

AFR

Neutral Citation No. - 2024:AHC:19811

Reserved on 31.01.2024

Delivered on 06.02.2024

Court No. - 36

1. Case :- WRIT - A No. - 18971 of 2022

Petitioner :- Smt Usha Verma And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Shoar Mohammad Khan, Quazi Mohammad Akaram

Counsel for Respondent :- C.S.C., Vijai Kumar Srivastava

2. Case :- WRIT - A No. - 6271 of 2023

Petitioner :- Paras Nath Tiwari

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Quazi Mohammad Akaram, Shoar Mohammad Khan

Counsel for Respondent :- C.S.C., Archana Singh, Arun Kumar, Kushmondeya Shahi

3. Case :- WRIT - A No. - 10540 of 2023

Petitioner :- Dan Bahadur

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Quazi Mohammad Akaram

Counsel for Respondent :- C.S.C., Arun Kumar

4. Case :- WRIT - A No. - 10928 of 2023

Petitioner :- Prabhu Nath

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Quazi Mohammad Akaram

Counsel for Respondent :- C.S.C., Bipin Bihari Pandey, Kushmondeya Shahi

5. Case :- WRIT - A No. - 10932 of 2023

Petitioner :- Ram Dular

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Quazi Mohammad Akaram

Counsel for Respondent :- C.S.C., Bipin Bihari Pandey, Kushmondeya Shahi

6. Case :- WRIT - A No. - 10939 of 2023

Petitioner :- Chaitu Ram

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Quazi Mohammad Akaram

Counsel for Respondent :- C.S.C., Bipin Bihari Pandey, Kushmondeya Shahi

7. Case :- WRIT - A No. - 11086 of 2023

Petitioner :- Shakeela Begum

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Durga Shanker Mishra

Counsel for Respondent :- C.S.C., Bipin Bihari Pandey, Suresh Kumar Maurya

8. Case :- WRIT - A No. - 11629 of 2023

Petitioner :- Lal Bahadur Patel

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Quazi Mohammad Akaram
Counsel for Respondent :- C.S.C.,Kushmondeya Shahi

9. **Case :-** WRIT - A No. - 11702 of 2023

Petitioner :- Ram Jiyawan

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Quazi Mohammad Akaram

Counsel for Respondent :- C.S.C.,Kushmondeya Shahi

10. **Case :-** WRIT - A No. - 12051 of 2023

Petitioner :- Daya Shankar

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Quazi Mohammad Akaram

Counsel for Respondent :- C.S.C.,Kushmondeya Shahi

11. **Case :-** WRIT - A No. - 12065 of 2023

Petitioner :- Grihraj

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Quazi Mohammad Akaram

Counsel for Respondent :- C.S.C.,Kushmondeya Shahi

12. **Case :-** WRIT - A No. - 13800 of 2023

Petitioner :- Ramakaran

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Quazi Mohammad Akaram

Counsel for Respondent :- C.S.C.,Kushmondeya Shahi

13. **Case :-** WRIT - A No. - 14043 of 2023

Petitioner :- Vimla Devi

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Quazi Mohammad Akaram

Counsel for Respondent :- C.S.C.,Kushmondeya Shahi

14. **Case :-** WRIT - A No. - 14359 of 2023

Petitioner :- Ravinder Bansal

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Durga Shanker Mishra

Counsel for Respondent :- C.S.C.,Chandra Shekhar Singh

15. **Case :-** WRIT - A No. - 15528 of 2023

Petitioner :- Devamatiya

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Sanjay Kumar Srivastava,Saroj Kumar Ram

Counsel for Respondent :- C.S.C.,Bipin Bihari Pandey

16. **Case :-** WRIT - A No. - 15781 of 2023

Petitioner :- Asha Srivastava

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Navin Kumar Sharma

Counsel for Respondent :- C.S.C.,Kushmondeya Shahi

17. **Case :-** WRIT - A No. - 16328 of 2023

Petitioner :- Manorama Singh

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Kamal Kumar Keshewani

Counsel for Respondent :- C.S.C.,Udit Chandra

18. Case :- WRIT - A No. - 17864 of 2023

Petitioner :- Smt. Shanti Devi

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Akhilesh Kumar

Counsel for Respondent :- C.S.C.,Akhilesh Kumar Sharma

19. Case :- WRIT - A No. - 20563 of 2023

Petitioner :- Smt. Kusma Devi

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Sanjay Kumar Srivastava,Ved Prakash

Counsel for Respondent :- CSC,Bhanu Pratap Singh Kachhawah

20. Case :- WRIT - A No. - 5588 of 2023

Petitioner :- Bindra Prasad Patel

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Quazi Mohammad Akaram,Shoar Mohammad Khan

Counsel for Respondent :- C.S.C.,Arun Kumar,Kushmondeya Shahi

21. Case :- WRIT - A No. - 7771 of 2023

Petitioner :- Awadh Narayan Patel

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Quazi Mohammad Akaram

Counsel for Respondent :- C.S.C.,Arun Kumar,Kushmondeya Shahi

22. Case :- WRIT - A No. - 7780 of 2023

Petitioner :- Mohan Lal

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Quazi Mohammad Akaram

Counsel for Respondent :- CSC,Archana Singh,Arun Kumar,Kushmondeya Shahi

23. Case :- WRIT - A No. - 7783 of 2023

Petitioner :- Ram Nidhi

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Quazi Mohammad Akaram

Counsel for Respondent :- C.S.C.,Archana Singh,Arun Kumar,Kushmondeya Shahi

24. Case :- WRIT - A No. - 9695 of 2023

Petitioner :- Bhagwati Prasad Kushwaha

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Quazi Mohammad Akaram

Counsel for Respondent :- C.S.C.,Arun Kumar,Kushmondeya Shahi

25. Case :- WRIT - A No. - 21010 of 2022

Petitioner :- Aslam Jainavi

Respondent :- State Of U P And 3 Others

Counsel for Petitioner :- Tawwab Ahmed Khan

Counsel for Respondent :- C.S.C.,Satish Chandra Yadav

Hon'ble Saurabh Shyam Shamsbery,J.

1. In order to make out a case to grant the relief sought, a writ petition has to be drafted very carefully. Pleadings are essential part of any litigation. The relief sought should be supported by pleadings. The present bunch of

writ petitions are example of it where the prayers sought are not only vague but not supported by material pleadings also. Even the petitioners have approached this Court by not disclosing entire relevant facts which goes adverse to their case, i.e., petitioners have not approached this court with clean hands.

2. Petitioners (retired employees or husband, father or mother of deceased employees), as the case may be, while working in Basic Education Department, have retired or died (before or after retirement) and period goes as old as 2002 to as recent as 2023. They have not raised any demand of gratuity for many years and only in 2022 and 2023, these writ petitions are filed seeking relief that concerned District Basic Education Officers be directed to release and pay the petitioners their respective amount of gratuity alongwith interest. Details of petitioners and relation with deceased employee, date of retirement/ date of death, age as on retirement/death, etc. are given hereinafter in the form of following chart:

Sl. No.	W.P. No.	Name of Petitioner	Year of retirement/ death	Age as on retirement/ death
1.	18971/2022	Smt. Usha Verma and Km. Kishwar Ara	2014 and 2016	62
2.	6271/2023	Paras Nath Tiwari	2015	62
3.	10540/2023	Dan Bahadur	2010	60
4.	10928/2023	Prabhu Nath	2007	62
5.	10932/2023	Ram Dular	2009	62
6.	10939/2023	Chaitu Ram	2011	62
7.	11086/2023	Shakeela Begum (wife of employee)	2012	62 Y 6 M
8.	11629/2023	Lal Bahadur Patel	2023	62
9.	11702/2023	Ram Jiyawan	2022	62
10.	12051/2023	Daya Shankar	2006	62
11.	12065/2023	Grihraj	2008	62
12.	13800/2023	Ramakaran	2002	60
13.	14043/2023	Vimla Devi	2020	62
14.	14359/2023	Ravinder Bansal (son of employee)	2009	51
15.	15528/2023	Devamatiya (wife of employee)	2014	61
16.	15781/2023	Asha Srivastava (wife of employee)	2018	61
17.	16328/2023	Manorama Singh (daughter of employee)	2007	61

18.	17864/2023	Smt. Shanti Devi (wife of employee)	2006	62
19.	20563/2023	Smt. Kusma Devi (wife of employee)	2022	62
20.	5588/2023	Bindra Prasad Patel	2017	64
21.	7771/2023	Awadh Narayan Patel	2018	62
22.	7780/2023	Mohan Lal	2014	62
23.	7783/2023	Ram Nidhi	2011	62
24.	9695/2023	Bhagwati Prasad Kushwaha	2011	62
25.	21010/2022	Aslam Jainavi (Voluntary Retirement)	2021	60

3. Petitioners have claimed aforesaid relief primarily on ground that Payment of Gratuity Act, 1972 (*hereinafter referred to as "Act, 1972"*) will be applicable to Teachers of Basic Schools. However, they have not disclosed that payment of gratuity for Teachers working in these Schools are presently governed by different Government Orders. Neither relevant Government Orders dated 23.11.1994, 10.06.2002 and 04.02.2004, were placed on record nor there was any averment in regard to their existence in writ petitions. The writ petitions are also silent about huge delay in claiming relief.

4. Despite aforesaid material shortcomings in pleadings, Sri Shoar Mohammad Khan, Sri Quazi Mohammad Akram and Sri Tawwab Ahmed Khan, Advocates for petitioners, proceeded to argue the case on merits that petitioners are employees under the definition of 'employee' as mentioned in Section 2(e) of Act, 1972. Learned counsel also referred Section 14 of Act, 1972 that it will override on all other enactments. It was also argued that there was no need to mention Government orders or to challenge it. Argument was also raised on 'repugnancy', so much as age of superannuation was increased upto 62 years without any conditions so condition of submitting any option was illegal. They also placed reliance on a judgment passed by Supreme Court in **Birla Institute of Technology vs. The State of Jharkhand and others, (2019) 15 SCC 586** that since Teachers of said Institute were considered to be employees, therefore, petitioners would also fall under the definition of 'employee'. Reliance was also placed on another judgment passed by Supreme Court in **Nagar Ayukt Nagar Nigam,**

Kanpur vs. Sri Mujib Ullah Khan and another, (Civil Appeal No. 2628 of 2017), decided on 02.04.2019 and this Court's judgment in **U.P. State Sugar Corporation vs. Smt. Sharada Devi and others, 2015(4) ADJ 559.**

5. Per contra, Sri K. Shahi, Sri Shivendra Singh Bhadauriya, Sri Bipin Bihari Pandey, Sri Sanjay Kumar Singh, Sri Bhanu Pratap Singh Kachhawah, Sri C.S. Singh and Sri Akhilesh Kumar Sharma, Advocates for Respondents-Basic Education Officers; Sri Ashish Kumar Nagvanshi and Sri Shashi Prakash Singh, Additional Chief Standing Counsel; Sri Ravi Prakash Srivastava, Standing Counsel and Mrs. Shruti Malviya, Brief Holder for State-Respondents, submitted that not only there is huge delay in approaching this Court but there is no challenge to Government orders whereby provision of gratuity is provided to Teachers subject to certain conditions. They further submitted that according to referred Government Orders since petitioners have worked till 62 years or not submitted option, they are not entitled for payment of gratuity. Reliance is placed on Supreme Court's decision in **Biharilal Dobray vs. Roshan Lal Dobray, (1984)1 SCC 551** and this Court's decision in **District Basic Education Officer and another vs. Shivkali and others (Special Appeal Defective No. 651 of 2021), decided on 06.10.2021.** Reliance is also placed on a recent judgment of this Court in **Smt. Shiv Pyari Srivastav and others vs. State of U.P. and others (Writ-A No. 37216 of 2014), decided on 18.01.2024** that since petitioners have worked till 62 years, they were not entitled for payment of gratuity.

6. Heard learned counsel for parties and perused the material available on record.

7. In above legal and factual background, substantial arguments raised before this Court by petitioners are not substantially supported by pleadings of writ petitions. It is difficult to believe that petitioners have no knowledge about relevant Government Orders whereby gratuity is payable to Teachers in certain conditions, despite they have worked for many years in Primary Schools/ Junior High Schools. Not disclosing the said Government Orders is nothing but an attempt to mislead the Court.

8. As referred in **Smt. Shiv Pyari Srivastav (supra)**, according to Government orders, if Teachers have worked upto the age of 62 years, they are not entitled for gratuity. Relevant part thereof is mentioned hereinafter:

“10. In the above factual and legal background, this Court has to consider interpretation of above referred G.Os. dated 04 February, 2004 and 23 November, 1994. According to G.O. of 23 November, 1994, in a case where an employee opt to work till the maximum age of retirement i.e. up to 62 years, he has to forego his right of gratuity and will be entitled for pension only.

11. I have also carefully perused the G.O. dated 04 February, 2004 and I have found merit in the argument of learned counsel for respondent that the said G.O. is in regard to extension of age of retirement only and it does not co-relate or extend any right to petitioners for gratuity even working till age of 62 years i.e extended date of retirement.

12. I have also carefully perused the impugned order as reproduced in previous paragraphs wherein concerned respondent has taken the same interpretation as discussed above. So far as, another G.O. is concerned, I do not find that petitioners will have any case on basis of said G.O., which was related only to an effect that petitioners were absorbed in the present service though they were earlier working in other service.

13. Therefore, petitioners are failed to point out any irregularity or illegality in the impugned order which is based on correct interpretation of concerned Government Orders, accordingly, I do not find any case for interference in impugned order, therefore, these writ petitions are accordingly, dismissed.”

9. So far as payment of gratuity is concerned, Section 1(3) of Act, 1972 provides applicability of Act and being relevant, is reproduced hereinafter:

(3) It shall apply to -

(a) every factory, mine, oilfield, plantation, port and railway company;

(b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;

(c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, or, any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.”

10. It is also relevant to mention definition of ‘employee’ as mentioned in Section 2(e) of Act, 1972, which is reproduced hereinafter:

“(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.”

11. Supreme Court in recent judgments has extended scope of “Establishment” and amended definition of “employee” and included “teachers working at private institutions” and “Angawadi workers / helpers” working under a scheme in **Birla Institute of Technology (supra)** and **Maniben Maganbhai Bhariya v. District Development Officer Dahod and others, 2022 SCC OnLine SC 507** respectively and held that they are entitled for gratuity.

12. In all above cases, there was no separate Act or Rules were enacted for payment of gratuity. Central Government/ State Governments have framed separate Act/ Rules for payment of gratuity for Teachers working under State/ Central Institutions, as the case may be. Later on payment of gratuity was made applicable to Teachers working in schools run by Basic Education Board by way of issuing Government Orders (referred above). The later part of definition of ‘employee’ has carved out an exception to do so, i.e., to

frame Act/ Rules for this purpose. It is upto the State to carry on present procedure or to frame specific Act/ Rules for payment of gratuity for Teachers in Basic Schools.

13. In aforesaid circumstances, presently gratuity is paid to Teachers in terms of referred Government Orders in certain circumstances. The details of Government Orders are not part of writ petitions. Petitioners have not pleaded about its applicability. Government Orders are also not under challenge, except oral argument on ‘repugnancy’.

14. The argument on ‘repugnancy’ is also liable to be rejected since there is no challenge to Government Orders and for this purpose reference to a judgment of Supreme Court in **Dhanraj vs. Vikram Singh and others (Civil Appeal No. 3117 of 2009)**, decided on 10.05.2023, would be relevant, wherein it has been observed that, “*We are of the view that in absence of any specific challenge to the validity of the statutory provisions, the High Court ought not to have undertaken the exercise of going into the question of repugnancy.*”

15. The Division Bench of this Court in **Shivkali (supra)** has considered the issue of payment of gratuity to Teachers working at Junior High Schools and not only upheld Government Orders on payment of gratuity but interpreted conditions in benefit of Teachers also. Relevant paragraphs 13 and 14 thereof are mentioned hereinafter:

“13. In so far as the contention of the learned counsel for the appellants that by Government Order dated June 10, 2002 the option could have been exercised only upto first day of July in which the incumbent was to attain the age of 58 years is concerned, the same is not acceptable. Because a plain reading of the Government Order dated June 10, 2002 would reflect that it is in two parts. The first part is in respect of fixing the last date for exercise of option to retire early to avail the benefits of early retirement whereas the second relates to the last date for change of the option submitted earlier. In the first part, the age of retirement is not mentioned. What is stated in the first part is that those who could not exercise their option to

avail the benefits under the earlier Government Order dated 23.11.1994 may exercise their option by the first day of July of the year in which they attain the age of superannuation. The second part gives option to those, who had already opted to retire at the age of 58 years, to change their option before they retire. Meaning thereby that if suppose a person has given an option to retire at the age of 58 years, before he attains the age of 58 years, he can change the option. Thus, as by Government Order dated February 4, 2004 the age of superannuation was enhanced from 60 years to 62 years by specifically providing that the benefits that were available on retirement at the age of 58 years would now be available upon completion of the age of 60 years and those that were to be available at the age of 60 years, would now be available on completion of the age of 62 years, by necessary implication, the option that could earlier be exercised upto the first day of July in which the incumbent was to attain the age of 58 years became exercisable upto the first day of July in which the incumbent would attain the age of 60 years.

14. In the instant case, since the date of birth of the first respondent's husband was 01.07.1951, he would have completed 60 years on June 30, 2011. Thus, the last day by which he could have opted to retire at the age of 60 years would be the first day of July, 2010, which never came in the life time of the first respondent's husband. Thus, for all the reasons given above, the benefit of death gratuity that would have been available to the incumbent's dependents/ heirs on incumbent's death, before attaining the age of 60 years, under the Government Order dated September 10, 2009, would be available to his heirs/dependents.”

16. With regard to deficiency of pleadings and that a litigant has to approach this Court with clean hands, few paragraphs of a judgment passed by this Court in **Anil Kumar Yadav vs. State of U.P. and others**, Neutral Citation No. 2023:AHC:193413 are referred hereinafter:

“(ख). इस स्तर पर उच्चतम न्यायालय द्वारा पारित किये गये निर्णय श्री के जयराम व अन्य प्रति बैंगलोर डेवलपमेंट अथॉरिटी व अन्य :

(२०२२) १२ एस सी सी ८१५ से निम्न अंश का उल्लेख करना महत्वपूर्ण होगा:—

“ ३८-... .स्थापित विधि के अनुसार, जो पक्ष संविधान के अनुच्छेद ३२ के अंतर्गत इस न्यायालय या अनुच्छेद २२६ के अंतर्गत उच्च न्यायालय के असाधारण क्षेत्राधिकार को आहूत करता है, तो यह माना जाता है कि वो सत्यवादी, स्पष्टवादी और विवर्त होगा। उसे बिना किसी निग्रह से सभी वस्तुगत तथ्यों को उद्धाटित करना चाहिए, भले ही वे उसके विरुद्ध हों। उसको तथ्यों की 'छुपा-छुपी' (हाईड एंड सीक) खेलने या उनका 'चयन और चुनने' (पिक एंड चूज) करने की अनुमति नहीं दी जा सकती, जिन्हें वह प्रकट और छुपाना (पर्दा डालना) या वो अन्य तथ्य जिनको उद्धाटित नहीं करना (छिपाना) पसंद करता है। आज्ञापत्र क्षेत्राधिकार का मूल आधार, सत्य व पूर्ण (सही) तथ्यों के प्रकटन पर आधारित है। अगर वस्तुगत तथ्य छुपाये या विकृत किये जाते हैं तो आज्ञापत्र न्यायालय की कार्यवाही ही और उपयोग असंभव हो जायेगा। याचिकाकर्ता को बिना किसी निग्रह के वांछित अनुतोष पर प्रभाव कारित करने वाले सभी तथ्यों को अवश्य ही उद्धाटित करना है। ऐसा इसलिए क्योंकि "न्यायालय विधि को तो जानता है लेकिन तथ्यों को नहीं।”

(देखे : श्री के जयराम व अन्य प्रति बेंगलोर डेवलपमेंट अथॉरिटी व अन्य : (२०२२) १२ एस सी सी ८१५) का प्रस्तर संख्या ३८)
(हिन्दी में अनुवाद न्यायालय द्वारा किया गया है।)
(रेखांकित कर प्रमुखता न्यायालय द्वारा प्रदान की गयी है।)”

17. In aforesaid circumstances, though the relief sought in writ petitions, was not supported by pleadings, still on basis above discussion, I do not find that petitioners are entitled for gratuity only on basis of Payment of Gratuity Act as presently it is governed by referred Government Orders permitted by legal provisions also. The petitioners have not pleaded to take benefit of relevant Government Orders for payment of gratuity, therefore, this Court cannot enter into said arena. However, if petitioners' case still falls under referred Government Orders, they have liberty to take available legal

recourse to avail it's benefit for payment of gratuity and for that reference of **Shivkali (supra)** and **Usha Rani vs. State of U.P. and others**, Neutral Citation No. - 2019:AHC:180910 be taken note of.

18. The writ petitions are accordingly **disposed off**.

Order Date :- 06.02.2024

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[Saurabh Shyam Shamsbery, J.]