

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-1299-1995 (O&M)
Date of decision : 20.05.2015

Sardari Lal Bhutani

...Petitioner

Versus

The Appellate Authority under the Payment of Gratuity Act and Joint
Labour Commissioner, Haryana and another

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. C.L. Sharma, Advocate for the petitioner.

Mr. Ashok Gupta, Advocate,
and Mr. Eklavya Gupta, Advocate,
for the respondents.

JITENDRA CHAUHAN, J. (Oral)

By way of the present petition filed under Articles 226/227 of the Constitution of India, the petitioner has sought quashing of the order dated 10.12.1991, passed by respondent No.2 and the order dated 09.12.1994, passed by respondent No.1, and for issuance of a direction to the respondents to pay the gratuity to the petitioner as provided in The Haryana Municipal Employees Rules, 1982.

The petitioner joined the service with the respondent-Municipality on 27.04.1950 and retired on 30.09.1982. He made representations for payment of Gratuity as per Government Instructions

dated 12/15.09.1986 but to no avail. Thereafter, he filed CWP No.7955 of 1988 before this Court, which was allowed vide order dated 01.12.1988, thereby, directing the Municipal Committee to pay the amount of gratuity due to the petitioner within a period of three months along with interest w.e.f. 15.09.1986, i.e. the date on which the instructions dated 12/15.09.1986 were issued. Consequently, the petitioner was paid Rs.16,833.98 by counting his services from 27.04.1950 to 31.01.1977, i.e. the period till his pay was less than Rs.1000/-.

Feeling aggrieved against the order passed, the petitioner again approached this Court by moving COCP No.338 of 1989, which was disposed of with a direction to approach the appropriate forum. Thus, the petitioner moved an application before the Controlling Authority, which was decided on 10.12.1991 (Annexure P-1) by holding that the case of the petitioner has to be dealt with as per the provisions of the Payment of Gratuity Act, 1972, and accordingly another amount of Rs.2,023/- was ordered to be paid to the petitioner. Thereafter, he preferred an appeal before the Appellate Authority, which was also dismissed vide order dated 09.12.1994 (Annexure P-2).

Hence, the present petition.

The grouse of the petitioner is that the gratuity ought to have been paid to him as per the Haryana Municipal Employees

(Integration, Recruitment and Conditions of Service) Rules, 1982, which stood adopted and enforced upon the employees of the Municipal Committee as applicable to the employees of the State of Haryana, w.e.f. 15.02.1982, i.e. much prior to the retirement of the petitioner on 30.09.1982. The learned counsel cites ***Municipal Committee Tohana Vs. Appellate Authority Under the Payment of Gratuity Act, 1972***, reported as ***1994(2) P.L.R. 65***

On the other hand, it is contended on behalf of the respondents that the amendment in Section 2(e) of the Payment of Gratuity Act came into force in the year 1984, whereas, the petitioner retired from service much prior.

Heard.

Admittedly, the petitioner joined the services of the Municipal Committee, Kalka on 27.04.1950 and he retired from service on 30.09.1982. The State of Haryana had framed the rules viz. Haryana Municipal Employees (Integration, Recruitment and Conditions of Service) Rules 1982, which were adopted and enforced upon the Municipal employees as applicable to the employees of the State of Haryana w.e.f. 15.02.1982. Therefore, on the date of retirement of the petitioner on 30.09.1982, the 1982 Rules had already come into force and would be applicable to the petitioner as well. According to Section 2(e) of the Payment of Gratuity Act, as amended

in the year 1984, the employees in whose respect specific rules have been framed by the Central Government or the State Government providing for payment of gratuity, are not entitled to payment of gratuity under the Payment of Gratuity Act. The rules regarding payment of gratuity to the employees of the municipal committees were enforced w.e.f. 15.02.1982. The amendment of 1984 clarifies that where there are specific rules which provide for payment of gratuity then an employee who retired from service would be entitled to gratuity as per the rules so framed by the State Government and not under the Payment of Gratuity Act. The contention raised by the respondents is ill-conceived as the substantive law became applicable on 15.02.1982, although, the amendment of Section 2(e) of the Payment of Gratuity Act, came into being in the year 1984, is clarificatory in nature.

In view of the above discussion, the present petition is allowed; impugned orders, Annexures P-1 and P-2, are, hereby, set aside; and it is ordered that the amount of gratuity payable to the petitioner be calculated as provided in the 1982 Rules, being applicable to the petitioner, and pay him the balance amount within a period of four months from the date of receipt of a certified copy of this judgment.

20.05.2015
atulsethi

(JITENDRA CHAUHAN)
JUDGE

Note : Whether to be referred to Reporter : Yes / No

ATUL SETHI
2015.06.01 13:05
I attest to the accuracy and
authenticity of this document
Chandigarh