

2024:PHHC:122020-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-723-2019(O&M) along
with 37 connected cases
Reserved on: 11.07.2024
Pronounced on: 27.09.2024

Senior Superintendent of Post Office, Hoshiarpur Appellant (s)

Versus

Paresh Kumar & others Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS BAHL**

Present:- Mr.Piyush Khanna, Advocate
Mr.Vinish Singla, Advocate for the appellant (s).

G.S. Sandhawalia, J. :

Delay applications in filing

1. Applications for condoning the delay ranging from 4-286 days in filing the appeals, are hereby allowed. Delay ranging from 4-286 days in filing the appeals is hereby condoned.

2. CMs stand disposed of.

Delay applications in refiling

3. Applications for condoning the delay ranging from 13-35 days in refiling the appeals, are hereby allowed. Delay ranging from 13-35 days in refiling the appeals is hereby condoned.

4. CMs stand disposed of.

Main appeals (O&M)

5. The present judgment shall dispose of 38 appeals bearing

LPA-723, 919, 920, 453, 506, 1173, 1174, 1175, 1190, 1203, 1251, 1417,

1176, 1177, 801 to 814, 842 to 845 & 918-2019, LPA-893-2018 and LPA-

1566, 1567, 1601 & 1748-2017, as common questions of law are involved. The 27 appeals, bearing LPA-723, 919, 920, 1173, 1174, 1175, 1190, 1203, 1176, 1177, 801 to 803, 805 to 807, 809 to 814, 842 to 845 & 918-2019 arise out of the judgment dated 17.07.2018, 4 appeals bearing LPA-453, 1251, 1417 & 804-2019, arising out of judgment dated 09.10.2018, 3 appeals bearing LPA-1566, 1567 & 1601-2017 arising out of judgment dated 23.05.2017, appeal bearing LPA-1748-2017 arising out of judgment dated 06.07.2017, appeal bearing LPA-893-2018 arising out of judgment dated 28.04.2017, appeal bearing LPA-506-2019 arising out of judgment dated 13.11.2018 and appeal bearing LPA-808-2019 arising out of judgment dated 25.07.2018, passed by the Learned Single Judge while disposing of bunch of 38 cases. The writ petitions filed by the appellants were dismissed in limine by holding that the Extra Departmental Agents, namely, the Gramin Dak Sewaks (GDS) were entitled to the benefit under the Payment of Gratuity Act, 1972 (for short, the '1972 Act') and the same would prevail over the Rules of Service. The Act being more beneficial, would enjoy primacy over the other schemes, was the reason which prevailed over the Learned Single Judges.

6. The factual matrix is being taken from LPA-723-2019 titled *Senior Superintendent of Post Offices, Hoshiarpur Vs. Paresh Kumar & others*. The employee in the said case had joined on 07.07.1980 as GDS and attained the age of superannuation on 20.01.2011 before the 2011 Rules came into force on 18.04.2011. In the year 2017, after 6 years, he filed an application under the 1972 Act claiming that he had only received Rs.60,000/- as ex-gratia Gratuity and therefore, he was entitled for Rs.1,36,656/- as his last salary drawn was Rs.7671/- per month and he had

served for 31 years. The balance of Rs.76,656/- along with interest was, thus, claimed.

7. The Learned Single Judge relied upon the binding precedent of the two Division Bench judgments on this point, namely, the judgment passed in **Senior Superintendent of Post Offices Vs. Smt. Sham Dulari & others, 2006 (3) SCT 577** which had been followed by the Co-ordinate Bench in **Senior Superintendent of Post Offices, Jalandhar Division, Jalandhar Vs. Darshan Ram (through LRs) & others, 2014 (9) SCT 120**. It is pertinent to notice that SLPs filed against the said two judgments had been dismissed by the Apex Court. Reference was also made to the two judgments of the Apex Court in **E.I.D. Parry (I) Ltd. Vs. G.Omkar Murthy, 2001 (4) SCC 68** and **Municipal Corporation of Delhi Vs. Dharam Prakash Sharma, 1998 (7) SCC 221**.

8. Counsel for the appellants has relied upon the later judgment of the Apex Court in **Senior Superintendent of Post Offices Vs. Gursewak Singh & others, 2019 (2) SCT 294** to contend that the Apex Court came to the conclusion that GDS were not entitled for payment of Gratuity under the Gramin Dak Sewak (Conduct & Engagement) Rules, 2011 (for short, the '2011 Rules') and that it had been held that the GDS is not an employee under the 1972 Act on account of the fact that they are part-time workers. It is, thus, submitted that the judgment of this Court was reversed in Gursewak Singh (supra) by relying upon the 2011 Rules.

9. The stand of the present appellants in their reply filed before the Controlling Authority was that they were engaged on part-time basis under the designation of EDA (Extra Departmental Agent) which was later changed to GDS and was covered by the set of rules of Gramin Dak

Sewak (Conduct & Engagement) Rules, 2011 and resultantly, it was pleaded that Dak Sewaks were not regular Government employees and were part-time workers being engaged 3-5 hours daily. As per the Rules, it was mandatory for them to have an independent source of livelihood before being engaged as GDS. It was admitted that on attaining the age of 65 years or on death, they were entitled to Gratuity and severance amount. Reliance was placed upon the judgment of the Apex Court in **Union of India & others Vs. Kameshwar Prasad, 1997 (11) SCC 650**. Reliance was placed upon 2011 Rules on the ground that GDS were not entitled to any pension and were not covered under the definition of an employee.

10. The controlling authority vide detailed order dated 14.07.2017 (Annexure P-2), firstly, came to the conclusion that the Post-Office was an establishment under Section 1(3)(b) of the 1972 Act for all purposes being governed by the Indian Post Office Act, 1898 and that the Acts like the Payment of Wages Act, 1936 and Contract Labour (Regulation and Abolition) Act, 1970 were also applicable. Reliance was placed upon the judgment of the Apex Court in **State of Punjab Vs. Labour Court, Jullundur & others, 1979 AIR 1981 SC**, while falling back on other judgments also that once there was a statute governing the employees, the Post-Office would be an establishment and 1972 Act would be applicable. The entitlement of the employee on the ground that the 1972 Act was more favourable in comparison to the 2011 Rules, was the reasoning given apart from relying upon the judgment in Sham Dulari (supra), Dharam Prakash Sharma (supra) and Darshan Ram's case (supra). Resultantly, it was held that the GDS is an employee under the 1972 Act and entitled for the payment of Gratuity under the same. The amount was,

thus, calculated on the basis of the last salary drawn multiplied by the years of service to reach to the conclusion that the balance which was due after having received Rs.60,000/-, is Rs.77,193/- which was payable within the statutory period with 10% simple interest, as per the 1972 Act.

11. The appeals filed by the appellants before the Appellate Authority were dismissed on 25.01.2018 (Annexure P-4) by a reasoned order. A perusal of the same would go on to show that reliance was placed upon the judgment in Darshan Ram (supra) wherein reference had been made to the earlier Rules of 2001 which had then replaced the 1964 Rules wherein it was held that the GDS was neither the holder of a civil post nor could claim parity with a Government servant and therefore, was covered under the definition of employee under the 1972 Act. Reliance was also placed upon the judgment of the Apex Court in **Superintendent of Post Offices Vs. P.K.Rajamma, (1977) 3 SCC 94** a Three Judge Bench to hold out that being a part-time worker could not deprive the respondent from the benefit of Gratuity and the Post-Office was held to be an establishment under Section 1(3)(b) of the 1972 Act by falling back upon judgment of the Apex Court in Labour Court, Jullundur (supra) and other judgments relied upon also by the Controlling Authority. Resultantly, it was held that Gratuity was payable since the 2001 Rules were not more beneficial and the 1972 Act was more beneficial than the Rules, by falling back on the judgment in E.I.D. Parry (I) Ltd. (supra). Resultantly, it was held by the Learned Single Judge that the Controlling Authority had rightly granted the amount and levied the requisite interest.

12. The legal issue thus, arises whether the law already stands settled regarding this aspect and whether the judgment in Gursewak Singh (supra) would be applicable.

13. After the arguments were concluded and judgment had been reserved, counsel for the appellant(s) also supplied copy of the judgment dated 06.08.2024, passed in LPA-1720-2017 titled *The Senior Superintendent of Post Offices, Department of Posts and Telegraphs, Hoshiarpur Vs. Harkewal Singh & others*, wherein the Bench headed by Hon'ble The Chief Justice, keeping in view the law laid down in Gursewak Singh (supra), allowed similar appeals and set aside the order of the Learned Single Judge. The judgment dated 06.08.2024 read as under:

“1. By this common order, a bunch of 13 Letters Patent Appeals (mentioned above) shall stand disposed of. 2. The appellant (employer) in the present intra court appeals assail the judgment of the learned Single Bench dated 28.03.2017 passed in a bunch of petitions including **CWP-26514-2016** titled as ‘**Senior Superintendent of Post Offices vs. Harbhajan Singh and others**’, whereby the learned Single Judge has dismissed the writ petitions of the employer assailing the order of the Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as ‘1972 Act’) as well as the Appellate Authority whereby the gratuity due to the private respondents under the ‘1972 Act’ was directed to be paid by the employer.

3. Today, when these cases have come up for hearing, learned counsel for the employer (appellant) has produced before us a decision of the Apex Court rendered in ‘Sr. Superintendent of Post Offices vs. Gursewak Singh and others’ 2019(15) SCC 292, wherein it has been observed as under:-

“9.4. Section 2(e) of the 1972 Act excludes persons who hold a post with the Central or State Government and are governed by any other Act or rules providing for payment of gratuity. Gramin Dak Sewaks are engaged as Extra Departmental Agents, a post governed by the 2011 Rules.

Superintendent of Post Officers v. PK Rajamma; (1977) 3 SCC 94 See also Union of India v. Kameshwar Prasad; (1997) 11 SCC 650 These Rules have a separate provision for payment of Gratuity to the Extra Departmental Agents. A Gramin Dak Sewak is not an "employee" under the 1972 Act. The first issue is answered accordingly.”

4. From the aforesaid law laid down by the Apex Court, it is obvious that it has been categorically held that Gramin Dak Sewak is not an employee as defined under Section 2 (e) of the ‘1972 Act’ and therefore, the Gramin Dak Sewaks (private respondents) are not entitled to gratuity under the ‘1972 Act’. However, what is culled out from the law laid down by the Apex Court in Sr. Superintendent of Post Offices’s case (supra) is that the Gramin Dak Sewaks may not be entitled to gratuity under the ‘1972 Act’ but would be entitled to gratuity as per the service rules and regulations as applicable to them i.e Gramin Dak Sewak (Conduct and Engagement) Rules, 2011.

5. In view of the above, when the law has been settled by the Apex Court, this Court disposes of all the present Letters Patent Appeals with the following directions:-

i) the order of the learned Single Judge dated 28.03.2017 and the orders passed by the Authority under the Payment of Gratuity Act, 1972 as well as the Appellate Authority are set aside.

ii) The respondents (employees) would, however, be entitled to the benefit of gratuity in terms of the provisions of the Gramin Dak Sewak (Conduct and Engagement) Rules, 2011, which if not released to the respondent employees be released with interest @ 6% per annum with effect from the date the gratuity became due.

iii) No costs.”

14. Since particular view has already been taken by a Co-ordinate Bench, we do not feel that the matter would require further consideration. Accordingly, the present set of appeals are hereby allowed. All pending application(s) also stand disposed of.

15. It is, however, to be noticed that the Controlling Authority had granted the benefit after the retirement in the year 2017. Thereafter, the appeal was also dismissed in the year 2018 by the Appellate Authority. Necessarily, the amounts would have to be deposited before the Appellate Authority as per the provisions of the Act. Thereafter, the learned Single Judge had dismissed the writ petitions on 17.07.2018. The appeals were filed thereafter in the year 2019 after delay and vide order dated 18.07.2019, while issuing notice of motion, stay was granted, unless the same had already been paid. Thus, it is apparent that during the intervening period, the amounts would have been received from the Controlling Authority. Therefore, the judgment of the Apex Court came in the meantime on 15.03.2019 and the Division Bench judgments, thus, in effect, were overruled. In such circumstances, we are of the considered opinion that whatever amounts have been received by the employees will not be liable to be refunded in the peculiar facts and circumstances, keeping in view the law laid down in **State of Punjab & others Vs. Rafiq Masih (White Washer) & others, 2015 (4) SCC 334**, since the amounts became payable to the employees after their retirement and therefore, it would be highly unjust to recover the said amounts from them in the evening of their life.

(G.S. SANDHAWALIA)
JUDGE

27.09.2024
Sailesh

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	