

IN THE HIGH COURT OF PUNJAB AND HARYANA
p AT CHANDIGARH

CWP No. 8026 of 2014 (O/M)
Date of decision : 17.2.2017

Joti Ram Petitioner (s)

Versus

State of Haryana and others Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Prateek Gupta, Advocate, for,
Mr. Sandeep Moudgil, Advocate, for the petitioner.

Mr. Naveen Sheoran, Deputy Advocate General, Haryana.

Mr. Arun Sharma, Advocate, for respondents No. 2 and 3.

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 ?
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KULDIP SINGH J. (ORAL)

Heard.

It comes out that the petitioner joined the service as a Peon in the regular cadre in the District Primary Cooperative Agriculture and Rural Development Bank Limited, Jagadhri, District Yamuna Nagar. Later on, in the year 2007 he was appointed as a Daftri. It also comes out that later on, the cadre of all the District Primary Cooperative Agriculture and Rural Development Bank Limited in the State were merged in one cadre and vide order dated 21.5.1996. The petitioner was brought on the common cadre of respondent No. 2 in Haryana State Cooperative Agriculture and Rural Development Bank Limited, though he continued to work at Yamuna Nagar. On the request of the petitioner himself, the gratuity for the period he worked with respondent No. 3 i.e. District Primary Cooperative

CWP No. 8026 of 2014 (O/M)

Agriculture and Rural Bank Limited, Jagadhri, District Yamuna Nagar, amounting to Rs. 10,402-12, was released to him on 2.11.2006, vide voucher No. 3738. The petitioner retired from service of respondent No. 2 on 31.8.2011. In the present writ petition, the petitioner seeks the writ of mandamus directing respondents to release the payment of gratuity amounting to Rs. 4,10,843/- alongwith interest at the rate of 18% per annum, claiming that some gratuity is payable. However, the same is resisted by the bank on the ground that the gratuity for the period when he was not brought on the common cadre was already released to him on 2.11.2006. The matter has already been considered by this Court in CWP No. 8596 of 2014, titled as Sat Narain Versus State of Haryana and others, decided on 14.12.2016, involving similar facts. This Court has observed as under :-

“ Admittedly, the petitioner was working as Peon in the Hansi Branch District Primary Cooperative Agricultural and Rural Development Bank Limited. The petitioner was appointed by the Branch Manager of the Hansi branch and was to work in Hansi Branch only. Admittedly, in the year 1996, common cadre of the Cooperative Agricultural and Rural Development Bank Limited was created and the petitioner was brought on the common cadre of Peon i.e. Class IV of Haryana State Cooperative Agricultural and Rural Development Bank Limited and his service thereafter was regularized by the Rules of the said Bank. Admittedly, the amount of gratuity lying with the respondent No. 4 was to be remitted to the head office, which was not remitted. It comes out that the petitioner was promoted as Daftri on 31.12.2007. It is also not denied that the petitioner himself had applied for release of gratuity before the period he was brought on common cadre, which was released.

CWP No. 8026 of 2014 (O/M)

Now, the question would arise when the payment of gratuity is to be released ?

Section 4 of the Payment of Gratuity Act, 1972, lays down that the gratuity is to be released on retirement or resignation. It can also be released in case of death or disablement due to accident or disease. None of the said grounds were available in the year 2007, when the gratuity for the period from 1972 to 1996 was released to the petitioner. Therefore, apparently, respondent No. 4 bank committed illegality and violated the provisions of Payment of Gratuity Act, 1972, while releasing the gratuity for the period from 1972 to 1996. Even the calculation sheet (Annexure-R5) shows that the gratuity was calculated on the basic pay of the each year, whereas it was to be calculated on the last pay drawn. The said error has been admitted by respondent in the better affidavit.

Now, a question would arise whether the petitioner is to be paid the gratuity for the entire period from 1972 till his retirement in the year 2013 on the last pay drawn or the gratuity is to be split up for the period 1972 to 1996 and thereafter from 1996 to 2013 ?

I am of the view that the gratuity was released by respondent bank on 23.2.2007 contrary to the Payment of Gratuity Act, 1972. Therefore, the petitioner is required to deposit the said amount of Rs. 10005-10 alongwith interest @ 9% per annum from 22.3.2007 till its deposit with respondent No. 2 bank and thereafter, the gratuity is payable as per last pay drawn on the date of retirement of the petitioner, since the services of the petitioner were taken over by respondent No. 2 bank on account of creation of common cadre.”

Therefore, the Court ordered the petitioner in the said case to deposit the gratuity alongwith interest at the rate of 9% per annum from the date it was received by him till the date of deposit and respondents were directed to re-calculate the gratuity payable to the petitioner on the basis of last pay drawn by him and release the gratuity in accordance with rules. It

CWP No. 8026 of 2014 (O/M)

was further directed that if the excess amount was paid, then the same can be adjusted in the said amount. The petitioner in the present writ petition stands at the same footing.

In view of the matter, the present writ petition is allowed. The petitioner is ordered to deposit back Rs. 10,402-12 alongwith interest at the rate of 9% per annum from 2.11.2006 till the date of deposit and after deposit of the said amount, respondents shall re-calculate the gratuity, payable to the petitioner on the basis of last pay drawn by him and release the gratuity in accordance with rules. However, if the excess payment is already made to the petitioner, the same can be adjusted in the said amount.

(KULDIP SINGH)
JUDGE

17.2.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes