IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 22081 of 2015 (O&M)
Date of decision: 30.03.2017

Kamal Kumar and another

... Petitioners

versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Puneet Kumar Bansal, Advocate for the petitioner.

Mr. R.S. Pathania, DAG Punjab.

Mr. Manuj Chadha, Advocate for respondent No.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)

Present writ petition has been filed under Article 226 of the Constitution of India for issuance of writ in the nature of mandamus directing the respondents to release the remaining pension, gratuity, leave encashment, provident fund, ex-gratia along with 18% interest on account of death of their father, late Rattan Lal, who died in harness.

According to the petitioners, their father-Rattan Lal (now deceased) was working as Safai Sewak with the Municipal Council, Ferozepur, Punjab. He died in harness on 23.11.2014 leaving behind the petitioners (Kamal Kumar & Ravi Kumar) and a daughter (Sania).

Daughter of the deceased (Sania) had executed an affidavit to the effect that she has no objection if all the benefits accruing on the death of her father are given to petitioners, who are her brothers. It is contended that petitioners are entitled to pension, gratuity, leave encashment, provident fund and ex-gratia etc. of the deceased, but, till date only ex-gratia of Rs. 1,00,000/- approximately had been released and remaining retiral benefits had not been released.

In reply, respondent No.4-employer of the deceased Rattan Lal has taken the stand that the retirement benefits of Rattan Lal inclusive of gratuity, leave encashment, provident fund, ex-gratia comes to ₹13,42,660/-. By way of installments, an amount of Rs. 8, 03, 035/- had already been paid to the heirs of Rattan Lal (deceased) and only an amount of ₹5,39,625/- is outstanding. Respondent No.4 has requested the concerned department of Punjab Government to release the fund so that the outstanding payment can be made. Further, objection was taken that the sister of the petitioner (Sania) was also a necessary party. Along with written statement, Annexure R1 dated 02.06.2016 the details of retiral benefits is annexed showing the outstanding amount.

I have heard learned counsel for the parties and perused the file carefully.

It comes out that during the pendency of the petition, respondent No.4 has placed on file the copy of the speaking order dated

03.03.2017, vide which the retiral benefits have been recalculated at the rate of ₹ 10, 04, 733/- and it is stated that entire payment has been made. However, in the case of gratuity, in place of earlier gratuity of ₹10,00,000/- it is mentioned as ₹ 6,62,077/-. Copy of the order dated 03.03.2017 has also been attached wherein it is stated that now nothing is due. Therefore, the only question survived for consideration before this Court is as to whether the gratuity is to be paid as per the Payment of Gratuity Act 1972 or as per the The Punjab Municipal Safai Karamchari Service Rules, 1984 (in short 'Service Rules 1984')?

The respondents have placed on file the copy of the letter of the Government dated 19.08.2016 (Annexure-R2) wherein after taking note of the gratuity paid by the different Local Governments, it was ordered that in case of employees of Urban Local Bodies they shall be governed under the provisions of the Payment of Gratuity Act, 1972. Since the petitioner was Safai Sewak, he is covered under Section 18 of the Service Rules 1984 which is reproduced as under:

> *18. Gratuity - The members shall be entitled to gratuity at such rates as is admissible to such category of employees of the Punjab Government.*

The above noted rule makes it clear that gratuity to the Safai Karamchari is to be paid as admissible to such category of employees of the Punjab Government.

Now, question would arise as to whether by instruction dated 19.08.2016 (Annexure-R2), the said Section 18 of the Service Rules 1984 can be annulled?

I find the reply negative. Once, there is a specific provision in an enactment governing the service condition that will have overriding effect on the provision regarding payment of gratuity under which gratuity is payable at the lower rate. In this regard, I am supported by the authoritative pronouncement of the Hon'ble Supreme Court in **State of Orrisa and others Vs. Prasana Kumar Sahoo, 2007(3) SCT 560**. Therefore, Annexure-R2 dated 19.08.2016 will not override the effect of Section 18 of the said Service Rules of 1984. It would follow that the legal heirs of the deceased employee will be entitled to gratuity amounting to ₹10,00,000/-as calculated vide Annexure-R1.

Mandamus is issued to respondent No.4 to pay the balance gratuity after deducting ₹ 6,62,077/- to the legal heirs of Rattan Lal (Deceased) starting within two months from the date of receipt of certified copy of the order along with interest @ 9% per annum starting three months from the date of death of the deceased employee till the date of payment.

In view of the above, present petition is allowed to be above noted extent.

(KULDIP SINGH)
JUDGE

30.03.2017
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Whether speaking/non-speaking : Yes/No
Whether reportable : Yes/No