

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-8596-2014 (O&M)

Date of decision: 14.12.2016

Sat Narain

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Sourabh Goel, Advocate for the petitioner
Mr.Naveen Sheoran, DAG Haryana
Mr.Arun Sharma, Advocate for respondent No.2 to 4

- 1. Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J. (Oral)

Petitioner Sat Narain was working as a Peon with respondent No.4 – Hansi Branch since 29.9.1972. He was appointed as Peon by respondent No.4 Branch office at Hansi District Hisar. At the time of appointment, there was no common cadre of post of Peon and the Peon was the Class IV employee of respondent No.4 Bank. However, in the year 1996, common cadre Class IV employees of respondent bank was created and with the result that all the class IV employees of the different branches of the respondent bank were brought on the common cadre. The gratuity account for the period from 1972 to 1996 was to be sent to the head office by the Hansi Branch but it was not sent. The petitioner was later on promoted as Daftri on 31.12.2007 vide order Annexure P1 and retired as such from the respondent bank on 31.3.2013 on attaining age of superannuation, while being posted with respondent no.4 Hansi Branch. It comes out that when the

petitioner was working at Hansi Branch of the respondent bank on the common cadre, he moved an application dated 22.3.2007 (Annexure R/2) requesting that a sum of Rs.10005/- as gratuity is lying deposited with the bank. This amount was deposited well before the creation of common cadre but all the increment and staff gratuity was to be deposited in the head office. Therefore, the said amount may be released to him. The said amount was accordingly released to him on 22.3.2007.

Petitioner retired from service on 31.3.2013. The amount of gratuity from the year 1996 onwards till his retirement was released to him. Respondents vide order dated 23.8.2013 (Annexure P5), ordered the recovery of gratuity of Rs.1,63,947/- paid to the petitioner in excess. Petitioner claims that he should be paid gratuity as per last pay drawn on the date of his retirement. It is further claimed that the part of gratuity could not be paid to him in the year 2007.

In reply, the respondents have not disputed the factual position. It was stated that on the request of the petitioner under Rule 7.6 of the Payment of Gratuity (Central) Rules, 1972, the gratuity lying with respondent No.4 was released on 22.3.2007. At that time, the petitioner was not member of the Payment of Gratuity Scheme before 24.5.1996. In the better affidavit filed by the respondent, it is stated that the gratuity amount on the basic pay as on 24.5.1996 which was Rs.5300/- for the period from 1.5.1971 to 24.5.1996 comes to Rs.73385/- with the formula of the gratuity payable on the basic pay multiplied by 15, multiplied by number of years divided by 26. It was stated that the petitioner has already received Rs.10005/- and is entitled to balance amount of Rs.63380/-.

I have heard learned counsel for the parties and have also

carefully gone through the file.

Admittedly, the petitioner was working as Peon in the Hansi Branch of Hissar District Primary Cooperative Agricultural and Rural Development Bank Limited. The petitioner was appointed by the Branch Manager of the Hansi branch and was to work in Hansi Branch only. Admittedly, in the year 1996, common cadre of the Cooperative Agricultural and Rural Development Bank Limited was created and the petitioner was brought on the common cadre of Peon i.e. Class IV of Haryana State Cooperative Agricultural and Rural Development Bank Limited and his service thereafter was regularized by the Rules of the said Bank. Admittedly, the amount of gratuity lying with the respondent no.4 was to be remitted to the head office, which was not remitted. It comes out that the petitioner was promoted as Daftri on 31.12.2007. It is also not denied that the petitioner himself had applied for release of gratuity before the period he was brought on common cadre, which was released.

Now, the question would arise when the payment of gratuity is to be released?

Section 4 of the Payment of Gratuity Act, 1972 lays down that the gratuity is to be released on retirement or resignation. It can also be released in case of death or disablement due to accident or disease. None of the said grounds were available in the year 2007, when the gratuity for the period from 1972 to 1996 was released to the petitioner. Therefore, apparently, respondent no.4 bank committed illegality and violated the provisions of Payment of Gratuity Act, 1972 while releasing the gratuity for the period from 1972 to 1996. Even the calculation sheet (Annexure R5) shows that the gratuity was calculated on the basic pay of the each year,

whereas it was to be calculated on the last pay drawn. The said error has been admitted by the respondent in the better affidavit.

Now a question would arise whether the petitioner is to be paid the gratuity for the entire period from 1972 till his retirement in the year 2013 on the last pay drawn or the gratuity is to be split up for the period 1972 to 1996 and thereafter from 1996 to 2013?

I am of the view that the gratuity was released by respondent bank on 23.2.2007 contrary to the Payment of Gratuity Act, 1972. Therefore, the petitioner is required to deposit the said amount of Rs.10005.10 along with interest @ 9% per annum from 22.3.2007 till its deposit with respondent no.2 bank and thereafter, the gratuity is payable as per last pay drawn on the date of retirement of the petitioner, since the services of the petitioner were taken over by respondent no.2 bank on account of creation of common cadre.

It being so, the present writ petition is allowed. The petitioner is ordered to deposit back the gratuity received by him amounting to Rs.10005.10 along with interest @ 9% per annum w.e.f. 23.3.2007 till the date of deposit. After the deposit of said amount, the respondents shall re-calculate the gratuity payable to the petitioner on the basis of last pay drawn by him and release the gratuity in accordance with Rules. Needless to say that if excess amount is already paid to the petitioner that can be adjusted in the said amount.

14.12.2016
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:

Yes

Whether Reportable:

No