

*Before Ajay Tewari, J.*

**DR. ALPNA GUPTA—Petitioner**

*versus*

**THE STATE OF PUNJAB AND OTHERS—Respondents**

**CWP No. 9932 of 2010**

August 2, 2013

*Constitution of India, 1950 - Art. 226 - Writ Jurisdiction -  
Service Law - Panjab University Calendar, Volume I - Chap. VIII(E),  
Regulation 13.1&17.9 - Gratuity -Post of Demonstrator advertised*

*by respondent-College - Qualification prescribed was 5 years degree from recognized University - Petitioner found eligible and selected against said post with effect from 23.01.1990 - Respondent-College affiliated to Central Council of Indian Medicine (CCIM) in 1992 - Following inspection of respondent-College in 2005 by a CCIM team, Petitioner found not to be eligible for the said post as essential qualification for any post in teaching faculty was Post Graduate Degree - Petitioner asked to improve her qualification and salary frozen in the meanwhile - Services of Petitioner terminated on failing to improve qualification - Whether Petitioner is entitled to gratuity - Held, yes - Petitioner is entitled to gratuity since she was qualified for appointment as per the advertisement issued by the respondent-College - Further observed that at the time of the selection of the Petitioner the respondent-College was not affiliated to CCIM - No false representation on the part of the Petitioner - Regulation 17.9 entitles Petitioner to gratuity as it places an employee who retires voluntarily at par with an employee who retires on superannuation - Writ Petition allowed - Respondent directed to pay the admissible amount of gratuity to Petitioner.*

*Held*, that in my considered opinion, this writ petition must succeed. It is not disputed that at the time when the post was advertised, respondents No.2 to 4-College was not affiliated to the CCIM and advertised the post with the qualification as possessed by the petitioner. The petitioner had not made any false representation of any kind, when she had applied for the job. Thereafter also for a period of 15 years till 2005, no objection was raised to the qualification of the petitioner. It was further not disputed that had the petitioner improved her qualification, her previous service would have been counted for the purpose of gratuity. It is also not disputed that respondent No.1 has not opposed the grant of gratuity to the petitioner. The fact that the petitioner prayed for gratuity under Regulation 13.1 in these circumstances, would not be determinative because of regulation 17.9 which states that 'an employee who retires voluntarily, shall be entitled to gratuity, furlough and benefit of encashment of earned leave, as in the case of employees who retire on superannuation, as may be admissible under the rules and regulations.'

Harsh Aggarwal, Advocate, *for the petitioner*:

Balpreet Sidhu, Advocate for Deepak Sibal, Advocate for respondent No.1.

Divya Suri, Advocate for Amar Viveck, Advocate for respondents No.2 to 4.

### **AJAY TEWARI, J. (ORAL)**

(1) Brief facts are that on 26.12.1989, respondents No.2 to 4-College advertised posts of Demonstrator, where required qualification was 5 years' degree from a recognized University. The petitioner, who has 5 years' BAMS degree from a recognized University, applied and was selected as such w.e.f 23.1.1990. In the year 1992, respondents No.2 to 4-College became affiliated with the Central Council of Indian Medicine (CCIM). Thereafter, in the year 2005, an inspection team of the CCIM came to the College and pointed out that the petitioner could not have been appointed as Demonstrator, since as per the Regulation, the essential qualification for the post of any Teaching Faculty was a Post Graduate Degree. Thereupon, respondents No.2 to 4 directed the petitioner to improve her qualification and till then ordered that her salary would be frozen. Subsequently, in the year 2006, since the petitioner did not improve her qualification, her services were terminated. By the present writ petition, the petitioner seeks her gratuity.

(2) Counsel for the petitioner has argued that even though it was later-on transpired that the petitioner was not qualified for the post, yet at the time when she had applied as per the advertisement of the respondents-College, she was eligible and made no false representation of any kind. In the circumstances, when her services had to be terminated, she could not have been denied gratuity.

(3) As regards respondent No.1, counsel for the petitioner has placed reliance on a report of the Committee constituted by the Vice Chancellor, as per which persons like the petitioner were to be permitted to continue as Lecturers till they acquired post Graduate qualifications.

(4) Counsel for the petitioner in support of the plea of grant of gratuity has relied upon the decision of the Hon'ble Supreme Court in Ahmedabad Private Primary Teachers Association vs Administrative Officer and others, 2004(2) RSJ 315, wherein it was observed as follows:-

“The main purpose and concept of gratuity is to help the workman after retirement, whether, retirement is a result of rules of superannuation, or physical disablement or impairment of vital part of the body. The expression ‘gratuity’ itself suggests that it is a gratuitous payment given to an employee on discharge, superannuation or death. Gratuity is an amount paid unconnected with any consideration and not resting upon it, and has to be considered as something given freely, voluntarily or without recompense. It is sort of financial assistance to tide over post-retiral hardships and inconveniences.”

(5) Counsel for respondents No.2 to 4 has argued that since the petitioner was not qualified for the post, she could not have been granted gratuity because as per him, gratuity is a benefit of satisfactory service. He has further argued that in the prayer clause, the petitioner has prayed that she should be granted gratuity as per Regulation 13.1 of Chapter VIII(E) of the Punjab University Calendar Volume 1. The said Regulation only contemplates gratuity to a person who has ‘retired’ and consequently, the petitioner whose services were terminated would not be eligible for gratuity.

(6) In my considered opinion, this writ petition must succeed. It is not disputed that at the time when the post was advertised, respondents No.2 to 4-College was not affiliated to the CCIM and advertised the post with the qualification as possessed by the petitioner. The petitioner had not made any false representation of any kind, when she had applied for the job. Thereafter also for a period of 15 years till 2005, no objection was raised to the qualification of the petitioner. It was further not disputed that had the petitioner improved her qualification, her previous service would have been counted for the purpose of gratuity. It is also not disputed that respondent No.1 has not opposed the grant of gratuity to the petitioner. The fact that the petitioner prayed for gratuity under Regulation 13.1, in these circumstances, would not be determinative because of regulation 17.9 which states that ‘an employee who retires voluntarily, shall be entitled to

gratuity, furlough and benefit of encashment of earned leave, as in the case of employees who retire on superannuation, as may be admissible under the rules and regulations.'

(7) Resultantly, this writ petition is allowed and the respondents are directed to pay the amount of gratuity as admissible to the petitioner within a period of three months from the date of receipt of a certified copy of this order failing which the petitioner would be entitled to claim the same with interest @ 8% p.a from the date her services came to an end till the date of actual payment.

(8) No order as to costs.

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*S. Gupta*