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

CWP-20810-2014 (O&M)
Date of decision: 04.05.2017

Amarjeet Singh **…..Petitioner**

versus

Registrar, Cooperative Societies, Punjab and others **.......Respondents**

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.M.S.Bedi, Advocate for the petitioner
Mr.Nikhil K.Chopra, Additional Advocate General Punjab
Mr.Ashish Gupta, Advocate for the respondent no.3-A

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, who was working as a Secretary of the respondent-Cooperative Society, retired from service on 28.2.2011 on attaining the age of superannuation. He had made claim for gratuity and leave encashment, which has now been restricted to gratuity. Petitioner based his claim for gratuity on the basis of Rule 19(b) of the Punjab State Cooperative Agricultural Services Societies Service Rules, 1997, which is reproduced as under:-

> *19(b) An employee shall be entitled to death-cum-retirement gratuity on account of death while in the service of the society or on retirement as admissible to govt. employees.*

Learned counsel for respondent has however, stated that Rule 19 (b) was amended on 3.6.1999 and the amended Rule is as under:-

> *19(b) An employee shall be entitled to death-cum-retirement gratuity on account of death while in the service of the society or on retirement as admissible to govt. employees subject to the Rider that all the benefits extended to the employees including Gratuity may not exceed 75% of profit of the Society.*

It is stated that since the respondent Society is running in losses, therefore, no gratuity is payable.

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High Court Chandigarh

I have heard learned counsel for both the parties and have also carefully perused the record.

After going through the said amended Rule, I am of the view that the Rule makes it clear that gratuity is payable on the retirement of the employee as admissible to government employee. Under the said rule only rider has been imposed that benefits including the gratuity may not exceed 75% of the profit of the Society. First of all word "may" is used and not the word "shall", which means that discretion still lies with the Society to pay even more than 75% of the profit. Provision only put a cap on maximum 75% of the gratuity payable. Provision does not say if the society is running in losses no gratuity is payable at all. Therefore, though the respondents are at liberty to put a cap in terms of the amended Rule 19(b) but the gratuity cannot be declined. The respondent Society has already passed a resolution dated 15.2.1970 requesting this Court that it is unable to pay 75% amount in one go due to the fact that it is running losses for the last 15 years and does not have sufficient funds. Therefore, request has been made to allow the payment of gratuity in six monthly installments.

Therefore, keeping in view the financial conditions of the Society the request is accepted. As per resolution dated 15.2.1970 the gratuity is ordered to be paid in six monthly equal installments to the petitioner with simple interest @ 6% per annum from the date of retirement till actual payment.

The writ petition stands disposed of accordingly.

04.05.2017 **(Kuldip Singh)**
gk **Judge**

Whether speaking/ reasoned: Yes
Whether Reportable: No

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