

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

CWP No. 22186 of 2015
Date of Decision: 01.02.2017

GAURI SHANKER SHARMA

... Petitioner

VS.

***MANAGING DIRECTOR HARYANA STATE MINOR IRRIGATION
TUBEWELL CORPORATION LTD.***

..Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. R.S. Sangwan, Advocate,
for the petitioner.

Mr. D.K. Khanna, Advocate,
for the respondent No. 1.

None for respondents No. 2 to 4.

KULDIP SINGH, J. (Oral)

The petitioner has preferred this writ petition under Articles 226/227 of the Constitution of India for the issuance of a writ of certiorari to quash the impugned order dated 25.02.2014 (Annexure P-3) passed by respondent No. 4 and order dated 13.10.2014 (Annexure P-5) passed by respondent No. 3. He also seeks the permission to withdraw the applications dated 08.04.2011 and 16.05.2011 Annexures P-1 and P-2 respectively, filed by the petitioner under the Payment of Gratuity Act, 1972.

The short controversy in the present petition is that the petitioner was retrenched from service on 30.07.2002 from Haryana State Minor Irrigation Tubewell Corporation (for short "HSMITC") and it comes out that he had opted for Haryana Civil Service Rules for payment of gratuity. All the retiral benefits including gratuity was paid to him. The gratuity was paid to him in terms of Haryana Civil Service Rules for which he had given the option. In that case the gratuity is payable for maximum of 300 days of accumulated earned leave.

Subsequently, after a period of 9 years, he filed two applications

dated 08.04.2011 and 16.05.2011 Annexures P-1 and P-2 respectively before

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the Managing Director, HSMITC for payment of gratuity under the Payment of Gratuity Act, 1972. The controlling authority under the Payment of Gratuity Act, 1972 vide order dated 25.02.2014 (Annexure P-3) decided the said applications against the petitioner and ordered the recovery of excess amount already paid to the petitioner. The appeal against the said order was also dismissed vide order dated 13.10.2014 (Annexure P-5).

Now, the short prayer of the petitioner is that he was granted the gratuity under the Haryana Civil Service Rules and due to wrong legal advice, he had filed the applications for payment of gratuity under the Payment of Gratuity Act, 1972. Therefore, the applications filed under the erroneous legal advice may be allowed to withdrawn and consequently order dated 25.02.2014 (Annexure P-3) and order dated 13.10.2014 (Annexure P-5) may be set aside.

I am of the view that once the gratuity under the Haryana Civil Service Rules has been paid to him and the same has been accepted by him, then he cannot claim for the same under the Payment of Gratuity Act, 1972.

In view of the request of the learned counsel for the petitioner, the petitioner is allowed to withdraw the applications dated 08.04.2011 and 16.05.2011 Annexures P-1 and P-2 respectively, filed under the Payment of Gratuity Act, 1972 and consequently impugned order dated 25.02.2014 (Annexure P-3) and order dated 13.10.2014 (Annexure P-5) is ordered to be set aside.

In view of the above, the present petition stands allowed.

February 1, 2017
Suresh Kumar

[KULDIP SINGH]
JUDGE

		✓	
Whether speaking / reasoned	:	Yes	/ No
			✓
Whether Reportable	:	Yes	/ No