

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

(249)

CWP-1157-2017

Date of Decision: November 19, 2018

Somawati

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vikas Singh, Advocate, for the petitioner.

Mr. Ayush Sarna, AAG, Punjab, for respondents No. 1 and 2.

Mr. Raj Kaushik, Advocate, for respondent No.3.

HARSIMRAN SINGH SETHI, J.(ORAL)

The present writ petition has been filed by the petitioner whereby the claim for the release of the salary for which late husband of the petitioner was entitled for during his service carrier. Further, a prayer for the release of the gratuity has been made.

Reply to the said claim has been filed today by respondent No.3. In respect of the claim of gratuity, respondent No.3 is relying upon the provisions of Rule 19 (A) of 1997 Rules, to contend that the death-cum-retiral gratuity cannot be paid to the petitioner as when the husband of the petitioner died, the society was running in loss. In respect of the salary for which the claim has been made by the petitioner in the present case, the same has been admitted.

Counsel for the respondents states that as and when a succession certificate is produced by the petitioner, the said salary will also be released.

I have heard learned counsel for the parties.

An employee has a right to claim gratuity under the Payment of Gratuity Act, 1972. If an employee is entitled for gratuity even under the service rules, then it is option of an employee to choose either for the payment under the Payment of Gratuity Act, 1972 or from the service rules, which is beneficial to him. In the present case, the gratuity is being denied on the ground that same is not admissible under Rules of 1997. The said denial is contrary to the Payment of Gratuity Act, 1972 according to which an employee after rendering the service is entitled for the gratuity. Rules cannot supersede the Act under which an employee is entitled for the gratuity. Nothing has been placed on record to show that any exemption has been granted to respondent No.3 under the Payment of Gratuity Act, 1972. Therefore, even otherwise, the petitioner will be entitled for the payment under the Payment of Gratuity Act, 1972.

As far as the salary for the period when the husband of the petitioner discharged duties before he died, the same is admitted but only subject to the production of succession certificate. In the reply so filed, there is no dispute with regard to the claim that the petitioner is the wife of late Sukhdev Kumar who was the employee of respondent No.3. Once, there is no dispute raised in the reply, the amount of salary cannot be denied or the petitioner cannot be made to first obtain a succession certificate in order to claim the salary, which the respondent should have paid the husband, regularly.

In view of the above, the respondents are directed to pay the salary which the petitioner is claiming on behalf in respect of the services

which were discharged by her late husband amounting to Rs.4,23,748.60/-.

As the said salary is being withheld since February, 2013, the petitioner will also be entitled for interest at the rate of 9% per annum from February 2013 till its realization. Further, the respondents are also directed to calculate the gratuity amount under the Payment of Gratuity Act, 1972. The said amount should be calculated within a period of three months and after calculation, the same should be paid within next one month. The said amount of gratuity will also have interest at the rate of 9% from the date it became due.

The writ petition is allowed, in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

November 19, 2018
harsha

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No