



GAHC010024932010

Page No.# 1/13



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6546/2010

AKON CHANDRA GOGOI and 11 ORS
S/O LT. RATENSWAR GOGOI, R/O HOUSE NO. 12, VILL. NARAKASUR, NEAR
MAINA PARIJAT, PO. KAHILIPARA, GUWAHATI-19

2: DEBESWAR THAKURIA
S/O LT. PITMOL THAKURIA
R/O VILL. SONAPUR
PO. JHAROBARI
DIST. KAMRUP
ASSAM

3: SANI RAM DEKA
S/O LT. DHATURAM DEKA
R/O HOUSE NO. 32
VILL. BHAGADUTTAPUR
PO. KAHILIPARA
GHY-19

4: KAMAL SAIKIA
S/O LT. RAMAKANTA SAIKIA
R/O HOUSE NO.4
VILL. NARAKASU
NEAR MAINA PARIJAT
PO. KAHILIPARA
GHY-19

5: NARAYAN DAS
S/O LT. PUWARAM DAS
C/O JYOTI CHITRABAN FILM STUDIO SOCIETY
PO. KAHILIPARA
GUWAHATI-19

6: BAPUKAN DEKA



S/O LT. NIRANJAN DEKA
C/O JYOTI CHITRABAN FILM STUDIO SOCIETY
PO. KAHILIPARA
GHY-19

7: AVA HAZARIKA
W/O LT. INDU KALPA HAZARIKA
R/O HOUSE NO.6
NEAR 10 APBN GAGTE
PO. KAHILIPARA
GHY-19

8: MADHABI CHOUDHURY
W/O LT. MUNIN CHOUDHURY
R/O H.NO.22
VILL. NARAKASUR
PO. KAHILIPARA

9: JONAKI KAKATY
W/O LT. MADAN KAKATY
C/O JYOTI CHITRABAN FILM STUDIO SOCIETY
PO. KAHILIPARA
GHY-19

10: RUKMONI RONGPI
W/O LT. RAMESWAR RONGPI
R/O VILL. NARAKASUR
PO. KAHILIPARA
GHY-19

11: PUTULI BUNGRUNG
W/O LT. DHANIRAM MIKIR
R/O VILL. NARAKASUR
PO. KAHILIPARA
GHY-19

12: MINU BALA TUMUNG
W/O LT. PUSPA RAM TUMUNG
R/O VILL. NARAKASUR
PO. KAHILIPARA
GHY-1

VERSUS

THE STATE OF ASSAM AND ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM, DEPTT.
OF FINANCE, DISPUR, GHY-6.



2:JYOTI CHITRABAN FILM STUDIO SOCIETY

REP. BY ITS SECRETARY
KAHILIPARA
GHY-19

3:THE SECRETARY

JYOTI CHITRABAN FILM STUDIO SOCIETY
KAHILIPARA
GHY-1

Advocate for the Petitioner : MR.N J KHATANIAR

Advocate for the Respondent : MR.A JAHID

Linked Case : WP(C)/4468/2013

BIRENDRA KUMAR DAS
S/O LT. LAKHI KANTA DAS
VILL. THUTUKATA
P.O. BORI VIA SASMATA
DIST- KAMRUP
ASSAM
RETIRED AS SUPERINTENDENT
JYOTI CHITRABAN FILM STUDIO SOCIETY
KAHILIPARA
GHY-19
ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
DEPARTMENT OF CULTURAL AFFAIRS
DISPUR
GHY-6
ASSAM

2:THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM



DEPARTMENT OF FINANCE

DISPUR

GHY.- 6

ASSAM.

3:THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM

PENSION AND PUBLIC GRIEVANCES DEPARTMENT

DISPUR

GHY.- 6

ASSAM.

4:THE DIRECTOR OF CULTURAL AFFAIRS

GOVT. OF ASSAM

DISPUR

GHY.- 6

ASSAM.

5:JYOTI CHITRABAN FILM STUDIO SOCIETY

REPRESENTED BY ITS SECRETARY

KAHILIPARA

GHY.- 781019

ASSAM.

6:THE SECRETARY

JYOTI CHITRABAN FILM STUDIO SOCIETY

KAHILIPARA

GHY.- 781019

ASSAM.

7:THE ACCOUNTANT GENERAL A and E

ASSAM

MAIDAMGAON

BELTOLA

GUWAHATI

DIST.- KAMRUP

ASSAM.

Advocate for : MR.H BEZBARUAH

Advocate for : MR.A JAHID appearing for THE STATE OF ASSAM AND 6 ORS

BEFORE

HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

Date of hearing : 14.09.2023

Date of judgment : 14.09.2023

JUDGMENT & ORDER

Both these writ petitions being analogous are taken up together for disposal by this common judgment and order. While in WP(C)/6546/2010, there were initially 11 numbers of petitioners, this Court on being apprised of the expiry of the petitioner nos. 6, 7 and 11 had passed an order dated 29.08.2023 for striking off their names. In the second writ petition, WP(C)/4468/2013, there is only one petitioner. The petitioners are either employees or legal heirs of the deceased employees of the Jyoti Chitraban (Film Studio) Society [hereinafter Jyoti Chitraban] and the issue raised in these writ petitions is with regard to a claim for gratuity and leave encashment benefits.

Shri Rahul, learned counsel for the petitioners however, at the outset, has submitted that the claim for leave encashment is not pressed in these writ petitions and therefore, the consideration would only be on the claim for payment of gratuity.

2. Before going to the issue which has arisen for consideration, it would be convenient if the facts of the cases are narrated in brief.

3. As indicated above, the petitioners are either employees or legal heirs of the deceased employees of the Jyoti Chitraban Society. The said Society was established by the State in the year 1961 for production of the films of the region and was registered bearing Registration No. 59/1973-74. It is the contention of the petitioners that the Society is fully financed and controlled by the Government of Assam. The petitioners have contended that after the retirement, they were not paid their gratuity and in this regard numerous representations were filed. The petitioners lay the foundations of their claim on Articles 14, 16 and 21 of the Constitution of India and the Statute holding the

field namely, the Payment of Gratuity Act, 1972.

4. The contention of the respondents, on the other hand, is that the applicability of the payment of Gratuity Act, 1972 is itself questionable and in any case, there is lack of funds to make the payments.

5. I have heard Shri G. Rahul, learned counsel for the petitioners. I have also heard Shri JK Goswami, learned Additional Senior Government Advocate for the State; Shri A. Sarma, learned counsel for the Jyoti Chitraban Society; Shri P. Nayak, learned Standing Counsel for the Finance Department and Ms. A. Lala, learned counsel appearing on instructions of Shri B. Chakraborty, learned Standing Counsel, AG, Assam.

6. Shri Rahul, learned counsel for the petitioners, by referring to the additional affidavit filed on 15.09.2021 more particularly Annexures E and F thereof has submitted that as per the Certificate dated 03.12.2003 issued by the Commissioner & Secretary, Department of Cultural Affairs, it has been certified that the Jyoti Chitraban is a Government Registered Society functioning under the Department of Cultural Affairs, Government of Assam and has been receiving regular Grants-in-Aid from the Government of Assam. It has further been certified that the Jyoti Chitraban and Television Institute is an establishment entirely run by the society and is an integral part of the Society.

7. In the communication dated 04.06.2012 which has been annexed as Annexure F to the said additional affidavit, the Director of Cultural Affairs, Assam has submitted a proposal for certain amounts for Grants-in-Aid (Non-plan) to the Jyoti Chitraban Society for salaries of the employees during the year 2012-13. The learned counsel for the petitioners has also referred to an order dated 01.11.2011 passed by Hon'ble Division Bench in WA/330/2007 wherein it

has been observed that the Jyoti Chitraban is a State Government controlled body.

8. As regards the applicability of the Gratuity Act, the learned counsel has referred to an order dated 25.02.2020 of this Court passed in the present case wherein, after extracting the provisions of Gratuity Act, 1972, it was observed that the said point would be examined in due course.

9. Shri Rahul, learned counsel for the petitioners has submitted that the said issue which was raised in the order dated 25.02.2020 stood answered in terms of a Gazette Notification dated 06.09.1997 wherein a notification dated 02.08.1997 is incorporated as per which, the payment of Gratuity Act, 1972 would be applicable to the Society registered under the Societies Registration Act, 1860 in which 10 or more persons are employed or were employed for wages on any day in the preceding 12 months as a class of establishment to which the Act shall apply from the date of publication of the notification. He submits that there is no dispute of fulfillment of the condition under the said notification as there were more than 10 persons working in the Jyoti Chitraban and therefore there is no dispute regarding applicability of the Act of 1972 to the Society in question.

10. *Per contra*, Shri Goswami, learned Additional Senior Government Advocate has submitted that the present claim may not be legally tenable. By referring to the affidavit-in-opposition dated 07.09.2011, the learned State Counsel has submitted that though it is correct that the Society was getting Grants-in-Aid from the State Government for payment of salaries, under Rule 32 of the Assam Services (Pensions) Rules, 1969, employees of the institution which are runs by Grants-in-Aid are not entitled to pension.

11. Shri Goswami, learned Additional Senior Government Advocate refers to another affidavit dated 15.03.2012 by the respondent no. 5 in which it has been stated that the employees of the Society are not entitled for gratuity.

12. Shri Sarma, learned counsel for the respondent nos. 2 and 3 – Society by referring to the affidavit-in-opposition filed on 01.12.2011 has fairly submitted that there may not be a serious objection on the applicability of the Gratuity Act, more so in view of the Gazette Notification dated 06.09.1997. However, he submits that there is no provision for payment of gratuity as per the Rule governing the field namely the by-laws and in this connection, he refers to the averments made in paragraph 10 of the said affidavit.

13. Shri Nayak, learned Standing Counsel, Finance Department has however raised the objection with regard to the applicability of the Gratuity Act, 1972 in respect of Cooperative Society. He further submits that even if the registration is done under the Societies Registration Act, 1860, by-laws of the Society should have sufficient provision for payment of gratuity and in absence of such provision, gratuity cannot be claimed. He further submits that the by-laws of the society is not the subject matter of challenge. Shri Nayak however fairly submits that affidavit-in-opposition by the Finance Department has not been filed.

14. Shri Rahul, learned counsel for the petitioners in his rejoinder has submitted that the issue regarding applicability of the Gratuity Act is settled by the Gazette Notification dated 06.09.1997 and therefore, no objections can be raised at this stage regarding such applicability. He further submits that the objections raised on behalf of the Finance Department are not supported by any affidavit or pleading and therefore, such objections are not liable for any consideration. He submits that though there may not be a bar in making a submission on the point of law, such submission has to be tested along with



15. With regard to the plea of lack of funds to pay the gratuity, as pleaded in the affidavit-in-opposition, the learned counsel for the petitioners has placed reliance upon a case of ***State of Maharashtra and Ors. Vs. Dr. Hari Shankar Vaidhya and Ors.*** reported in ***(1997) 9 SCC 521***. The Hon'ble Supreme Court in the said judgment has held as follows:

“5. In view of the respective contentions, the only question that arises for consideration is whether the High Court would be justified to grant the pension and gratuity scheme to the teachers working in the Ayurvedic, Unani and Homeopathic aided institutions. It is seen that pursuant to the direction issued by this Court, the pension and gratuity scheme were extended to the Law Colleges from 1995. Whether the scheme could be extended or not is a question of an executive policy and the Court would not take the responsibility of directing the Government to extend the policy. The Court requires examination as to how the policy laid down is being worked out. It is stated that since huge financial outlay is involved in extending the benefits and the Government is not intending to deny the benefit to the segment of the teachers, we appreciate the stand taken by the Government. The Government is, therefore, directed to consider extension of the benefit of pension and gratuity scheme to the teachers working in the Ayurvedic, Unani and Homeopathic aided educational institutions in a phased manner, as was done with respect to the other aided institutions.”

16. The learned counsel for the petitioners has placed reliance upon another

judgment of this Court in the case of ***Dibrugarh University Pensioners' Association & Anr. Vs. Dibrugarh University & Ors.*** reported in **2021 (3) GLT 662**. For ready reference, paragraphs 56 and 57 are extracted hereinbelow:

“56. The State respondents should shoulder the liability to honour the wisdom of the legislature, as Dibrugarh University cannot generate such high amount of its own. The State respondents should sign the MOU towards the implementation of such Pension Scheme so as to grant adequate grant-in-aid to the Dibrugarh University to provide the required amount under the proper head for disbursement of pensionary benefits of the retired petitioners as well as regular pensioners.

57. As has been reiterated by the Hon'ble Apex Court, the right to receive pension is a Right to Property and the same is still a constitutional right. In view of the legal proposition and in the given facts and circumstances of the case, it is the considered opinion of the Court that the objection raised by the respondents cannot stand on the way of issuing writ of mandamus to the State to adjudicate the long standing claim of the old/retired persons to redress the grievances as per the mandate of law.

17. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

18. There is no dispute that the Society in question was registered under the Society Registration Act of 1860 and in fact the Commissioner & Secretary, Cultural Affairs Department had issued a certificate to the effect that the Society is a Government Registered Society. It is also not in dispute that the Society was

under the control of the Government and all the expenses were met including the salaries of the employees from Grants-in-Aid of the State Government. This Court has also noticed that Hon'ble Division Bench of this Court vide an order dated 01.11.2011 passed in WA/330/2007 has held that the Society in question is a State Government controlled body.

19. The only question is with regard to applicability of the Gratuity Act, 1972 which was in fact the issue raised before this Court on 25.02.2020. The said issue, in the opinion of this Court, stood answered in favor of the petitioners in view of the Gazette Notification dated 06.09.1997 regarding such applicability. The said Notification which was published by the Central Government has made it clear in unequivocal terms that Societies which were registered under the Societies Registration Act, 1860 in which 10 or more persons are employed or were employed would be covered by the Gratuity Act, 1972. Though Shri Nayak, learned Standing Counsel, Finance Department has raised certain objections on the applicability of the Act, such objections would not be sustainable in law in view of the Central Government Gazette Notification dated 06.09.1997, as mentioned above. There is no manner of doubt regarding fulfillment of the conditions imposed by the said notification of having 10 or more persons employed.

20. This Court makes it clear that though the aforesaid objection was not taken up in any affidavit, as no affidavit was filed by the Department, still the said point being a point of law has been taken up and considered in the above manner.

21. Gratuity is a retirement benefit for the long services rendered by an employee and as a provision for old age which is a statutory right under the Act. The said right cannot be taken away except in accordance with the provisions of

the Act. It is considered as deferred payments earned by an employee during his lifetime of service and protected under the social welfare concept enshrined in the Constitution of India.

22. The subsequent question / issue which will arise is with regard to lack of funds of the State Government to pay the Gratuity. The entitlement to gratuity being a statutory entitlement, the ground of lack of funds cannot be held to be a cogent ground and therefore it is the duty and reasonability of the State Government as a whole to allot adequate funds to clear the gratuity to the petitioners.

23. This Court has also taken note of the case laws relied upon by the petitioners wherein indications have been made that in matters of payment of gratuity, the State would have to take the responsibility.

24. In this connection, one may gainfully refer to the case of ***IUF Workers' Assn. v. Union of India*** reported in **(2018) 8 SCC 201**. In that case, the Hon'ble Supreme Court was dealing with a similar situation where in various the tea estates in the States of Assam, Kerala etc. were abandoned by the tea companies and the workers were left high and dry and were living in pitiable conditions as they did not receive their dues. Under such circumstances, the Hon'ble Supreme Court had directed the Central Government to carry out their statutory duties under the provisions of the Tea Act with some conditions.

25. In view of the above, both these writ petitions stand allowed holding that the petitioners are entitled to gratuity. Since, the pleaded case of the respondents is lack of funds, this Court directs the State Government to make adequate funds available to the Society to make the payment of gratuity to the petitioners. Since the claim is a long pending one, the said funds are to be made



available within an outer limit of 90 days from today and the gratuity be paid to the petitioners as per their entitlements after due verification.

26. Both these writ petitions accordingly stand allowed.

27. No order as to cost.

JUDGE

Comparing Assistant