Sanjiv Kumar Sharma
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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 16328 of 2004 (O/M)
Date of decision : 24.3.2017

Mrs. Shashi Sareen .... Petitioner (s)

Versus

State of Punjab and others .... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vikas Bahl, Senior Advocate, with,
Ms. Balpreet Sidhu, Advocate, for the petitioner.
Mr. Nikhil Chopra, Additional Advocate General, Punjab.
Mr. R.S. Dadwal, Advocate, for respondents No. 3 and 4.

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

-.- -.-

KULDIP SINGH J. (ORAL)

The petitioner, who was working as a Lecturer in Hindi in B.L.M. Girls College, Rahon Road, Nawanshahr (respondent No. 3 herein), which is a Government Aided Privately Managed College, retired from service on 15.4.2003. She had initially filed this writ petition for release of the balance of gratuity amount of Rs. 2 lacs alongwith other benefits. It comes out that during the hearing of the present case, the Division Bench of this Court, vide order dated 29.11.2005, directed respondents to release the gratuity alongwith interest at the rate of 6%. Thereafter, it comes out from the interim order dated 11.5.2006 that as per the written statement and the letter dated 2.2.2006 (Annexure-A-6), placed on record, the entire admitted claim of the petitioner has been settled. Therefore, the writ petition was disposed of with liberty to take any other alternative remedy including filing of Civil Writ Petition. The matter was then taken to the Apex Court wherein the amount of gratuity was disputed. The Apex Court remanded

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the case to this Court by making following observations, vide order dated 27.8.2015, passed in Civil Appeal No. 5958 of 2007 :-

> " We are inclined to think so as the learned counsel for the appellant has drawn our attention to the letter dated 28.4.2003 wherefrom (not legible) it is evincible that the amount towards gratuity comes to Rs. 3,50,000/-. On a perusal of the counter affidavit filed on behalf of respondents No. 3 to 5, it appears that they have paid Rs. 3,58,783/- (Rupees three lac fifty eight thousand seven hundred and eighty three only). It is not clear whether it is inclusive of interest or not.
>
> In view of the aforesaid, we direct the respondents No. 3 to 5 to deposit Rs. 2,00,000/- (Rupees two lac only) before the High Court within eight weeks hence and thereafter the High Court shall proceed to determine whether the amount has been paid to the appellant and the mode of payment. The inquiry by the High Court shall be limited to the said extent. We request the High Court to dispose of the matter within a period of four months from the date of deposit of the amount by respondents No. 3 to 5.
>
> Resultantly, the appeal is allowed in part and the order passed by the High Court is set aside. There shall be no order as to costs."

It comes out that in pursuance to the abovenoted order of the Apex Court, respondents deposited a sum of Rs. 2,00,000/- in the Registry of this Court.

I have heard the learned senior counsel for the petitioner, the learned State counsel, the learned counsel for respondents No. 3 and 4 and have also carefully gone through the file.

The short question arising for consideration after the remand is as to whether the petitioner is entitled to gratuity of Rs. 3,50,000/- as claimed or Rs. 2,68,200/-, as calculated by respondents ?

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Respondents have calculated the gratuity on the basic pay divided by 15, taking the service of the petitioner to be 30 years. Respondents have basically placed reliance upon Para-15 of Chapter-III, Volume-I of Guru Nanak Dev University calendar to take the view that the gratuity is to be calculated on the basic pay, basic emoluments consisting of basic pay plus the special pay and dearness pay (as and when dearness allowance is treated as dearness pay). It is claimed that the petitioner was not getting any personal pay and that the dearness allowance was ordered to be made a part of the personal pay with effect from 1.4.2004, vide notification dated 19.5.2006 (Annexure-A-2), issued by the Government of Punjab.

On the other hand, the learned senior counsel for the petitioner has also relied upon Guru Nanak Dev University calendar, where in clause-(iii) of the said Para-15 (Annexure-A-3), it is provided that the rate of gratuity, as may be modified by the State Government from time to time, would be applicable to the University employees from the same date and on the same terms and conditions. The relevant extracts from the same are reproduced as under :-

> "(iii) A person who, after having served in other Universities/affiliated colleges in the Punjab State including Punjab University Chandigarh joined this University shall be allowed the benefit of previous service while calculating gratuity at this University at the time of retirement, superannuation or pre-mature retirement, as the case may be.
>
> The rate of gratuity as may be modified by the State Government from time to time would be applicable to the University employees from the same date and on the same terms and conditions."

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Therefore, it would mean that Para-15 of the Guru Nanak Dev University calendar, relied upon by respondents, cannot be read into isolation. It has to be read with the succeeding sub paras also. Therefore, it has to be concluded that the gratuity is to be paid at the rate fixed by the State Government from time to time.

The learned senior counsel for the petitioner has produced the copy of the notification dated 16.7.1998 of the State Government in Court today, which is taken on record, vide which in clause 2.1, it was laid down that the term 'emoluments' would include the dearness allowance also and as per clause 5.1, the maximum rate of gratuity was raised from present rate of Rs. 2,50,000/- to Rs. 3,50,000/-.

In view of the University calendar, reproduced above, the State Government instructions are applicable to the University employees also. Therefore, as per the State Government notification dated 16.7.1998, the rate of gratuity is enhanced from Rs. 2,50,000/- to Rs. 3,50,000/-. Therefore, it would follow that the petitioner is entitled to the gratuity at the rate of Rs. 3,50,000/-. Consequently, Rs. 2,00,000/-, already deposited by respondents No. 3 and 4 before the Registrar of this Court, are ordered to be paid to the petitioner alongwith interest, if any, that has accrued on the said amount. If after calculation, some amount is found in excess, the same shall be refunded to respondents No. 3 and 4.

The limited point, on which this case was remanded by the Apex Court, stands decided accordingly.

(KULDIP SINGH)
JUDGE

24.3.2017
sjks

Whether speaking / reasoned : Yes
Whether Reportable : Yes