IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT PETITION No. 31272 of 2024

THE STATE OF MADHYA PRADESH AND OTHERS

Versus

SHIVNATH SINGH KUSHWAH AND OTHERS

WITH

WRIT PETITION No. 31281 of 2024

THE STATE OF MADHYA PRADESH AND OTHERS

Versus

ANIL KUMAR TRIPATHI AND OTHERS

Appearance:

Shri Ravindra Dixit – Government Advocate for the petitioners – State.

Shri Suryabhan Singh Solanki and Ms. Sakshi Basnet - Advocates for the respondents in their respective cases.

ORDER

(Reserved on : 16.01.2025)

(Pronounced on : 06.05.2025)

The present petitions have been filed by the petitioner/State of Madhya Pradesh and its functionaries being aggrieved by the Order dated 03.09.2024 passed by the Controlling authority under Payment of Gratuity Act, 1972 thereby allowing the claim of the respondent No.1 to get Gratuity on account of services rendered as Shiksha Karmi Grade II and thereafter, as Adhyapak and then as Madhyamik Shikshak. Since the issues arising in both the matters are similar, they

were heard analogously and are being decided by this common order. For the sake of convenience, facts are taken from W.P.No.31272/2024.

2. The Controlling Authority has held the Respondent No.1 entitled to get Gratuity of Rs.6,92,289/- alongwith interest Rs. 3,12,478/- i.e, total Rs.10,04,767/- with future interest till the date of payment. The said Order has been assailed by the State of Madhya Pradesh and its functionaries stating that the State Govt. is not liable to pay Gratuity to the respondent No.1.

3. Shri Ravindra Dixit, learned Government Advocate has vehemently argued that the respondent No.1 cannot be said to be an employee in terms of Section 2 (e) of Payment of Gratuity Act, 1972 nor the petitioners (State Govt.) cannot be said to be employer in terms of Section 2(f) of the Payment of Gratuity Act, 1972 (for short, hereinafter referred to as Act of 1972). It is further argued that the payment of Gratuity Act does not apply to the employees employed by the State Govt. or the Central Govt. or that the said Act would not apply to the Petitioners and therefore, the Order passed by the Controlling Authority is totally devoid of jurisdiction and therefore, the petitioners are not liable to be relegated to avail the alternative remedy of appeal in terms of Section 7 (7) of the Act of 1972.

4. To elaborate the contentions, the learned Government Advocate has argued that initially, teachers used to be appointed by the Department of School Education in the State of Madhya Pradesh. However, from the year 1996-97, the State Govt. set up a new procedure for appointment of teachers and in accordance with such process, the Shiksha Karmis were appointed in Panchayats as well as in Urban local bodies in the State of Madhya Pradesh. For Panchayats in rural areas, the Rules were framed known as M.P. Panchayat Shiksha Karmi (Recruitment and

Conditions of Service) Rules, 1997 and the Petitioner was appointed in accordance with said Rules of 1997.

5. It is contended that thereafter, the mode of recruitment was further modified and in place of Shiksha Karmi Grade I, Grade II and Grade III, the Rules known as M.P. Panchayat Sanvida Shala Shikshak (Employment and Conditions of Contract) Rules 2001 were framed which were then superseded by M.P. Panchayat Sanvida Shala Shikshak (Employment and Conditions of Contract) Rules 2005 and the teachers appointed from 2001 onwards were given the nomenclature of Samvida Shala Shikshak Grade I, Grade II or Grade III in the rural areas as they were appointed by Panchayats and in the urban areas they were appointed by the urban local bodies. Thereafter, these teachers were absorbed in Adhyapak Cadre which was separately framed for the teachers working in Panchayats and the teachers working in urban local bodies and separate Rules were framed in the year 2008.

6. It is argued that in the year 2018, the State Govt. came out with the Rules known as M.P. School Education Service (Teaching cadre) Conditions and Recruitment Rules, 2018 (for short, hereinafter referred to as Rules 2018) and as per Rule 18(2) of the said Rules, the teachers working in Panchayats and urban local bodies were given an option to migrate to service of the State Govt. in Department of School Education. The respondent No.1 opted to migrate to service of the State Govt. and therefore, as per the specific language of Rule 18(2), the respondent No.1 would not be entitled to count the past services for Gratuity or any other benefit. Therefore, since the respondent No.1 has retired from the service of State Govt. on 31.01.2020 before completing 5 years of service in accordance with Rules of 2018 in the service of State Govt. Therefore, as per Rule 44 of M.P. Civil

Services Rules, 1976, he has not completed minimum 5 years qualifying service and therefore, the respondent no.1 cannot claim Gratuity from the State Govt. On these grounds, it is contended that the Order passed by the Controlling authority is totally devoid of jurisdiction and is perverse, so also contrary to the legal position and the controlling authority has granted the relief to the respondent No.1 for which no right of respondent No.1 exists.

7. Per contra, the learned counsel for the respondent No.1 has argued that the respondent No.1 was appointed as Shiksha Karmi Grade II and thereafter, absorbed as Adhyapak in the service of Jila Panchayat in accordance with the Adhyapak Samvarg Rules, 2008. Therefore, the respondent No.1 was entitled to all the terminal benefits as applicable in the matter as an employee of the State Govt. by counting his past services from the date of initial appointment i.e, from the year 2008 because he stood absorbed by the State Govt. in the year 2018 in accordance with the Rules of 2018.

8. It is contended that the Controlling authority has not erred in law in passing the Order granting gratuity to the respondent No.1 because no exemption has been sought by the State Govt. in terms of the Act of 1972. Further reliance has been placed reliance on a judgment of Division Bench in W.A.2358/2024 (Indore) which was in the case of similarly situated Shiksha Karmis who were appointed in urban local bodies and then taken over in terms of Rules of 2018.

9. Heard learned counsel for the parties.

10. The contention of the petitioner-State that payment of Gratuity Act would not apply to the State Govt. and that the employees working in the State Govt. or the Central Govt. are automatically exempt from application of payment

of Gratuity Act, 1972 is taken up first. The case was vehemently argued by relying on the definition of Employee and Employer as appearing in Section 2(e) and (f) of the Act of 1972. The aforesaid definitions are as under:-

> *"(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;*
>
> *(f) "employer" means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop—*
>
> *(i) belonging to, or under the control of, the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,*
>
> *(ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority,*
>
> *(iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person"*

11. It is evident from the perusal of definition of employee that the term employee does not include a person who holds a post under Central Govt. or State Govt. **and** is governed by any other Act or any other Rules providing for payment of Gratuity. Therefore, the persons holding a post under the State Govt. would be exempt from the term employee ***only if*** they are governed by any other Act or Rules providing for payment of Gratuity.

12. The definition of employer as appearing in Section 2 (f) of Act of 1972 makes it clear that as per clause (i) thereof employer in relation to any establishment belonging to or under the control of State Govt. would be the head of Ministry or Department concerned. Therefore, the very definition of employer does not exclude State Govt. or the Central Govt. The only exclusion is in the definition of employee and that is where an employee of the State Govt. is governed by any other Act or Rules providing for payment of Gratuity. Only in that contingency, there can be exclusion of the said employee from the term "employee".

13. Now, it is required to be seen whether the respondent No.1 is covered under any other Rules providing for payment of Gratuity. It was vehemently argued that the employees of the State Govt. are covered under Civil Services (Pension) Rules 1976 and therefore, the respondent No.1 would be covered under the Pension Rules of 1976 to claim Gratuity which is allowable in terms of Rule 44 of the said Rules. The qualifying service of five years as per Rule 44 (1) (b) was vehemently relied by the learned State Counsel.

14. Upon perusal of the aforesaid Rules, it is seen that as per Rule 2(g) of Pension Rules, 1976, Govt. servants appointed on or after 01.01.2005 to the services and posts in connection with the affairs of the State either temporarily or permanently are not covered in the said Rules. Section 2(g) is as under:-

> *"(g) "Pension Rules" means the Madhya Pradesh Civil Services (Pension) Rules, 1976 and the Madhya Pradesh (Work-Charged and Contingency Paid Employees) Pension Rules, 1979"*

15. Therefore, the respondent No.1 having been appointed in the service of State Govt. having been absorbed in service of State Govt. in accordance with

Rules of 2018, in the year 2018does not seem to be covered under M.P. Civil Services Pension Rules. Now, ancillary question would emerge that whether upon absorption in the State Govt. services in the year 2018, the services for the purpose of applicability of Pension Rules right from the year 2001 have to be calculated or not.

16. Learned counsel for the State has made a very strange argument. On one hand, it was said that the respondent No.1 cannot count the services prior to the year 2018 i.e, date of absorption in State Govt. for the purpose of claiming pension because he would be covered under the exclusion clause of Rule 2(g) but at the same time, the Pension Rules of 1976, more particularly, Rule 44 (1) can be pressed into service to deny payment of gratuity to the employee for the reason that he has not worked for five years in the fold of State Govt. Therefore, the State Govt. is blowing hot and cold at the same time and wants to deny the benefit of gratuity by placing reliance on Rules which, if accepted, would create a right to an employee to claim pension from the State Govt. However, the State Govt. has raised an argument of hot and cold to deny the payment of gratuity as well as the payment of pension to the respondent No.1. Therefore, this issue needs to be settled and decided conclusively.

17. Therefore, despite availability of alternative remedy of appeal under Section 7(7), this Court accepts the argument of State counsel regarding there being existence of a legal issue and jurisdictional issue involved in the matter and therefore, the petition has been heard on merits without relegating the petitioner to the alternative remedy of appeal before the appellate authority under Section 7(7) of Payment of Gratuity Act, 1972.

18. So far as the issue of Act 1972 is concerned, in the case of Employees of Erstwhile M.P. State Electricity Board, the State Government had granted exemption to the successor companies of the said Board from the operation of Act of 1972 and the exemption notifications were challenged before this Court in the case of ***M.P. Vidyut Karmchari Pensioners Association Vs. The State of Madhya Pradesh (W.P.No.14554/2015 decided on 26.11.2015)***and the Division Bench of this Court held that though the employees of Board are having a better package so far as the Civil Services (Pension) Rules, which are adopted by MPSEB for its employees as they relate to payment of pension as well as gratuity, yet gratuity in terms of Act of 1972 is more beneficial as compared to gratuity payable under the Pension Rules 1976 framed by the State Government and therefore, the exemption notifications were read down in the matter that there would not affect the rights of the employees to claim better gratuity under Act of 1972. The said judgment of this Court was challenged before the Supreme Court in **Civil Appeal No.10266-10268/2018 (M.P. Power Management Company Vs. M.P. Vidyut Mandal Pensioner's Association and others)** and the Supreme Court held that under Payment of Gratuity Act, pension and gratuity must be taken to be two different concepts and law which do not at any point of time come together. Accordingly, the judgment of this Court was upheld by holding as under:

> *"The second argument advanced by learned Advocate General is that the pensionary benefits, in any case, would include gratuity and that therefore on the facts of this case, what is to be paid under the Madhya Pradesh Civil Services (Pension) Rules is more than what is under the Payment of Gratuity Act.*
>
> *We are clearly of the view that when the Payment of Gratuity Act speaks of "gratuity" and "pension or gratuity" being more than that which is awarded under the Act, pension and gratuity must be taken to*

be two completely different concepts in law which do not at any point of time come together."

19. The Payment of Gratuity Act 1972 has merely codified the law relating to Gratuity, and the concept is older than the Act of 1972, as acknowledged by the Hon'ble Supreme Court in ***Bakshish Singh Vs. Darshan Engineering Works*, *(1994) 1 SCC 9*.** In the said case, in the following terms, it has been held that the benefits under the Act of 1972 are the bare minimum provisions of Gratuity that are part of mandatory service conditions of the employees:-

> ***16.*** *The aforesaid survey of the relevant authorities shows that in labour jurisprudence the concept of "gratuity" has undergone a metamorphosis over the years. The dictionary meaning may suggest that gratuity is a gratuitous payment, a gift or a boon made by the employer to the employee as per his sweet will. It necessarily means that it is in the discretion of the employer whether to make the payment or not and also to choose the payee as well as the quantum of payment. However, in the industrial adjudication it was considered as a reward for a long and meritorious service and its payment, therefore, depended upon the duration and the quality of the service rendered by the employee. At a later stage, it came to be recognised as a retiral benefit in consideration of the service rendered and the employees could raise an industrial dispute for introducing it as a condition of service. The industrial adjudicators recognised it as such and granted it either in lieu of or in addition to other retiral benefit(s) such as pension or provident fund depending mainly upon the financial stability and capacity of the employer. The other factors which were taken into consideration while introducing gratuity scheme were the service conditions prevalent in the other units in the industry and the region, the availability or otherwise of the other retiral benefits, the standard of other service conditions etc. The quantum of gratuity was also determined by the said factors. The recognition of gratuity as a retiral benefit brought in its wake further modifications of the concept. It could be paid even if the employee*

resigned or voluntarily retired from service. The minimum qualifying service for entitlement to it, rate at which it was to be paid and the maximum amount payable was determined likewise on the basis of the said factors. It had also to be acknowledged that it could not be denied to the employee on account of his misconduct. He could be denied gratuity only to the extent of the financial loss caused by his misconduct, and no more. Thus even before the present Act was placed on the statute book, the courts had recognised gratuity as a legitimate retiral benefit earned by the employee on account of the service rendered by him. It became a service condition wherever it was introduced whether in lieu of or in addition to the other retiral benefit(s). The employees could also legitimately demand its introduction as such retiral benefit by raising an industrial dispute in that behalf, if necessary. The industrial adjudicators granted or rejected the demand on the basis of the factors indicated above.

17. *It is true that while doing so, the industrial adjudicators insisted upon certain minimum years of qualifying service before an employee could claim it whether on superannuation or resignation or voluntary retirement. This was undoubtedly inconsistent with the concept of the gratuity being an earning for the services rendered. What is, however, necessary to remember in this connection is that there is no fixed concept of gratuity or of the method of its payment. Like all other service conditions, gratuity schemes may differ from establishment to establishment depending upon the various factors mentioned above, prominent among them being the financial capacity of the employer to bear the burden. There has commonly been one distinction between a retiral benefit like provident fund and gratuity, viz. the former generally consists of the contribution from the employee as well. It is, however, not a necessary ingredient and where the employee is required to make his contribution, there is no uniformity in the proportion of his share of contribution. Likewise, the gratuity schemes may also provide differing qualifying service for entitlement to gratuity. It is true that in the case of gratuity an additional factor weighed with the industrial adjudicators and courts, viz. that being entirely a payment made by the employer without there being a*

corresponding contribution from the employee, the gratuity scheme should not be so liberal as would induce the employees to change employment after employment after putting in the minimum service qualifying them to earn it. But as has been pointed out by this Court in the Straw Board Mfg. Co. Ltd. case [(1977) 2 SCC 329 : 1977 SCC (L&S) 243 : (1977) 3 SCR 91] in view of the constantly growing unemployment, the surplus labour and meagre opportunities for employment, the premise on which a longer qualifying period of service was prescribed for entitlement to gratuity on voluntary retirement or resignation, was unsupported by reality. In the face of the dire prospects of unemployment, it was facile to assume that the labour would change or keep changing employment to secure the paltry benefit of gratuity.

27. *It would thus be apparent both from its object as well as its provisions that the Act was placed on the statute book as a welfare measure to improve the service conditions of the employees. The provisions of the statute were applied uniformly throughout the country to all establishments covered by it. They applied to all employees drawing a monthly salary upto a particular limit in factories, shops and establishments etc. whether the employees were engaged to do any skilled, semi-skilled, unskilled, manual, supervisory, technical or clerical work. The provisions of the Act were thus meant for laying down gratuity as one of the minimal service conditions available to all employees covered by the Act. There is no provision in the Act for exempting any factory, shop etc. from the purview of the Act covered by it except those where, as pointed out above, the employees are in receipt of gratuity or pensionary benefits which are no less favourable than the benefit conferred under the Act. The payment of gratuity under the Act is thus obligatory being one of the minimum conditions of service. The non-compliance of the provisions of the Act is made an offence punishable with imprisonment or fine. It is settled law that the establishments which have no capacity to give to their workmen the minimum conditions of service prescribed by the Statute have no right to exist [vide Bijay Cotton Mills Ltd. v. State of Ajmer [(1955) 1 SCR 752 : AIR 1955 SC*

> *33 : (1955) 1 LLJ 129] , Crown Aluminium Works v. Workmen [1958 SCR 651 : AIR 1958 SC 30 : (1958) 1 LLJ 1] and U. Unichoyi v. State of Kerala [(1962) 1 SCR 946 : AIR 1962 SC 12 : (1961) 1 LLJ 631]].*
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> ***32.** On both grounds, therefore, viz. that the provisions for payment of gratuity contained in Section 4(1)(b) of the Act are one of the minimal service conditions which must be made available to the employees notwithstanding the financial capacity of the employer to bear its burden and that the said provisions are a reasonable restriction on the right of the employer to carry on his business within the meaning of Article 19(6) of the Constitution, the said provisions are both sustainable and valid. Hence the decision of the High Court has to be set aside.*

20. Now coming to the liability of the petitioners to pay gratuity to the respondent No.1 and the applicability of exclusion clause in terms of Rule 44(1) of Pension Rules, 1976. Reliance was placed on judgment of Division Bench of this Court in WA No.2358/2024. The Division Bench of this Court has categorically held in the aforesaid case that all teachers have become State Government employees and their services are liable to be counted from the date of their initial appointment, hence they are entitled for pensionary benefits also as claimed in the writ petition because now the teachers are under absolute control of School Education Department at par with Government teachers. The said judgment was sought to be distinguished on the ground that this judgment relates to Shiksha Karmis initially appointed in urban local bodies whereas the present respondent No.1 was initially appointed as Shiksha Karmi in Panchayats and therefore, there is some difference. Reliance was also placed on judgment of the Supreme Court in the case of ***Dr. K.M. Sharma and others Vs. State of Chhattisgarh and others reported in (2022) 11 SCC 436.***

21. So far as the reliance on the judgment of *Dr. K.M. Sharma (supra)* is concerned, the said judgment has already been considered by the Division Bench in WA No.2358/2024 and furthermore, the said judgment only takes into account the Shiksha Karmis Rules of 1998 relating to Shiksha Karmis appointed in urban local bodies and have not taken into account the subsequent Rules under which such Shiksha Karmis were initially appointed in Adhyapak Cadre in the year 2008 and thereafter, absorbed in the School Education Department itself in the year 2018. Therefore, for these issues the said judgment cannot be pressed into service because these issues did not arise for decision before the Supreme Court and it was a case where the Shiksha Karmis sought equal pay scales as applicable to teachers appointed in Municipal services in the State of Chhattisgarh.

22. So far as the applicability of judgment of the Division Bench in WA No.2358/2024 is concerned, it was sought to be distinguished on the ground that the respondent No.1 in the present case was initially appointed in Panchayat as Shiksha Karmis and not in urban local bodies.

23. Under the provisions of M.P. Municipalities Act, 1961, as per Section 95, the State Government is having competence to make rules in respect of various matters including in the matter of pension. Section 95 is as under:

95. State Government to make rules.-

> *The State Government may make rules in respect of qualification, recruitment, appointment, leave, scale of pay, all allowances by whatever name called, loans, pension, gratuity, compassionate fund, provident fund, annuity, dismissal, removal, conduct and other departmental punishment and appeal and service conditions for Municipal employees other than a member of the State Municipal Service.*

24. As per Section 355, there is a general power to frame rules vested in the State Government and as per Section 355(2)(iv)(b), the State Government is having power to frame rules in the matter of pension. Section 355(2)(iv)(b) is as under:

> ***Section 355 Power to make rules.-***
>
> *(2)In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-*
>
> *(iv) Constitution of Municipal service for the State and recruitment's and appointments thereto;*
>
> *(b) qualifications, scale of pay, leave, leave allowance, acting allowance, loan, pension, gratuity, annuity, compassionate fund, provident fund, dismissal, removal, conduct, departmental punishments, appeals and other service conditions of the members of the State Municipal service;*

25. It is not disputed that the State Government has duly framed rules in the matter of payment of pension to the municipal employees which are known as M.P. Municipal Services (Pension) Rules, 1980.

26. Different provisions are to be found in M.P. Panchayat Act. As per Section 131 of the said Adhiniyam, 1993, there is no provision to pay pension to panchayat employees and as per Section 131, there is a saving of pension scheme and retirement benefits of existing employees. Prior to the Adhiniyam 1993, there was Panchayat Act of 1990 and before that Act of 1981 and before that M.P. Panchayats Act, 1962. As per Section 386 of M.P. Panchayats Act, 1962 is similar saving clause was there and the substantive provision in the matter of payment of pension was as per Section 147 in the case of Janpad Panchayat and Section 189 in

the case of Jila Panchayat and as per Section 147(a) and Section 189 (a) provident fund automatically applied to the panchayat employees and as per Section 147(c) and Section 189(c) pension would be subject to previous approval of the State Government. Sections 147 and 189 and are as under:

> ***147. Establishment of Provident Fund****.—A Janpad Panchayat may in accordance with the rules made under this Act:*
>
> *(a) establish and maintain a Provident Fund on behalf of its officers and servants;*
>
> *(b) grant gratuity to any officer or servant subject to the previous approval of the prescribed authority; and*
>
> *(c) grant pension to any officer or servant subject to the previous approval of the State Government.*
>
> ***189. Establishment of Provident Fund****.—A Zila Panchayat may in accordance with the rules made under this Act:*
>
> *(a) establish and maintain a Provident Fund on behalf of the officers and servants;*
>
> *(b) grant gratuity to any officer or servant subject to the previous approval of the prescribed authority; and*
>
> *(c) grant pension to any officer or servant subject to the previous approval of the State Government.*

27. It is undisputed that the State Government at no point of time framed rules in the matter of payment of pension to panchayat employees and therefore, the services under panchayat are not pensionable but are undisputedly subject to benefit of Contributory Provident Fund. Recently, the Division Bench of this Court considered the issue in ***Ganesh Ram Kahar Vs. State of Madhya Pradesh &Ors., (WA 752/2020, decided on 28.2.2025)*** in the following manner :-

> *"11. From the above Section 386, it is clear that there is saving as to existing permanent employees that those employees, who are now being covered under M.P. Panchayats Act of 1962 and were earlier employees of Mandal Panchayat, Janpad Sabha, Kendra Panchayat or Tahsil Panchayat, etc. would continue to be paid pension, provident fund and gratuity as they were entitled with their erstwhile employer. The Janpad Sabha was not a local authority and was run by the State Government and therefore, the employees of Janpad Sabha, which were absorbed in Panchayats after 1962 were undisputedly entitled to pension as allowed to State Government employees under the Pension Rules applicable to State Government Employees. Therefore, the dispute has arisen in this case whether the petitioner is a taken over employee of erstwhile Janpad Sabha or not ? This is because undisputedly if the petitioner was not a taken over employee, then he would only be covered under the Contributory Provident Fund Scheme of Janpad Panchayat and if he is a taken over employee, then he would be entitled to pension because it is not in dispute that employees of Janpad Sabhas were entitled to pension and their pension rights would be protected upon absorption in Janpad Panchayats."*

28. Coming to provisions of Pension Rules, 1976, Rule 3(p) relates to qualifying service meaning the period between date of joining pensionable service and retirement there from. The service under the panchayat is not pensionable and therefore, to some extent the counsel for the State is right in submitting that the judgment in the case of Urban Local Bodies would not apply to the present case because the respondent No.1 was a Shiksha Karmi under panchayat and not under urban local body. Rules 3(p) is as under:

> ***3(p)"Qualifying service"*** *means the period between the date of joining pensionable service under the State Government and retirement therefrom which shall be taken into account for purpose of the pension and gratuity admissible under these rules and includes the period which qualifies under any other order or rule for the time being in force;*

29. As per Rule 13 there is a provision regarding conditions subject to which service qualifies. The said Rule is as under:

> ***13.Conditions subject to which service qualifies.***
>
> *(1)The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government, or under conditions determined by the Government.*
>
> *(2)For the purposes of sub-rule (1), the expression "service" means service against a post under the Government and paid by the Government from the Consolidated Fund of the State which has not been declared as non-pensionable.*

30. As per Rule 13(2) also, the expression service means service against a post under the Government and which has not been declared as non-pensionable. As undisputedly, the services under Panchayat were non-pensionable, therefore, the employees of panchayats appointed as Shiksha Karmi and thereafter as Adhyapak do not seem to be covered under Pension Rules, 1976 and therefore, though the learned Government Advocate has succeeded in distinguishing the case so far as the entitlement of pension is concerned but the same argument goes against the State so far as the question of entitlement of gratuity under the Act of 1972 is concerned.

31. Initially, the teachers were appointed in the School Education Department of the State Government but in the year 1997, the State Government came out with rules to appoint Shiksha Karmis and different rules were framed for appointing Shiksha Karmis and placing their services under urban local bodies and under panchayats. It was a very interesting system because the schools were run by the School Education Department under the control of authority of School Education Department and under Sarva Shiksha Abhiyaan, which is also a project

of School Education Department but the teachers working therein were by a legal fiction, employee of Panchayats or Urban Local Bodies. For panchayats, the Shiksha Karmis were appointed in accordance with M.P. Panchayat Shiksha Karmi (Recruitment and Conditions of Service) Rules, 1997. Thereafter, the said rule was succeeded by M.P. Panchayat Samvida Shala Shikshak (Appointment and Conditions of Service) Rules, 2001 and in the year 2005, these rules were superseded by M.P. Panchayat Samvida Shala Shikshak (Employment and Conditions of Service) Rules, 2005. By the said Rules of 2001 and 2005, the teachers continued to be appointed in the Panchayats and Urban Local Bodies by framing separate set of rules for the purpose and they were now converted into contractual employees and all the appointments made after the year 2001 were made on the post of Samvida Shala Shikshak Grade-I (for Higher Secondary/High School), Grade-II (for Middle) and Grade-III (for Primary). The said system continued upto 2008 and in the year 2008, the State Government came out with Rules to absorb such Shiksha Karmis and Samvida Shala Shikshaks in regular cadre known as Adhyapak cadre. For Panchayats, Rules were framed known as M.P. Panchayat Adhyapak Samvarg (Employment and Conditions of Service) Rules, 2008 and for urban local bodies, the rules were framed known as M.P. Nagriya Nikay Adhyapak Samvarg (Employment and Conditions of Service) Rules, 2008.

32. Under the Rules of 2008 framed separately for Panchayats and Urban Local Bodies, the Shiksha Karmis and Samvida Shala Shikshak were absorbed in teacher cadre of urban local bodies and panchayats respectively. The said rules were *parimateria* and the Division Bench in WA No.2358/2024 has considered the provisions of Teaching Cadre Rules of 2008 for Urban Local Bodies and similar provisions are there in the rules of Panchayat also. As per Rule 2(b) of the Rules,

the appointing authority is defined as one specified in schedule-I which is Chief Executive Officer of Jila Panchayat and as per Rule 5(1) one of the methods of recruitment in service is by merger of Shiksha Karmis and of Samvida Shala Shikshaks Grade-I, Grade-II and Grade-III on the post of Varishth Adhyapak, Adhypak and Sahayak Adhyapak respectively. As per note to Rule 8, persons employed or merged under the Teaching Cadre Rules, 2008 would be entitled for similar leaves as regular teachers of School Education Department. They will be having superannuation age of 62 years and would be covered under to M.P. Panchayat Services (Conduct) Rules, 1998 and were also held entitled to Dearness Allowance and other allowances payable as notified by the State Government from time to time.

33. The aforesaid provisions have already been interpreted by Division Bench in Writ Appeal No.2358/2024 in respect of Urban Local Bodies and it has been held that in all respect they became the regular employees of urban local bodies and in similar manner, the respondent No.1 herein, for all practical purposes became a regular employees of Jila Panchayat.

34. Upon having become a regular employee of Jila Panchayat, the respondent No.1 undisputedly became subject to all the service conditions of Jila Panchayat and became entitled to count his services for the purpose of gratuity from the date of initial appointed as Samvida Shala Shikshak/Shiksha Karmi and further to be covered under Contributory Pension Scheme or National Pension Scheme at par with employees of Janpad Panchayat and Jila Panchayat.

35. The issue of applicability of M.P. Civil Services Pension Rules 1976 to teachers absorbed in Panchayats in Adhyapak Cadre, and subsequently in the regular Cadre as per Rules of 2018, was recently decided by a coordinate Single

Bench of this Court at Jabalpur in ***Tribal Welfare Teachers Association Vs. State of Madhya Pradesh &Ors, (WP No. 10444/2020, decided on 01.3.2024***). It has been held that such Teachers who were appointed and absorbed in Panchayats before coming under direct fold of the State as per Rules of 2018, will not be covered under Pension Rules of 1976. In the said case, challenge to the circular No. F 1-16/2009/20-1dated 05.5.2011 issued by the School Education Department in name of the Governor, was rejected, whereby all Adhyapaks absorbed in Adhyapak Cadre as per Rules 2008 were covered under contributory Scheme of National Pension Scheme (NPS). Therefore, the said coverage will continue and has not been affected for the Teachers initially appointed and absorbed under the Panchayats.

36. So far as the heavy reliance framed on Rule 18(2) of Rules of 2018 is concerned. The option was taken from respondent No.1 in terms with the aforesaid Rule 18(2). Rule 18(2) is as under:

> *18(2) The members of the Adhyapak Cadre appointed into this service as per sub-rule (1), (2) and (3) of Rule 5 shall not be entitled to get pay scales, allowances and schemes with respect to this service before the commencement of these rules.*

37. From a bare language of Rule 18(2), it is clear that the members of Adhyapak Cadre appointed into this service as per Rule 5 shall not be entitled to get pay scales, allowances and schemes with respect to 'this service' before the commencement of these rules. Thus, by a plain language, the employees absorbed in accordance with the Rules of 2018 in the service of School Education Department would not be entitled to get the pay scales, allowances and schemes as per the pay scales notified in the Rules of 2018 prior to their absorption. No other rights of the absorbed teachers are affected by the school. The contention of the

State that since these are the employees of Jila Panchayat, they cannot seek gratuity from Jila Panchayat and since they spent less than 5 years in State Government, they cannot seek gratuity from the State Government. It is a very strange argument made by the State Government which is expected to be model employer and expected to lay down examples of other employers rather than to act a thrifty and miser businessman. By no stretch of imagination, vested right to claim Gratuity can be termed as "pay-scale, allowance or scheme" so as to interpret Rule 18 (2) to infer extinction of right to Gratuity.

38. It is settled in law that upon absorption, the employees would have continuity of service conditions and even looking to the ground raised by the State Government that the same service condition would continue then also the Adhyapaks taken over from Panchayats in accordance with Rules of 2018 which are to be continued to be covered under the payment of Gratuity Act, 1972 so also the Contributory Pension Scheme or National Pension Scheme for which they were entitled under the services of Panchayat and in terms of circular dated 05.5.2011, though the Pension Rules may not have been applicable to Panchayat employees.

39. Therefore, nothing is there in Rule 18(2) to deny the benefit of gratuity to the respondent No.1 by calculating his services from the date of initial appointment as Shiksha Karmi/Samvida Shala Shiksha till his eventual superannuation from the service of the State Government after having been absorbed in accordance with Rules of 2018. The previous rules would continue to apply and therefore, the employees would continue to cover under Gratuity Act, 1972 as well as the Provident Funds Scheme as applicable to regular employees of Jila Panchayat and Janpad Panchayat.

40. Consequently, holding the respondent No.1 entitled to gratuity in terms of payment of Gratuity Act, 1972, no error is found in the impugned order Annexure P/1 passed by the Controlling Authority. The petition being devoid of merits stands **dismissed.**

41. Let the order of controlling authority be complied with within a period of one month from the date of production of copy of this order, failing which the respondent employee shall be entitled to initiate such proceedings as are permissible under law to get the said order and this order complied.

42. As to appreciate the arguments of the petitioner's counsel, the entire entitlement of the respondent No.1 to Pension, Provident Fund and Gratuity had to be considered and he has been found entitled to provident fund at par with regular employees of Panchayat, therefore, it is clarified that by this order, the right of the respondent No.1 to claim the benefit of contributory provident fund at par with whatever scheme is applicable to regular employees of panchayat from the date of initial appointment as Shiksha Karmi/Samvida Shala Shikshak till his eventual superannuation from the service of State Government, shall not be affected in any manner and shall remain intact. This also be done within a period of two months from the date of production of copy of this order.

43. With the aforesaid observations, these petitions are **dismissed.**

(VIVEK JAIN)
JUDGE

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