

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

CWP No.27772 of 2017 (O&M)

Date of Decision:18.12.2017

K.C. Sharma

... Petitioner

Vs.

Controlling Authority under the Payment of Gratuity Act and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. J.S. Maanipur, Advocate for the petitioner.

P.B. BAJANTHRI J. (Oral)

In the instant petition, matter relates to entitlement of gratuity amount to the petitioner. The employer failed to extend the benefit of gratuity amount. Consequently, employee filed an application before the Controlling Authority under the Payment of Gratuity Act, 1972 and it was decided. Thereafter, employer preferred an appeal. Appeal was allowed in part insofar as deduction of income tax is concerned. The appellate authority framed the issues. Extract of issue No.3 reads as under:

“Issue No.3: Whether the appellant could deduct Tax from the gratuity amount or not?

The appellant has claimed that an amount of Rs.32,300/- has been deducted by appellant on account of Income Tax. The respondent has vehemently argued that Tax cannot be deducted as it will amount to deduction of gratuity. The Controlling Authority has stated in his order that respondent has cited a circular dated 24.09.2009 that the ceiling of the gratuity stands revised from 3.50,000/- to Rs.10,00,000/- (Ten Lakh) w.e.f. 1.1.2007. The applicant has stated income tax

from gratuity is not permitted as this is covered under the Circular No.5/2009 issued by FCI Head Quarter, New Delhi which collaborate maximum permissible exemption under the above said provisions is Rs.3,50,000/- and gratuity is excess of aforesaid limit is taxable in the hands of recipient as has been allowed by the appellant (Central) Kanpur in case/File No. K36(03)/2013/C-1/5863 dated 9.4.2014, thus the Controlling Authority concluded that income tax deducted beyond Rs.3,50,000/- from gratuity is totally wrong.

Admittedly the tax has been deducted from gratuity under Income Tax Act. This authority is not competent to assess the justification of deduction of the Tax under Income Tax Act by the appellant. If the appellant has deducted the tax from gratuity amount and even if it is wrong deduction, then remedy for recovery of tax wrongly deducted is from the Income Tax Department. Income Tax deducted from gratuity is a matter within the purview of the Authorities under Income Tax Act. So this authority cannot direct the appellant not to deduct the tax amount of Rs.32,300/-.

The issue No.3 is decided in favour of the appellant.”

In view of the above finding on issue No.3 decided in favour of the employer read with the deduction of income tax, Authorities under the Payment of Gratuity Act have no jurisdiction. Therefore, there is no infirmity in the impugned order dated 28.2.2017 (Annexure P-2) passed by the Appellate Authority.

Accordingly, petition stands dismissed.

Learned counsel for the petitioner relied on Annexure P-3 Circular dated 24.9.2009. Even if circular is taken into consideration under the payment of Gratuity Act, Authorities cannot decide the deduction of Income Tax. Thus, circular cannot be interpreted by the authorities under the payment of Gratuity Act. This order would not be a hurdle to the petitioner to approach appropriate forum if he is disputing in relation to deduction of income tax on the gratuity amount.

18.12.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No