

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-10698-2019
Reserved on:01.03.2024

Pronounced on: 20.03.2024

The Senior Superintendent of Post offices Petitioner

Versus

Sh. Yash Pal and others Respondents

2. CWP-10956-2019
The Senior Superintendent of Post offices Petitioner

Versus

Sh. Dev Raj and others Respondents

3. CWP-10967-2019

The Senior Superintendent of Post offices Petitioner

Versus

Sh. Sada Ram and others Respondents

4. CWP-10970-2019
The Senior Superintendent of Post offices Petitioner

Versus

Sh. Suresh Kumar and others Respondents

5. CWP-10973-2019
The Senior Superintendent of Post offices Petitioner

Versus

Sh. Gulshan Kumar and others Respondents

6. CWP-10992-2019
The Senior Superintendent of Post offices Petitioner

Versus

Smt. Amarjit Kaur and others Respondents

7.

The Senior Superintendent of Post offices

CWP-11026-2019

.... Petitioner

Versus

Sh. Harmesh Chander and others

....Respondents
8.

The Senior Superintendent of Post offices

CWP-13053-2019

.... Petitioner

Versus

Sh. Kulwinder Kumar and others

....Respondents
9.

The Senior Superintendent of Post offices

CWP-13219-2019

.... Petitioner

Versus

Smt. Paramjit Kaur and others

....Respondents
10.

The Senior Superintendent of Post offices

CWP-14681-2019

.... Petitioner

Versus

Smt. Surinder Kaur and others

....Respondents
11.

The Senior Superintendent of Post offices

CWP-14791-2019

.... Petitioner

Versus

Sh. Naranjan Kumar and others

....Respondents
12.

The Senior Superintendent of Post offices

CWP-10767-2019

.... Petitioner

Versus

Sh. Baldev Raj and others

....Respondents
13.

The Senior Superintendent of Post offices

CWP-10781-2019

.... Petitioner

Versus

Smt. Harbinder Kaur and others....Respondents

14.CWP-11990-2019
The Senior Superintendent of Post offices.... Petitioner

Versus

Sh. Jagtar Singh and others....Respondents

15.CWP-10736-2019
The Senior Superintendent of Post offices.... Petitioner

Versus

Sh. John Peter and others....Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Piyush Khanna, Advocate for the petitioner(s).

None for the respondents.

SANJAY VASHISTH, J.(Oral)

1. By way of this common order passed in **CWP-10698-2019** titled as **Senior Superintendent of Post Offices v. Yash Pal and others**, all the aforementioned 15 writ petitions are being disposed of as a common question of law and facts is involved in all these writ petitions.

Although, the relevant facts are being extracted from CWP-10698 of 2019, yet in the facts and circumstances of each and every case mentioned hereabove, the question to be adjudicated is one and same, therefore, the same principle of law would be applicable in all such cases.

2. All these CWP's are preferred by the Senior Superintendent of Post Offices, Department of Posts and Telegraphs, Hoshiarpur Division, District Hoshiarpur (Punjab) as petitioner; whereby the orders passed by the Controlling authority and thereafter, by the Appellate Authority ordering to pay amount of gratuity under the provisions of the Payment of Gratuity Act, 1972 has been questioned.

3. Present Civil Writ petition has been preferred by the petitioner-The Senior Superintendent of Post Offices, Department of Posts and Telegraphs, Hoshiarpur Division, Punjab, for issuance of the writ in the nature of certiorari to quash the order dated 26.12.2017 (Annexure P-2) passed by the Controlling Authority under the Payment of Gratuity Act (hereinafter referred to as 'The Act 1972') and the order dated 10.09.2018 (Annexure P-4), whereby the appeal preferred by the petitioner has also been dismissed by the Appellate Authority.

4. Brief factual matrix of the case are that Respondent No. 1 – Yash Pal was appointed on 20.08.1987 as Gramin Dak Sewak (BPM) and worked on the said post till 20.03.2011, thus, served continuously for 24 years. On 20.03.2011, his services were discharged as he was promoted to Multi tasking Staff on regular basis. Respondent No. 1 filed an application under the The Act 1972 claiming gratuity in lieu of the services rendered by him, however, the said application was rejected.

Being aggrieved, Respondent No. 1 filed an application under Sections 4 and 7 of the Act 1972 before the Controlling Authority seeking a direction to the petitioner to pay the amount of gratuity for the services rendered by him alongwith interest.

5. The claim application was admitted by the Controlling Authority, and a notice was issued to the non-applicant/management for submission of their defence. After completion of the pleadings, Learned Controlling Authority framed the following issues:-

1. *Whether the Post Office is an establishment under the Payment of Gratuity Act, 1972?*
2. *Whether Gramin Dak Sewak is an employee under the Payment of Gratuity Act, 1972 and whether the applicant is entitled for Payment of Gratuity under the Payment of Gratuity Act, 1972?*
3. *What amount of Gratuity should be paid to the Applicant and whether it should be paid with interest or not?*

6. Learned Controlling Authority while deciding the first issue observed that Post office is an establishment within the meaning of Section 1(3)(b) of the Act 1972 as it is governed by the Indian Post Office Act, 1898.

While deciding the initial part of the second issue, Learned Controlling Authority observed as reproduced herein:-

“Therefore, the contention of the Non-applicant regarding applicability of Gratuity Act is untenable and Hence rejected and it is held that, Gramin Dak Sewak (GDS) is an employee under the Payment of Gratuity Act, 1972 and are entitled for Gratuity under the Payment of Gratuity Act, 1972.”

While deciding the latter part of the second issue, Learned Controlling Authority observed as follows:

“Now, the question arise when the GDS is continuing in the employment, still he is eligible for the gratuity as he is working with the Department of Posts.

The answer to this question is in affirmative in the opinion of this Authority. The reason being GDS are a class of its own, they are being issued fresh appointment letters and everything is done afresh like issuing of fresh appointment letters, usual formalities like verification of character and antecedents, age, medical certificate, caste certificates etc. Further, the service rendered in GDS is not counted for any further benefits for gratuity or pension or anything. Severance of employment has taken place, a termination has taken place and a new appointment has been made with no past liability to the department. The applicant deserve to be paid gratuity for the services rendered as GDS. It has been held time and again by the Higher Judiciary that gratuity is not the bounty but hard earned benefit which accrues to an employee and is in the nature of “property”. Further, ours is a welfare state and Payment of Gratuity Act, 1972 is a social welfare legislation and one should not be deprived of its benefit for the services rendered.”

7. Thus, cumulatively, Learned Controlling Authority held that the Gramin Dak Sewak falls under the definition of Employee for the purposes of the Act 1972 and further held that although, workman is continuing in the Employment, still, he would be entitled to the benefit of Gratuity under the Act 1972.

Lastly, while deciding Issue No. 3, Learned Controlling Authority computed the amount of the Gratuity payable to Respondent No. 1 as Rs. 96,065/- alongwith simple interest @10% per annum as per sub section (3-A) of Section 7 of the Act, 1972, from 20.03.2011 the date of termination i.e. from the date when gratuity became payable.

8. Said order dated 26.12.2017 (Annexure P-2) passed by the Controlling Authority was challenged by the petitioner herein before the Appellate Authority under the Act 1972, however, said appeal

was dismissed vide order dated 10.09.2018 (Annexure P-4) by observing as follows:-

“The Controlling Authority has issued the directions in his order dated 26.12.2017 which is in resonance with the aforesaid directions of the Hon’ble High Court and Supreme Court. The Appellant has filed an LPA to review the above order of the Supreme Court. However, although the LPA is admitted, there is no stay on the proceedings under the Act.

In view of the aforesaid position, this Appellate Authority, does not find any merit in the grounds of appeal and confirms the decision of the Controlling Authority dated 26.12.2017.”

Both the said orders passed by the Learned Controlling Authority as well as the Appellate Authority have been challenged by the petitioner before this Court.

9. Learned Counsel for the petitioner while addressing arguments relies upon the judgment of Hon’ble the Apex Court titled as **Sr. Superintendent of Post Offices v. Gursewak Singh 2019(2) S.C.T. 294: Law Finder Doc ID #1398091** and submits that the question that whether Gramin Dak Sewak (GDS) falls under the definition of “Employee” for the purposes of the Act, 1972 is no longer *res-integra*. Relevant part of the said judgment is reproduced hereinbelow:-

“9.4. A Gramin Dak Sewak is not an ‘employee’ under the 1972 Act.”

He further submits that once, it is held that Respondent No. 1 does not fall under the definition of Employee for the purposes of the the Act 1972, order of grant of gratuity under the said Act by the Learned Authority itself, is liable to be set aside.

10. Learned Counsel for the petitioner further submits that in the case at hand, there is no order of termination of the employee, rather Respondent No. 1 has been promoted to a regular class and in the absence of termination; there cannot any stage for grant of any gratuity to the employee whatsoever. To substantiate his argument, Counsel for the petitioner relies upon Section 4 of the Act, 1972.

11. Since, there is no appearance of any of the respondents in all the aforementioned 15 writ petitions, this Court has gone through the judgment of Hon'ble the Apex Court in Senior Superintendent of Post offices's case (supra) with the help of the counsel for the petitioners. Some of the facts noticed from the cited judgment are as under:

(a) A civil appeal was filed by the Sr. Superintendent of Post Offices against the workman who was engaged as Gramin Dak Sewak (GDS) and voluntarily resigned from the part time job after rendering 23 years of service. Workman approached the Controlling Authority under the Act 1972 for seeking gratuity and vide order dated 21.09.2015, Learned Controlling Authority directed the Department to pay an amount of Rs. 1,06,021/- along with 10% interest.

(b) Against the said award, Department filed an appeal under Section 7(7) of the 1972 Act, however, the said appeal was dismissed.

(c) The Department further filed a Civil Writ Petition under Article 226/227 of the Constitution, which was dismissed by Hon’ble Single Bench of the High Court. The said decision was further challenged by filing a Letters Patent Appeal (LPA), and the said LPA was also dismissed.

(d) Against the said orders, the Department filed a civil appeal before Hon’ble the Apex Court, in which the following specific issue was framed:-

“(a) Whether a Gramin Dak Sewak (GDS) is an “employee” as per Section 2(e) of the Act 1972 and is entitled to payment of Gratuity under this Act?

“(b) Whether a Gramin Dak Sewak (GDS) is eligible for payment of gratuity under the 2011 Rules upon voluntary resignation?”

(e) The Court while deciding the issue explicitly held that the Indian Post Office Act, 1898 falls under the expression ‘law’ in Section 1(3)(b). Consequently, the Post & Telegraphs Department would be an establishment under the 1972 Act.

(f) It was further held that “A Gramin Dak Sewak (GDS) is not an “employee” under the 1972 Act.

(g) However, the next question before Hon’ble the Apex Court was that even if the workman did not fall within the ambit of term “employee” under the Act 1972, will he still be eligible for the payment of

gratuity as provided under the Gramin Dak Sewaks (Conduct and Engagement) Rules, 2011 (herein after referred to as “2011 Rules”). While deciding the said issue, Hon’ble the Apex Court held that as the workman had voluntarily resigned, thus, in consonance with the Rule 6(13) of 2011 Rules, he is not eligible for payment of gratuity even under the said rules.

(h)For the purpose of applying the 1972 Act, Court held that the employee should be working for an ‘establishment’ for the purpose of claiming gratuity amount under the 1972 Act and Post Office falls within the ambit of term ‘establishment’ under the Act.

(i)Hon’ble the Apex Court also observed that GDSs are extra departmental agents and are outside the civil service of the Union and thus, cannot claim to be at par with the Central Government Employees. They are engaged (not appointed) to catch up the postal requirements in the rural and remote areas. Services are availed from the school masters, shopkeepers, landlords and such other villagers to provide them adequate means of livelihood and simultaneously, seeking assistance for the department on a part time basis. Finding recorded to that effect in paragraph

No.10.1 of the said judgment is also reproduced herebelow:

“10.1. The 2011 Rules provide that Gramin Dak Sewaks are Extra-Departmental Agents, who are outside the Civil Service of the Union, and shall not claim to be at par with the Central Government Employees. The Extra-Departmental Agents are engaged by the Department of Posts & Telegraphs to cater to the postal requirements in the rural and remote areas. The system avails the services of schoolmasters, shopkeepers, landlords, and such other persons in a village who have a reasonable standard of literacy, and adequate means of livelihood, and can therefore assist the Department on a part-time basis by way of gainful avocation, to provide service to the rural communities for their postal requirements.

Rule 3-A(i) of the 2011 Rules provides that the Gramin Dak Sewaks shall not be required to perform duties beyond a maximum period of 5 hours a day. This shows the avocational nature of the service.

Rule 6(1) of the 2011 Rules provides for payment of gratuity to Gramin Dak Sewaks. However, Rule 6(13) states that no Gratuity is payable if an Extra-Departmental Agent quits the agency on his own.”

12. For the sake of convenience, the terms and conditions of engagement of Gramin Dak Sewak (GDS) are reproduced herebelow:

"3-A Terms and Conditions of Engagement

(i) A Sevak shall not be required to perform duty beyond a maximum Period of 5 hours in a day;

(ii) A Sevak shall not be retained beyond 65 years of age;

(iii) A Sevak shall have to give an undertaking that he has other sources of income besides the allowances paid or to be paid by the Government for adequate means of livelihood for himself and his family;

(iv) A Sevak can be transferred from one post/unit to another post/unit in public interest;

(v) A Sevak shall be outside the Civil Service of the Union;

(vi) A Sevak shall not claim to be at par with the Central Government employees;

(vii) Residence in post village/delivery jurisdiction of the Post Office within one month after selection but before engagement shall be mandatory for a Sevak;; Failure to reside in place of duty for GDS BPM & within delivery jurisdiction of the Post Office for other categories of Gramin Dak Sevaks after engagement shall be treated as violative of conditions of engagement and liable for disciplinary action under Rule 10 of the Conduct rules, requiring removal/dismissal;
(viii) Post Office shall be located in the accommodation to be provided by Gramin Dak Sevak Branch Postmaster suitable for use as Post Office premises;
(ix) Combination of duties of a Sevak shall be permissible;"

Rule 6(1) and (13) of the 2011 rules providing for Payment of ex-gratia gratuity are also reproduced hereinbelow:

"(1) Payment of ex-gratia gratuity. - The question of grant of some kind of purely ex gratia monetary grant to ED Agents working in the Indian Posts and Telegraphs Department on termination of their services has been under consideration for a long time. It has been decided as follows :-

1. ED Agents as defined in P & T Extra Departmental Agents (Conduct and Service) Rules, 1964, whose services are terminated otherwise than (i) for unsatisfactory work or (ii) as a measure of disciplinary action or (iii) in consequence of their being appointed in a regular post under the P & T Department, may be sanctioned monetary grants termed as 'Gratuity', provided that they have put in not less than ten years of continuous satisfactory service as Ed Agents."

"(13) No gratuity to ED Agent who quits the agency on his own. - The question of extending the benefit of grant of ex gratia gratuity to ED Agents who have to resign on account of circumstances beyond their control was taken up with the Ministry of finance. It has been decided that no ex gratia gratuity will be paid to ED Agents in such cases. It is, therefore, clarified that according to the present orders, gratuity is payable only if the services of an ED Agent are terminated in consequence of an action of the department, subject to their fulfillment of the other prescribed conditions and that no gratuity is payable if an ED Agent quits the agency on his own. The services of an ED Agent should not be terminated when he himself quits the job. In such cases, an order permitting the ED Agent to quit the services on his own should be issued so that the order may not be construed as an order of termination of service."

13. Thus, broadly, as per the dictum of the Hon'ble the Supreme Court, services of Gramin Dak Sevaks (GDSs) are governed by

GDS’s (Conduct and Engagement) Rules, 2011 and they are entitled to claim gratuity under Rule 6 (1) of the Rules, 2011 and not under the Payment of Gratuity Act, 1972.

14. Thus, following the dictum of the Hon’ble the Apex Court in Senior Superintendent of Post Offices (supra), this Court is of the view that all the writ petitions filed by the petitioner are worth to be allowed. Accordingly, the **writ petitions are allowed** and the impugned order passed by the Controlling Authority and the order of dismissal of Appeal by the Appellate Authority under the Act of 1972, are hereby **quashed/set aside**.

However, before parting with the judgment, it is clarified that it would be open for the Respondent No.1(in all the writ petitions) to seek their remedy for claiming “so called gratuity” in accordance with Rule (1) of the Rules, 2011, to substantiate the right, if any.

20.03.2024
rashmi

[SANJAY VASHISTH]
JUDGE

Whether speaking/reasoned	yes
Whether reportable?	yes