

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

**CWP No. 13218 of 2017 (O&M)
DECIDED ON: JULY 17, 2017**

MAAN SINGH

.....PETITIONER

VERSUS

UNION OF INDIA & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Mohit Jaggi, Advocate
 for the petitioner.

JASPAL SINGH, J (ORAL)

CM No. 9448 of 2017

Application is allowed, as prayed for.

CWP No. 13218 of 2017

By virtue of instant petition preferred under Articles 226/227 of the Constitution of India, petitioner has sought the issuance of a writ in the nature of Certiorari for setting aside the orders dated March 24, 2017 (Annexure P-6) and February 27, 2017 (Annexure P-4) passed by respondent No.1 as well order dated September 20, 2016 (Annexure P-2) passed by respondent No.2 with further direction to issue a writ in the nature of Mandamus directing the respondents especially respondent No.3 to release the remaining gratuity of the

petitioner i.e. ₹7,36,260/- alongwith interest @36% per annum from the date it became due till its actual payment.

Learned counsel for the petitioner has submitted that petitioner joined Malwa Gramin Bank as officer on January 12, 1989. Thereafter, he was promoted as Scale II Officer (MMGS-II) on March 29, 2000 and then to the post of Scale III Officer (MMGS-III) on March 27, 2012. Petitioner retired from service on attaining the age of superannuation on December 31, 2015 after serving the bank for a period 27 years. The Malwa Gramin Bank has its own Rules called “Malwa Gramin Bank (Officers and Employees) Service Regulations 2010” (hereinafter called “SR-2010”). The gratuity of the petitioner is being regulated under the afore-said regulations. Though, the gratuity is payable @ one month pay for every completed year of service, subject to maximum 15 month's pay. Yet the calculation was done without taking into consideration treating monthly wages as wages for 26 working days as provided under Section 4(2) of the Payment of Gratuity Act, 1972 (for short 'Act'), which comes out to ₹11,96,422/- (₹79761.49x15). Thereafter, this amount was reduced to ₹10,00,000/- by applying maximum limit of gratuity as prescribed under Section 4(2) of the Act, which could not have been done.

It has further been submitted by learned counsel for the petitioner that petitioner preferred a complaint dated April 29, 2006 in this regard to respondent No.2 and sought the grant of gratuity for his entire service of 27 years; for 15 years @ one month wages for every completed years of service under SR-2010 and for the remaining 12 years, which have not been addressed at all by the SR-2010, @ 15 days wages for every completed year of service

under the Act. He challenge the provision of SR-2010 which restricts the payment of gratuity to 15 years of his service and violates his statutory right. However, respondent No.2 waived the maximum limit of ₹10,00,000/- and allowed the interest on the delayed payment of gratuity. Thus, the impugned orders are not sustainable in the eyes of law and deserved to be set aside. Consequently, petitioner is entitled to the gratuity of ₹19,32,682/- under the provision of the Act; that too, without any restriction.

This Court has given a deep thought to the afore-said submissions made by learned counsel for the petitioner but does not find any legal or factual substance therein.

The claim of the petitioner in this petition is that he rendered 27 years of service prior to his retirement on December 31, 2015 on attaining the age of superannuation. He was entitled for gratuity of ₹17,48,617/- as per SR-2010 but the bank has paid only ₹10,00,000/- towards gratuity on the day of his retirement. In fact, he rendered continuous service of 27 years and is entitled for gratuity for the said period. Whereas, his claim has been restricted to 15 years, which is wrong. Petitioner has only challenged the impugned orders vide which, he was granted the gratuity of ₹11,96,422/- after careful interpretation of the provisions contained in SR-2010 as well as that of Act which is beneficial to the petitioner. The petitioner has been held entitled to the gratuity of ₹11,96,422/-. The contention of the petitioner that he should be paid gratuity to the tune of ₹19,32,682/-, has rightly been rejected by the concerned authority while passing the impugned order, in view of clear cut restriction of maximum of 15 months pay imposed under SR-2010. If the petitioner is aggrieved of the

restriction of maximum of 15 months pay imposed under SR-2010, he can challenge the same before the competent court of law for setting aside or quashing the same but till said restriction is not set aside or quashed by the competent court of jurisdiction, he is bound by restriction so imposed under SR-2010. Otherwise also, an amount has been awarded on account of gratuity after taking into consideration SR-2010, as well as the provisions of Act.

Thus, this Court does not find any infirmity, illegality and perversity in the impugned orders and the same are absolutely in consonance with the settled proposition of law. Thus, no question of law arises for the consideration by this Court in this petition.

As a sequel of afore-said discussion, this Court does not find any merit in the instant petition. As such, the same is dismissed.

JULY 17, 2017
sham

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*