

**SMT. SONIYA THAKRAN, CONTROLLING AUTHORITY UNDER THE PAYMENT OF
GRATUITY ACT, 1972**

**OFFICE OF THE DEPUTY LABOUR COMMISSIONER (NORTH-WEST),
LABOUR DEPARTMENT, GOVT. OF NCT OF DELHI,
NIMRI COLONY, ASHOK VIHAR, PHASE-IV, DELHI-110052**

No.PGA/79/CA-I/NWD/19/Lab/196

Dated:- 01/02/2022

In the matter of

✓ Smt. Kalpana Khan,
201 B, Q.U. Block, Pitam Pura,
Delhi-110034.

.....Claimant


V/s

M/s Ravindra Public School,
S.D, Block, Pitam Pura, Delhi-110034.

.....Respondent /Mgt.

ORDER

1. Vide this order the undersigned shall dispose of the claim application dated 04.09.2019 filed by Smt. Kalpana Khan under the provisions of the Payment of Gratuity Act, 1972 (here in after referred to as the Act) for claiming gratuity amounting to Rs. 12,76,432/- from the management of M/s Ravindra Public School on account of gratuity for rendering 27 years of service with the respondent.
2. The claimant in the statement of claim has stated that she worked with the Respondent from 01.11.1992 as Post Graduate Teacher and her last drawn wage was Rs. 70,040/- p.m. She was retired from her services by the management w.e.f. 31.07.2019 and thereafter approached the Respondent by sending demand notice dated 16.08.2019 for paying her due amount of gratuity for the service rendered by her. She further stated she is entitled for gratuity for rendering 27 years of service with Respondent but the same has not been paid to her by the Respondent so far despite her demand notice{.


Controlling Authority
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3. Notices in Form 'O' of the Payment of Gratuity (Central) Rules, 1972 were sent to the Respondent for appearing in this office and submitting his reply along with documents on which he intends to rely in defence. Sh. Akshay Bhasin, Advocate appeared on behalf of management on 16.10.2019 and requested for an adjournment for filing written statement. A copy of claim was provided to Sh. Akshay Bhasin, Advocate and the case was adjourned to 29.10.2019. Respondent appeared on 29.10.2019 nor filed any written statement and respondent again sought date for filing written statement, on request case is adjourned to 25.11.2019. But despite the several opportunity neither respondent appeared nor filed any written statement, therefore it was proceeded ex-parte on 02.12.2019.
4. The claimant filed her evidence by way of affidavit which is exhibited as Ex.WW1/A and relied upon documents exhibited as WW1/1 to WW1/3 i.e. copy of request letter for gratuity payment, copy of Form I, copy of salary certificate attested by Vice-Principal dt. 25.11.2019 & copy Provident Fund in support of her claim. She tendered her evidence on 30.12.2019 corroborating the facts as mentioned in her statement of claim and the matter adjourned to 15.01.2020. She could not be cross examined as the Respondent had already been proceeded ex-parte.
5. On 15.01.2020 AR respondent Sh. O.P. Tiwari, Advocate appeared and filed his Vakalatnama and an application dated 15.01.2020 for setting aside the Exparte proceedings, copy of same has been provided to claimant for submitting the response. On request matter adjourned to 27.01.2020. Both the parties appeared on dated 27.01.2020 & claimant stated that she does not wish to file any reply to the application of Respondent, however she stated that she has no problem/grievance if the application is allowed. Hence application of respondent is being allowed and then again given opportunity to respondent for filing written statement and the matter adjourned on 05.02.2020 for filing written statement. But on 05.02.2020 AR respondent Sh. Manas Mishra, Proxy appeared and requested for some more time for filing written statement and stated that main

counsel of respondent is out of station. So on request matter is adjourned for 24.02.2020.

6. AR Respondent Sh. O.P. Tiwari, Advocate appeared on 24.02.2020 and filed written statement. Copy of W.S. given to applicant.
7. On dated 02.03.2020 applicant filed rejoinder and copy of rejoinder given to respondent. On the basis of pleadings following issues were framed: -
 - (a) Whether the claim is maintainable under the Payment of Gratuity Act 1972?
To what amount on account of gratuity, the claimant is entitled?
 - (b) Whether the claimant is entitled for gratuity? And if so to what amount?
 - (c) Any other relief.
8. She tendered her evidence again on 06.10.2021 and was cross examined by AR of Respondent. In cross, she stated as under: -

"I joined as PGT since 1992 and last basic wages were Rs. 70,040/- per month. It is correct that I have challenged my salary in the Hon'ble High Court and still pending vide WPC No. 11114/2018. It is wrong to suggest that since last drawn wage is under challenged, I cannot claim my gratuity till disposal of above writ petition and declaration of my actual last drawn wage by Hon'ble High Court. Generally, school working was about 300 days in a year during my service period. It is wrong to suggest that I did not complete 240 days of my service in several years of my service. It is also wrong to suggest that I am not entitled for the gratuity of those years in which I did not completed 240 days. It is wrong to suggest that my claim is premature and I have written gratuity amount more than the actual amount. It is wrong to suggest that I have filed my false claim, false affidavit and I am deposing falsely.
9. Respondent as well as claimant nor filed their written arguments and adduced verbal as well. Thereafter the case was concluded for order.
10. I have gone through the pleadings, evidence led by parties & records available on file and my findings in the case are as under: -

11. It is not in dispute that the claimant was employed with Respondent. The claimant has claimed that she was continuously working with Respondent. On the other hand, the Respondent has disputed the same and has stated that the claimant had worked as Teacher and the claimant did not completed 240 days of her service in several years & Further stated that the Basic + D.A of PGT recognized un-aided public school in delhi is Rs. 59,024/-. The Respondent has also submitted the provisions of the Act are not maintainable and this authority has no jurisdiction to try, entertain and decide the claim but nothing has been produced by them in support of their contention. Despite several opportunities management has failed to file the evidence.

12. I am of the considered opinion that the provisions of the Act are very much applicable upon the Respondent and the claim filed by the claimant is maintainable before this authority.

13. The testimony of the claimant remained un-rebutted, therefore I have no reason to disbelieve the same.

14. In view of the above, I hold that the claimant has worked with the respondent as Teacher (PGT) w.e.f. 01.11.1992 and her last drawn wage (basic) for the purpose of calculation of gratuity was Rs. 70,040/- per month as submitted by the salary statement of the claimant. She got superannuated on 31.07.2019 and therefore she is entitled for gratuity for rendering the service i.e. from 01.11.1992 to 31.07.2019 i.e. 27 years of service with the Respondent. The due amount of gratuity is calculated as under: -

$$\text{Due amount of gratuity} = \frac{\text{Wages last drawn} \times \text{No. of years of service rendered} \times 15}{26}$$

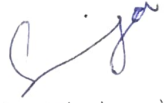
$$= \frac{70,040 \times 27 \times 15}{26} = 10,91,007.69/-$$

Which rounding of comes to Rs. 10,91,008/-



15. Therefore the claimant is entitled for an amount of **Rs. 10,91,008/-** on account of gratuity from the management.
16. The management has failed to make the payment of due amount of gratuity within prescribed time, thus simple interest @ 10% p.a. as per section 7(3A) of the Act on the due amount of gratuity is also payable by the management.
17. Accordingly, I direct the management to pay the claimant an amount of **Rs. 10,91,008/-** on account of gratuity alongwith simple interest @ 10% p.a. w.e.f. the date when it became due i.e. 01.08.2019 till the date of actual payment within a period of 30 days from the issue of this order.

This order is given under my hand and seal on 1st day of February 2022.



(Soniya Thakran)
Labour Officer/Controlling Authority
Under the Payment of Gratuity Act, 1972

Controlling Authority
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