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SUPREME COURT ON EMPLOYEE'S ENTITLEMENT TO GRATUITY

A. Introduction

The Supreme Court (SC), in the *G.B. Pant University of Agriculture and Technology* case,¹ held that an employee who is exercising the option to avail the benefit of extension of retirement age to 60 years from 58 years, will not be denied gratuity.

B. Brief Facts

1. SC heard a special leave petition against the Uttarakhand High Court's (HC) order of November 1, 2017, filed by G.B. Pant University of Agriculture and Technology (the "University").
2. In the case before the HC,² the University had contended that under the Statute of University,³ the retirement age was prescribed as 58 years, as per clause 6(ii) & (iii). Sub-clause (ii) reads as follows:
"For those employees who are appointed before 1.1.84 and who...opt for the benefits of pension, death-cum-retirement gratuity, family pension and general provident fund, the age of superannuation shall be 58 years."
3. Sub-clause (iii) stated that all employees who were appointed before January 1, 1984, and opted for certain benefits such as pension, family pension and general provident fund (PF), the age of superannuation shall be 60 years. This clause, however, did not expressly provide for death-cum-retirement gratuity, which is available under clause 6(ii).
4. University's counsel argued that an employee who chooses to retire at 60 will be entitled to pension, family pension and PF. Such employee, having opted for the benefits under the Government Order dated December 19, 1984, and whose age of retirement is 60 (as opposed to 58), would not be entitled to gratuity under the Payment of Gratuity Act, 1972.
5. The HC, on assessment of this issue, held that: *"The exercise of benefit of extension of 60 years of age of retirement, the payment of gratuity under the Act of 1972, was not intended to deprive gratuity to optees. Hence, exercising of an option will not deprive the private respondent of gratuity until and unless it has been made exempted after a prior approval of the State Government."*

¹ *G.B. Pant University of Agriculture and Technology v. Sri Damodar Mathpal* (Special Leave to Appeal (C) No(s). 1803/2018). Judgment accessible at: https://www.livelaw.in/pdf_upload/gb-pant-university-of-agriculture-and-technology-v-sri-damodar-mathpal-678-404667.pdf.

² *G.B. Pant University vs. Appellate Authority and Ors.* (MANU/UC/0898/2017).

³ The Uttar Pradesh (Krishi Evam Prodyogik Vishwavidyalaya Adhiniyam), 1958, defines "Statute" as the statutes and regulations of the University made under the Act.

C. Order and Conclusion

1. SC concurred with the HC's view and held that: "*(M)ere exercise of option by an employee, to avail the benefit of extension of age of retirement to 60 years, could not have operated against his entitlement to gratuity; and exercising of such an option will not deprive the private respondents to gratuity unless and until the establishment i.e., the petitioner-University, was exempted in strict compliance of Section 5 of the Payment of Gratuity Act, 1972, after prior approval of the State Government.*"⁴
2. Therefore, exercising an option of extended retirement age would not deprive employees of their entitlement to gratuity unless there is an express exemption⁵ after prior approval of the respective government.

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⁴ Page 2 of the Order.

⁵ Section 5 (Power to Exempt) of the PGA.