IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.14087 of 2012
Date of Decision: March 19, 2015

The Shiwalik Co-op. Labour & Const. Society Ltd. Village Bheora, P.O.Rangilpur, Tehsil and District Rupnagar & others

...Petitioners

Versus

Punjab State Power Corporation Limited & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.H.K.Brinda, Advocate,
for the petitioners.

Mr.Parminder Singh-I, Advocate,
for the respondents.

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AMIT RAWAL, J. (Oral)

Challenge in the present writ petition is to the Memos Annexures P-10 and P-11, whereby the Punjab State Power Corporation-respondent No.1 has called upon the petitioner-societies to make the payment of the gratuity immediately to the workers working under the Societies, so that unrest may not happen.

The stand of the Punjab State Power Corporation had been and is that as per the allotment letter (Annexure R-1), vide which the societies have been given work for a specified period, the liability to pay the gratuity to the workers is of the Societies. As per Section 4 of the Payment of

Gratuity Act, 1972 (for short "the Act"), the right to claim gratuity arises only when the person is retired or his services have been terminated/retrenched. There is no dispute to the proposition that the liability to pay the gratuity is of the petitioner-societies, but the occasion would only arise when any eventuality as enshrined under Section 4 of the Act arises.

Learned counsel appearing for the petitioner-societies contends that the State Power Corporation cannot direct the cooperative societies to make the payment of gratuity annually and the occasion would only arise when an eventuality under Section 4 of the Act arises.

I have heard the learned counsel for the parties and appraised the paper book and as well as the arguments advanced by the learned counsel for the parties to the lis.

The applicability of Section 4 of the Act is not in dispute. For the sake of brevity, Section 4 is extracted herein below:-

> "4. Payment of gratuity. —(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,—
> (a) on his superannuation, or
> (b) on his retirement or resignation, or
> (c) on his death or disablement due to accident or disease:
> Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:
> [Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be

deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.]

Explanation .— For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of [an employee who is employed in a seasonal establishment and who is not so employed throughout the year], the employer shall pay the gratuity at the rate of seven days' wages for each season.

[Explanation. —In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.]

(3) The amount of gratuity payable to an employee shall not exceed [ten lakh rupees].

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement

shall be taken to be the wages as so reduced.

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (1),—

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee [may be wholly or partially forfeited]—

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

I am in agreement with the argument addressed by the learned counsel for the petitioner-societies that the liability to pay the gratuity is of the petitioner-societies, but the occasion would only arise when the situation as envisaged under Section 4 of the Act arises and not in the manner and the directions as contained in Annexures P-10 and P-11. The action of the State Power Corporation to issue directions to the petitioner-societies to pay the gratuity annually immediately is not in consonance with the provisions of Section 4 of the Act. Therefore, the letters/directions as contained in Annexures P-10 and P-11 issued by the State Power Corporation are hereby set-aside. However, it is made clear that the petitioner-societies are under obligation/right as per the terms and conditions of the allotment letter to pay the gratuity to its workers as and when the occasion arises, i.e., in terms of Section 4 of the Act.

With the aforementioned observations, the writ petition is disposed of.

March 19, 2015 **(AMIT RAWAL)**
ramesh **JUDGE**