

Reserved

Court No. - 40

AFR

Case :- SPECIAL APPEAL DEFECTIVE No. - 651 of 2021

Appellant :- District Basic Education And Another

Respondent :- Shivkali And 4 Others

Counsel for Appellant :- Awadhesh Kumar

Counsel for Respondent :- Kamal Kumar Keshewani

Hon'ble Manoj Misra,J.

Hon'ble Jayant Banerji,J.

(Delivered by Manoj Misra, J.)

1. This intra-court appeal arises from a judgment and order of a Single Judge dated 02.02.2021 in Writ-A No.11578 of 2020 whereby, the writ petition of the first respondent was allowed with a direction upon the District Basic Education Officer, Basti (first appellant) and the Finance and Account Officer (Basic Education), Basti (second appellant) to compute the amount payable to the petitioner towards gratuity in terms of the scheme formulated by the Government Order dated September 16, 2009 and release the same along with interest at the rate of 8% per annum from the date of filing the application for gratuity till the amount is actually disbursed.

2. In brief, the facts giving rise to the appeal are as follows:-

2 (i). The husband of the first respondent was appointed as Assistant Teacher on 11.03.1974 in a basic school under the Basic Shiksha Parishad, Uttar Pradesh. Later, he was promoted on the post of Headmaster. Initially, the age of superannuation was 58 years which was enhanced to 60 years and, later, to 62 years. Before enhancement of the age of superannuation to 62 years, by Government Order No.6369/15-5-93-55/89, dated 23.11.1994, the benefit of gratuity was introduced to teaching and non teaching staff of basic education institutions for those who opt to retire on attaining the age of 58 years. Such option, as per Clause 2 of the Government

Order, dated 23.11.1994, was to be exercised within 90 days from the issuance of the Government Order. This period, however, was extended by Government Order No.5491/15-5-2002-212/2001, dated 10.06.2002, extracted below:-

“शिक्षा अनुभाग-5 संख्या- 5491/15 - 5-2002-212/2001, दिनांक 10 जून, 2002

प्रेषक,

दिनेश चन्द्र कनौजिया,

विशेष सचिव,

उत्तर प्रदेश शासन,

इलाहाबाद।

सेवा में,

शिक्षा निदेशक, (बेसिक) एवं अध्यक्ष,

उत्तर प्रदेश बेसिक शिक्षा परिषद्,

इलाहाबाद।

विषय: उत्तर प्रदेश बेसिक शिक्षा परिषदीय शिक्षक/शिक्षणेत्तर कर्मचारियों के सेवानिवृत्तिक लाभों में परिवर्तन हेतु विकल्प की सुविधा दिये जाने के संबंध में नीति निर्धारण।

महोदय,

उपर्युक्त विषयक शासनादेश संख्या- 6369/15-5-93-55/89, दिनांक 23.11.1994 के अनुक्रम में मुझे यह कहने का निदेश हुआ है कि उक्त शासनादेश द्वारा प्रदत्त विकल्प को सुविधा के लाभ से वंचित रह गये बेसिक शिक्षा परिषद् शिक्षक/शिक्षणेत्तर कर्मचारियों के संबंध में विकल्प परिवर्तन की सुविधा प्रदान किये जाने की मांग पर सम्यक् विचारोपरान्त श्री राज्यपाल यह आदेश प्रदान करते हैं कि उ0 प्र0 बेसिक शिक्षा परिषदीय शिक्षको/शिक्षणेत्तर कर्मचारियों द्वारा सेवानिवृत्ति के एक वर्ष अर्थात् जिस शैक्षिक सत्र में उनकी सेवानिवृत्ति होगी, उसको पहली जुलाई तक विकल्प परिवर्तन कर सकते हैं। किन्तु ऐसे कर्मचारी जो 58 वर्ष की आयु पर सेवानिवृत्ति का विकल्प देते हैं, को सेवानिवृत्ति के पूर्व तक विकल्प परिवर्तन की सुविधा अनुमन्य होगी। यह व्यवस्था इस शासनादेश के जारी होने की तिथि से लागू

होगी।

2. यह आदेश वित्त विभाग के अशासकीय संख्या-ई-11/753 दस-2002, दिनांक 4.6.2002 में प्राप्त उनकी सहमति से जारी किये जा रहे हैं।

भवदीय

(दिनेश चन्द्र कनौजिया)

विशेष सचिव।

2 (ii). Thereafter, on February 4, 2004, Government Order No.289/79-6-04-28(5)/2004 was issued enhancing the age of superannuation from 60 years to 62 years and, further, clarifying that the retiral dues that were to be available on attaining the age of 58 years would now be available at the age of 60 years; and those retiral dues that were to be available at the age of 60 years would now be available at the age of 62 years. The said Government Order is extracted below:-

“बेसिक एवं सहायता प्राप्त उच्च प्राथमिक विद्यालयों के शिक्षकों की सेवा निवृत्ति

आयु 60/62 वर्ष

संख्या 289/79-6-04-28(5)/2004

प्रेषक,

सेवा में,

श्री हरिराज किशोर

शिक्षा निदेशक (बेसिक)

सचिव,

उत्तर प्रदेश लखनऊ

उत्तर प्रदेश शासन।

शिक्षा अनुभाग-6

लखनऊ: दिनांक : 4 फरवरी, 2004

विषय : परिषदीय प्राथमिक विद्यालय, परिषदीय उच्च प्राथमिक विद्यालय तथा उच्च प्राथमिक विद्यालयों के अध्यापकों की अधिवर्षता आयु वर्तमान 60 वर्ष से 62 वर्ष किये जाने के सम्बन्ध में।

महोदय,

शासन द्वारा सम्यक विचारोपरान्त यह निर्णय लिया गया है कि परिषदीय प्राथमिक विद्यालय, परिषदीय उच्च प्राथमिक विद्यालय तथा सहायता प्राप्त उच्च प्राथमिक विद्यालयों में शासन द्वारा सृजित पदों पर नियमानुसार कार्यरत अध्यापकों की वर्तमान अधिवर्षता आयु में वृद्धि कर दी जाये।

अतः श्री राज्यपाल महोदय तात्कालिक प्रभाव से परिषदीय प्राथमिक विद्यालय, परिषदीय उच्च प्राथमिक विद्यालय तथा सहायता प्राप्त उच्च प्राथमिक विद्यालयों में शासन द्वारा सृजित पदों पर नियमानुसार कार्यरत अध्यापकों की वर्तमान अधिवर्षता आयु को 60 वर्ष से बढ़ाकर 62 वर्ष किये जाने की सहर्ष स्वीकृति प्रदान करते हैं। फलस्वरूप 58 वर्ष की अधिवर्षता आयु पर मिलने वाले सेवा नैवृत्तिक लाभ अब 60 वर्ष की अधिवर्षता आयु पर तथा 60 वर्ष की अधिवर्षता आयु पर मिलने वाले सेवा नैवृत्तिक लाभ 62 वर्ष की अधिवर्षता आयु पर अनुमन्य होंगे।

श्री राज्यपाल महोदय यह भी आदेश प्रदान करते हैं कि जो शिक्षक जुलाई, 2003 के पश्चात् अधिवर्षता आयु पूर्ण कर सत्रान्त लाभ पर चल रहे हैं उन्हें भी अधिवर्षता आयु वृद्धि सम्बन्धी लाभ प्रदान किया जायेगा।

इस सम्बन्ध में पूर्व में निर्गत समस्त शासनादेश उक्त सीमा तक संशोधित समझे जायेंगे तथा उनकी शेष शर्तें यथावत् रहेगी।

उत्तर प्रदेश बेसिक शिक्षा (अध्यापक) सेवा नियमावली, 1981 के संगत नियमों में आवश्यक संशोधन की कार्यवाही शासनादेश जारी होने के तीस दिन के अन्दर सुनिश्चित कर ली जायेगी।

यह आदेश वित्त विभाग के अशासकीय पत्र संख्या यू0 ओ0 ई0-11-207/2004 दिनांक 04.2.2004 में प्राप्त सहमति के अन्तर्गत निर्गत किये जा रहे हैं।

भवदीय,

ह0/- हरिराज किशोर,

सचिव।

2 (iii). After the age of superannuation was enhanced from 60 to 62 years, the State Government issued yet another Government Order No.1754/79-5-09-02/2009, dated 16.09.2009, inter alia, providing Death-Cum-Retirement Gratuity up to a maximum of Rs.10 lacs to those who opted to retire at the age of 60 years. Clause 5 of the

said Government Order is relevant and is extracted below:-

“5. सेवानिवृत्तिक ग्रेच्युटी

60 वर्ष की आयु का विकल्प दिये जाने पर सेवानिवृत्तिक ग्रेच्युटी/मृत्यु ग्रेच्युटी की अधिकतम धनराशि रु0 10.00 लाख (रुपये दस लाख मात्र) तक सीमित होगी।

2 (iv). The first respondent's husband, whose date of birth was 01.07.1951, died in harness on 30.06.2010, that is even before he could attain the age of 60 years. Before his death, first respondent's husband had not exercised his option to retire at the age of 60 years. Consequently, the claim of the first respondent for release of death gratuity was not acknowledged. As a result, the first respondent filed Writ-A No.11578 of 2020 for a direction upon the respondents to release the amount of death-cum retirement gratuity otherwise payable under Government Order dated 16.09.2009 with interest at the rate of 18% per annum.

2 (v). The appellants contested the claim of the first respondent on the ground that under the Government Order dated 23.11.1994 gratuity was payable upon exercise of option to retire at the age of 58 years, that too, within three months from the date of issuance of Government Order. Later, the period to exercise the option was extended, vide Government Order dated 10.06.2002 (supra), up to the first day of July of the year at the end of which the incumbent would have attained the age of superannuation, which means that the option could be exercised up to the first day of July of the year in which the incumbent would have attained the age of 58 years and not later. According to the appellants, the first respondent's husband had crossed the age of 58 years without exercising the option therefore, it would be deemed that he had not opted for the benefit of death cum retirement gratuity and as such the same was not payable to the first respondent.

2 (vi). The case of the first respondent had been that the purpose of the Government Order dated 23.11.1994 was to provide the benefit of gratuity to those who opted to retire at the age of 58 years i.e. two years before attaining the age of superannuation. This age of superannuation was enhanced by Government Order dated February 4, 2004 from 60 years to 62 years. Thereafter, by Government Order dated September 16, 2009 the benefit of death-cum-retirement gratuity up to a maximum of Rs.10 lacs was available to those who opted to retire at the age of 60 years. The time period to exercise the option, under the Government Order dated 23.11.1994, was upto three months from the date of issuance of the said Government Order but this period was extended by the Government Order dated June 10, 2002 up to the first day of July of the year in which the incumbent would have attained the age of superannuation. Since the age of superannuation was increased from 60 years to 62 years and the retirement benefits that were to be available on completion of 58 years and 60 years, respectively, were to be made available on completion of 60 years and 62 years, respectively, vide Government Order dated 04.02.2004 (supra), by necessary implication, this option became exercisable up to the first day of July of the year in which the incumbent would have completed the age of 60 years. And since in terms of clause 5 of the Government Order dated September 16, 2009 the benefit of death-cum-retirement gratuity was available either on death before completion of 60 years or on retirement at the age of 60 years, the first respondent was entitled to it. Thus, the case of the first respondent is that as her husband could have exercised his option to retire at the age of 60 years till the first day of July 2010 and, because of his death a day before, he could not exercise the option, the claim for death gratuity could not be denied.

2 (vii). The learned Single Judge accepted the contentions made on behalf of the writ petitioner (i.e. first respondent herein) and by

placing reliance on certain decisions, which we shall refer to later, allowed the writ petition by issuing a direction upon the appellants to compute the gratuity payable to the writ petitioner in terms of the scheme formulated by Government Order dated September 16, 2009 with interest etc.

3. We have heard Sri K. Sahi along with Sri Awadhesh Kumar for the appellants; Sri Kamal Krishna Kesharwani for the contesting respondent no.1; and the learned Standing Counsel for the respondents 2 to 5.

4. Sri K. Sahi, who led the arguments for the appellants, submitted that the decisions on which the learned Single Judge has placed reliance have not taken into consideration that the benefit of option to retire at the age of 58 years, which was later enhanced to 60 years, for availing the benefit of gratuity had to be exercised, under the Government Order dated 23.11.1994, within 90 days of the issuance of that Government Order, and, under Government Order dated June 10, 2002, up to first day of July of the year in which the incumbent would have completed the age of 58 years. But as this option was never exercised by the husband of the first respondent up to the first day of July, 2008, the first respondent was not entitled to the benefit of death gratuity. It has been contended that the learned Single Judge has failed to consider the true import of the Government Order dated June 10, 2002.

5. **Per contra**, learned counsel for the contesting respondents submitted that the Government Order dated June 10, 2002 has to be read not in isolation but with the subsequent Government Orders dated February 4, 2004 and September 16, 2009. By Government Order dated February 4, 2004, the age of superannuation was enhanced from 60 years to 62 years and it was clearly specified that

those benefits that were available on completion of the age of 58 years would now be available on completion of the age of 60 years. Following that, clause 5 of the Government Order dated September 16, 2009 clearly provided that the death - cum -retirement gratuity would be available to those who opt to retire at the age of 60 years. It was urged that a combined reading of the three Government Orders would suggest that the last day to exercise the option for the benefit of retirement at the age of 60 years on enhancement of the age of retirement from 60 years to 62 years got extended up to the first day of July in which the incumbent would attain the age of 60 years. Consequently, as the date of birth of the husband of the first respondent was 01.07.1951, he would have completed 60 years on June 30, 2011 and, therefore, the last date for exercise of option by her husband would be deemed to be the first day of July, 2010. But since he died on June 30, 2010 i.e. a day before, he could not exercise his option to retire at the age of 60 years hence the benefit of death gratuity as payable under the Government Order dated 16.09.2009 could not be denied. It was thus submitted that the view taken by the learned Single Judge suffers from no infirmity.

6. We have considered the rival submissions and have perused the record carefully.

7. Before we deal with the rival submissions it would be apposite to notice a few decisions that have been consistently followed in connection with grant of relief to such claimants as the first respondent. The earliest decision on the issue was a Division Bench decision in the case of ***Smt. Ranjana Kakkar Vs. State of U.P. and others: 2008 (10) ADJ 63***. The controversy involved in that case was that the Government had taken a decision to raise the retirement age of the employees from 58 years to 60 years. Those who did not want to continue up to the age of 60 years, were given an option to retire at

the age of 58 years with the benefits of Death-cum-Retirement Gratuity, pension, family pension and general provident fund. The employees who did not opt to retire at the age of 58 years and wanted to avail two years of additional service upto the age of 60 years, were not to be provided with the benefit of Death-cum-Retirement Gratuity. The other benefits namely pension, family pension and general provident fund were to be made available to both categories of employees. In that case, the employee concerned had opted to retire at the age of 60 years but as providence would have it he died in an accident at the age of 45 years. The widow of that employee made a representation to the employer stating that though her husband had opted to continue in service upto the age of 60 years thereby foregoing the benefit of Death-cum-Retirement Gratuity but as he died much before attaining that age, he could not be deprived of the benefit of Death-cum-Retirement Gratuity which would have, otherwise, been available to him if he had not given an option to retire at the age of 60 years. The claim of the widow was rejected by the employer. The widow invoked the writ jurisdiction of this Court. After considering the true import of the beneficial provisions of the various Government Orders, the Division Bench of this Court, in paragraphs 10, 11, 12 and 13 of the judgment, observed as follows:-

“10. The scheme of the Government Orders dated 24.12.1983 and 21.08.1990 was to give the benefit of the extended age of retirement from 58 years to 60 years subject to the conditions that those teachers, who will retire at the age of 58 years, will not be given benefit of D.C.R.G and those, who want to take benefit of two years additional service, will get the calculation of pension only upto age of 58 years. These benefits, as it is stated in the opening paragraph of the Government Order dated 24.12.1983, were given for the purposes of providing social security to the teachers. These benefits were available to only those who could live up to the date of their superannuation to avail these benefits. For those, who unfortunately

could not reach the age of 58 years, could not be taken to be covered by the scheme.

11. The providence to survive upto the age of 58 years could not be known to the teachers exercising options. The God has not yet bestowed the man with the powers to foresee or to predict death. The man arranges his affairs in accordance with the wisdom given to him by God. The Almighty has reserved the powers of sustaining and guiding human destiny. No one, who was required to give an option under the scheme, could have predicted, whether he would survive to claim the benefits.

12. Where an event cannot be foreseen and a person is invited to give options with the understanding to arrange his affairs according to his own wisdom, his choice should not be allowed to work to his disadvantage after his death. He should be provided with the maximum of the benefits and social security after his death. Late Prof. Amarnath Kakkar did not live beyond the age of 45 years. He may have planned for his affairs upto the age of 60 years, both for himself and his family. The God however willed otherwise. His untimely death made his option unworkable. In order to give him maximum benefits of the social security, which was the intention of the Government Order dated 24.12.1983, he could not be denied the D.C.R.G payable to him and calculated upto his death, for the completed years of service rendered by him to the University. His life was cut short and thus his option became unworkable and futile, on his death at the age of 45 years. He could not be pinned down to his option by the University, to deprive his family of the gratuity earned by him and payable to his family.

13. The 'gratuity' is defined in Webster's New Collegiate Dictionary as something given voluntarily, or beyond obligation usually in return for, or in anticipation of some service. The Black's Law Dictionary defined gratuity as a recompense or reward of service or benefits given voluntarily without solicitation or promise. Late Amarnath Kakkar could have given up gratuity voluntarily on his option, if he had the occasion to avail the benefit of two years

additional service. When he could not avail the benefit and was not in a position to change his option, he cannot be denied the reward by way of gratuity payable to him on completing 58 years of service. The event provided in his option i.e. the extended service up to the age of 60 years, became an impossibility to be performed by him and thus his option would be deemed to be revoked in law, on principles of frustration of contract.”

8. In the case of ***Noor Jahan Vs. State of U.P. and 4 others (Writ-A No.40568 of 2016, decided on 04.01.2018)***, the writ petitioner's husband died at the age of 57 years and before his death, he could not exercise the option to retire at the age of 60 years and therefore the benefit of death gratuity available otherwise under the Government Order dated September 16, 2009 was denied. Aggrieved by such denial, the widow of the incumbent filed writ petition. A Single Judge Bench of this Court held as under:-

“Government Order dated 16th September, 2009 provides for revision of pension and other retiral benefits to the retired employees of the department of basic education. This Government Order grants higher benefits w.e.f. 1.1.2006. Clause 4(1) of the Government Order provides that pension would not be payable to those employees, who have not completed 10 years of qualifying service, but the employees who retire upon attaining the age of superannuation of 60 years would be entitled to gratuity and other service benefits. The Government Order does not restrict payment of gratuity to an employee, who is otherwise covered under the scheme just because he has not attained the age of 60 years. Reference to age of 60 years is due to fact that age of superannuation under the rule is otherwise 60 years. Position has otherwise been clarified by Clause 5 of the Government Order, which provides that gratuity would be payable at the age of 60 years or upon death. The respondents, therefore, were not justified in rejecting petitioner's claim for payment of gratuity, in terms of Government Order dated 16.9.2009. The impugned action, therefore, cannot be sustained. Order dated 8.7.2016 is, accordingly, quashed.

A direction is issued to the respondents to compute the amount payable to petitioner's husband towards gratuity in terms of the scheme and release the same, within a period of three months from the date of production of certified copy of this order. The petitioner shall also be entitled to interest at the rate of 8% per annum, from the date of filing of the application till the amount is actually disbursed.

Writ petition is, accordingly, allowed.”

9. Following the above decision as well as other decisions, in Writ-A No.17399 of 2019 (Usha Rani Vs. State of U.P. and others), decided on 07.11.2019, it was held as follows:-

“Following the decision rendered in the judgment of Noor Jahan (Supra) as well as Smt. Omwati (Supra), matter of Smt. Brijesh (Supra) for payment of gratuity was allowed by this Court by quashing the impugned orders by which gratuity was denied.

Similar controversy was also decided by Lucknow Bench of this Court vide order dated 5.8.2019 passed in the matter of Smt. Mala Tripathi (Supra) in which Court has taken a similar view and held that if husband of petitioner died before attaining the age of 60 years and has not given option for retirement at the age of 60 years, gratuity cannot be denied only on this ground. Relevant paragraph of the said judgment is quoted below:-

"Heard learned counsel for the contesting parties and perused the records.

From perusal of the records, it clearly comes out that the petitioner's husband died in harness on 26.08.2012 while working as Assistant Teacher in an aided and recognized institution. It is also admitted that the family pension has been paid to the petitioner. The only dispute revolves around the payment of gratuity to the petitioner. The ground taken by the respondents of the petitioner's husband not having opted for retiring at the age of 60 years which thus entails non-payment of gratuity to her at the very out set does not stand to legal scrutiny inasmuch as it is an admitted case by the respondents

also that the petitioner's husband died in harness on 26.08.2012 despite his actual date of superannuation being November 2019. Thus, an employee is only expected to submit an option prior to his retirement and not decades prior to his retirement. However, this aspect of the matter has not been considered by the respondents and even the letter of the Institution dated 19.03.2014, a copy of which has been filed as Annexure-3 to the petition, does not address the aforesaid issue.

Accordingly, keeping in view the aforesaid discussions, the order dated 19.03.2014 (Annexure-3 to the petition) cannot be said to be valid in the eyes of law. As such, the writ petition deserves to be partly allowed and is hereby partly allowed. A writ of certiorari is issued quashing the order dated 19.03.2014. A writ of mandamus is issued directing the respondents to consider the case of the petitioner for payment of gratuity in accordance with law and relevant rules within a period of three months from the date of receipt of a certified copy of this order."

Facts of the case and dispute involved in the present case is squarely covered by the pronouncements made by this Court which are referred herein above, therefore, under such facts and circumstances, impugned order dated 30.7.2019 passed by respondent No. 7- Block Education Officer Block Kadarchauk, Distruict Badaun is hereby quashed.

Respondents are directed to compute the amount payable to the petitioner's husband towards gratuity in terms of the scheme and release the same, maximum within a period of three months from the date of production of certified copy of this order.....”

10. Following the above decisions, similar orders have been passed in Writ-A No.11474 of 2020 (Savitri Vs. State of U.P. and others), decided on 28.07.2021, and several other matters.

11. The issue that arises for our consideration is whether an employee who, by a certain a date, could exercise an option to retire

early to avail the benefit of gratuity, dies before that date, and prior to his death had not exercised that option, should his heirs be denied the benefit of death gratuity which, otherwise, would have been available to them had that employee died at that age after exercising the option.

12. To have an answer to the issue we would have to examine as to (a) what had been the purpose of conferment of such benefit on exercise of the option; and (b) whether the Government Orders that conferred the benefit had fixed a time period by which that option was to be exercised, if so, whether the incumbent i.e. first respondent's husband had crossed the time limit by which he could have exercised that option. In so far as the purpose of conferring such benefit is concerned the same is obvious, which is to provide social security to those who forego two years of additional service. There could be a latent purpose as well, which is to encourage people to seek early retirement may be to streamline the organization. Be that as it may, it is a beneficial provision to accord social security to the employee and his or her dependents therefore, an interpretation that promotes and serves the purpose for which it is crafted must be preferred. Under the circumstances, whatever the purpose might be, the same is subserved where the nature exercises the option on behalf of the incumbent by letting him not survive even upto the last day by which he could have exercised the option. Therefore, denying the heirs/dependents of such an incumbent the benefit of social security that, otherwise, would have been available to them had the incumbent exercised his option would defeat the very purpose for which the policy was made. Thus, to ensure that the policy serves its purpose fully, in our view, where a last date for exercise of the option is yet to arrive and before that date the incumbent dies, without exercising his option, his dependents should not be deprived of the benefit which they would have been otherwise entitled to had the incumbent exercised his option.

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.

15. For all the reasons above, we find ourselves in agreement with the view taken by the learned Single Judge. Consequently, the appeal fails and is **dismissed**.

Order Date :- 6.10.2021

AKShukla/-