPONDENTS

J U D G E M E N T

K. VINOD CHANDRAN, J.

1. The petitioner is the son of a teacher in an aided school, who died while in service. The petitioner as the legal heir claims gratuity under the Payment of Gratuity Act, 1972¹. The petitioner's claim was rejected by the original authority and the appellate authority under the Act and also the High Court against which the petitioner is before this Court.

¹ For brevity 'the Act of 1972'

2. The petitioner appeared in person and argued that the school has settled the General Provident Fund dues in his name clearly mentioning him as nominee and the question of legal heirship certificate never arose. ***Birla Institute of Technology v. State of Jharkhand***² clearly held that teachers are eligible for gratuity under the Act overruling the judgment placed on record by the learned Government Advocate reported in ***Ahmedabad (P) Primary Teachers' Assn. v. Administrative Officer***³, negating the case of the Government that rules framed under Article 309 of the Constitution of India would apply. It is contended that without an exemption with respect to the schools in Maharashtra, the Gratuity Act cannot be made inapplicable. Further the exemption under sub-rule (5) of Rule 4 does not apply since the gratuity payable under the Act is far more beneficial than the scheme under the Rules of 1982.

3. The learned Government Advocate on the other hand submits that being an aided school, the employees are paid pay & allowances, while in service, by the Government so is the pensionary benefits including Death-cum-Retirement Gratuity

² (2019) 4 SCC 513

³ (2004) 1 SCC 755

(DCRG) paid under the Maharashtra Civil Services (Pension Rules), 1982⁴ brought out under Article 309 of the Constitution of India. There is no question of the petitioner being paid amounts under the Act of 1972. The petitioner admits that his father is surviving, who would also be a legal heir of the deceased. The petitioner hence has to produce a legal heir certificate and the claim of the father will also have to be dealt with. The High Court has in fact directed such consideration by the Government, on the Government's own undertaking that it would be done expeditiously on an application being filed with required papers.

4. The petitioner approached the original authority under the Payment of Gratuity Act who found that there was a difference in DA, as asserted by the petitioner in his application and the last pay certificate of the deceased teacher which was produced before the authority, which makes the claim for DCRG anomalous. We cannot accept this contention since the DA will have to be ascertained from the last pay certificate issued by the employer. It was also held that the Act of 1972 though would be applicable to teachers, the definition of employee excludes a person holding a post under the Central Government and State

⁴ For brevity 'the Rules of 1982'

Government; which the teacher was holding while she was in service. Finding that the petitioner's mother's service does not fall under the Act of 1972, the application was rejected.

5. The appellate authority found the order of the controlling authority to be perfectly in order. It was also noticed that the respondent had specifically contended that the petitioner had never approached the respondents with a proper documentation as to the death and legitimacy of the claim. Before the High Court, the respondent submitted that it requires certain documents from the petitioner for processing the claim, namely, photograph and the undertaking to indemnify the legitimate claim, if raised by any other person, on submission of which, the claim would be processed. A direction was issued to process the claim as undertaken by the respondent for which the petitioner was directed to be present before the respondent.

6. On the question of the teacher's entitlement to the provisions of the Gratuity Act, it has to be held that the decision in ***Birla Institute of Technology***² puts to rest any such controversy. The question here would be not so much the entitlement to gratuity but as to whether the legal heirs of a deceased teacher in an aided school would be entitled to gratuity

under the Act of 1972 or under the Rules of 1982. The argument of the State is that an aided school employee, including a teacher would be exempted from the definition of an employee under the Act. *Per contra* it is argued that the exemption is only to a person who holds a post under the Central Government or State Government. An aided school teacher does not hold a post under the State Government contends the appellant.

7. It must be observed that a teacher in an aided school for all practical purposes is akin to a post under the State Government. Pertinent is the fact that the posts in aided schools are either sanctioned by the Government or approved in accordance with the Rules and pay and allowances are also paid by the Government. The aided school teachers are also entitled to some of the conditions of service as are applicable to Government teachers, with entitlement of pension, provident fund and gratuity as applicable, in accordance with the Rules brought out under Article 309 of the Constitution of India. Though strictly speaking the teachers may not be holding a post under the State Government, it is akin to a post under the State Government, at least for the monetary benefits of pay and allowances, while in service, as also pension and other benefits on retirement.

8. We have to also notice that sub-section (5) makes Section 4 inapplicable, if the employees have a right to receive better terms of gratuity under any award or agreement or contract with an employer. When comparing the benefits, the question is not to be considered in isolation with respect to an employee and whether he or she would be entitled to higher amounts under the Act or under the Rules. The scheme has to be considered in toto for the purpose of determining as to which is more beneficial. The Act of 1972 prescribes under Section 4(2), gratuity at the rate of 15 days wages based on the last wages drawn for every completed year of service or part thereof in excess of six months. Insofar as the Rules of 1982 is concerned, gratuity is payable equal to $\frac{1}{4}^{\text{th}}$ of last pay drawn of each completed six monthly period of qualifying service, subject to a maximum of 16 and a half years. It has to be noticed that the payment of gratuity as per the Act of 1972 is payable to an employee on the termination of his employment after rendering continuous service for not less than five years; the minimum limit of five years being not applicable only when the termination is due to death or disablement. While DCRG under the Rules of 1982 is payable to the Government employee, at any time his services cease without

the minimum limit of five years-service. Further, on death prior to the minimum period, the gratuity payable under the Rules of 1982 is far more than that applicable under the Act of 1972, which is as hereunder:

Completed year of qualifying service		death gratuity
1	...	2 ½ months' pay
2	...	5 months' pay
3	...	7 ½ months' pay
4	...	10 months' pay

9. A person entering service though has a normal expectation of retiring on attaining the age of superannuation but there are vagaries of fate which would make it otherwise. We have already seen that on death prior to five years of service the benefits under the Rules of 1982 would be more beneficial to the dependents of the employees. Further it must be noticed that the Government servants including the teachers in the Government schools would be entitled to gratuity under the Rules of 1982 and there cannot be a situation where the teachers of aided schools are entitled to a different computation of gratuity under the Act of 1972. It is also to be emphasised that the Rules of 1982 enables not only DCRG but also pension to the employees covered under the Rules of

1982, which a person entitled to the gratuity under the Act of 1972 may not be entitled in all circumstances.

10. We are of the opinion that the aided school teachers who are governed by the service conditions brought out by the State Government are also covered under the Rules of 1982. The extent of application as per the Rule 2(a) of the Rules of 1982 specifically makes it applicable to: *“Any person for whose appointment and conditions of employment special provision is made by or under any law for the time being in force” (sic)*. There can hence be no dispute raised on the applicability of the Rules of 1982, insofar as aided school teachers are concerned whose pay and allowances and service conditions are regulated by the Government.

11. Now we come to the actual claim raised by the petitioner, who is the son of the deceased teacher. The Government Advocate had raised a contention that the required documents have not been produced, especially the legal heirship certificate, especially in the context of the husband of the deceased teacher being still alive. Petitioner, however, contends that the husband was estranged and they have been separated for long. Be that as it may, a mere estrangement would not disentitle the husband from the benefits due to the family of a deceased employee. The

petitioner, undisputedly has been paid the provident fund dues, for which he was notified as a nominee, as seen from the records, by the mother when she was alive; presumably as indicated from her service records. We find absolutely no reason to direct the petitioner to produce a legal heirship certificate since in any case the payment made to a nominee or one of the legal heirs, when there are also other legal heirs left behind, is in trust and the person who receives the payment as a nominee holds the money in trust for all the others. The nomination made by the deceased employee while she was alive only absolves the employer from finding out the different legal heirs for the purpose of making payments apportioning their separate shares.

12. The death is undisputed and there is no requirement now to produce the death certificate also. In such circumstances, the petitioner shall approach the first respondent with an application for payment of DCRG in accordance with the Rules of 1982 along with an undertaking to indemnify the Government and the Society which runs the aided school from any claims made by any other legal heir, by a notarised affidavit. The same shall be forwarded to the Education Officer, who shall make the payment expeditiously. We make it clear that the petitioner shall also be

paid simple interest @ 7% per year, starting from one month of the date of death of the employee, till the date of payment.

13. The Special Leave Petition is allowed with the above modification.

14. Pending applications, if any, shall stand disposed of.

..... J.
(SUDHANSHU DHULIA)

..... J.
(K. VINOD CHANDRAN)

**NEW DELHI;
JULY 14, 2025.**