

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15702 of 2014 (O&M)
Date of Decision:-01.12.2016.

Gajjan Singh

.....Petitioner

Versus

Presiding Officer and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Ravi Gakhar, Advocate for the petitioner.

Mr. Dines Kumar Prajapati, Advocate for respondent No.2.

P.B. BAJANTHRI, J. (Oral)

CM-15268-CWP of 2016

CM for placing on record the written statement on behalf of respondent No.2 is allowed subject to all just exceptions for the reasons stated in the application as well as affidavit.

Written statement on behalf of respondent No.2 is taken on record.

CWP No.15702 of 2014

1.) In the instant writ petition, the petitioner has prayed for quashing of award passed by the Industrial Tribunal dated 31.10.2012 (Annexure P-6) by which deceased Gajjan Singh's application under Section 33 (c) (2) of the Industrial Disputes Act, 1947 has been dismissed and further sought for a direction to comply the award dated 17.1.2003 (Annexure P-1/T) and release gratuity-cum-retirement amount, earned

this writ petition. Deceased Gajjan Singh was appointed as a Peon on 1.1.1979 and he has attained age of Superannuation and retired from service on 31.7.2001 in the respondent Cooperative Society. Thus, he has rendered for about 22 years of service. After his retirement from service, the respondent Society did not release his retiral benefits. Thus, he made application before the Industrial Tribunal under Section 33 (c) (2) of the 1947 Act. The same was declined. Hence, the present petition.

2.) The respondents-Society have filed their statement of objections. Short question for consideration in the present petition is deceased Gajjan Singh has been denied retiral benefits in particular gratuity only on the score that he failed to deposit 5% of the basic pay in view of Rule 19 of the Punjab State Cooperative Agricultural Service Society Rules, 1997. An extract of the Rule 19 reads as under:-

“19. RETIREMENT

(a) Every employee of the society shall retire on attaining the age of 60 years except for the peon-cum-chowkidar who shall retire on attaining the age of sixty two years.

(b) An employee shall be entitled to death-cum-retirement gratuity on account of death while in service of the society or on retirement as admissible to govt. employees.”

Note: For this purpose the society shall deduct 5% of the basic pay of every employee and deposit it in the branch of cooperative bank. The Society from its own funds shall also deposit upto 5% of the basic pay of the employee and deposit the same in the gratuity-cum-retirement funds of each employee.”

Perusal of Note to Rule 19 of the 1997 Rules, it is crystal clear

that there is a mandate to the Society to deduct 5% of the basic pay of every employee and deposit in DCRG account of employee and deposit in the branch of Central Cooperative Bank. Further it mandates that the Society from its own funds shall also deposit upto 5% of the basic pay of the employee and deposit the same in the gratuity-cum-retirement funds of each employee. It is obligation on the part of the Society to comply Rule 19 of Rules 1997 in particularly Note to Rule 19. The same has not been complied. For no default of deceased Gajjan Singh, he cannot be denied the benefit of gratuity and retiral benefits which were due to him as and when he attained age of superannuation and retired from service. The respondent-Society failed to deduct 5% of the basic pay of the deceased Gajjan Singh. Award dated 31.10.2012 (Annexure P-6) is set aside. The Society is directed to calculate 5% of the basic pay of late Gajjan Singh and issue necessary demand to his legal heirs so as to claim retiral benefits of the deceased Gajjan Singh. The legal heirs are directed to pay demanded amount of 5% contribution and 6% interest on the demanded amount by the Society. The said exercise shall be completed within a period of three months. The respondent-Society after receipt of so demanded amount along with 6% interest from the legal heirs is directed to release the retiral benefits along with interest @ 6% within a period of three months.

3.) Award dated 31.10.2012 (Annexure A-6) is set aside.

4.) Petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

December 01, 2016.

sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.