

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10543 of 2018

Date of Decision: 10.10.2018

Municipal Council, Ferozepur

... Petitioner

Versus

The Appellate Authority Under
Payment of Gratuity Act and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rajveer Singh Parmar, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.(Oral)

1. Ex facie, it is rather unfair and improper for the petitioning-Municipal Council, Ferozepur to have not answered the Court query put at the threshold on April 30, 2018 when the matter was heard for the first time upon listing in urgent list, to show cause why the respondent-workman would not be entitled to gratuity as has been ordered by the Controlling Authority under the Payment of Gratuity Act, 1972-cum-Assistant Labour Commissioner, Ferozepur by his order dated February 17, 2017. It has been recorded by the Controlling Authority in his order that the defence of the Municipality resisting payment of gratuity could have saved them of interest on the gratuity amount, the payment of which has been unnecessarily delayed when a case for payment was made out. The Controlling Authority has recorded that in the light of their attitude, it is left open to the establishment/department to recover interest from the officers concerned of the Municipal Council, Ferozepur who filed the written statement. The

Controlling Authority held that the workman is entitled to gratuity in view of Section 7 (3-A) of the Payment of Gratuity Act, 1972 (for short “the Act”). An amount of ₹1,14,466/- was assessed along with 9% interest per annum from March 01, 2008 till realization.

2. Heard learned counsel for the petitioner-Municipal Council, Ferozepur.

3. It may be noticed that against the order of the Controlling Authority, the Municipal Council, Ferozepur preferred an appeal before the Appellate Authority under the Payment of Gratuity Act-cum-Deputy Labour Commissioner, Punjab, Chandigarh. The Appellate Authority by its judgment and order dated February 21, 2018 has dismissed the appeal and upheld the order of the Controlling Authority holding that the appeal was not maintainable because it was filed after a lapse of more than five months from the date of the order passed by the Controlling Authority. The limitation for filing appeal provided in the Act is 60 days from the date of the receipt of the order as per Section 7 (7) of the Act.

4. Section 7 (7) provides that if the Appellate Authority is satisfied that the appellant was prevented by sufficient cause for preferring an appeal within the said period of 60 days, it may extend the said period for a further period of 60 days. After the period has expired the Appellate Authority loses power to entertain the appeal barred by time and this view taken is perfectly good in its finding on limitation and the same is upheld.

5. Apart from dismissing the appeal being time barred and therefore on maintainability of the appeal, the Appellate Authority has in addition examined the issue on merits and has reached to the conclusion that

this is a fit case to award gratuity as the ingredients in the Act were satisfied.

6. The defence plea of the management before the authorities below was that the respondent-workman is not entitled to gratuity under Section 4 of the Act since his services were governed by the provisions of the Punjab Civil Services Rules and, therefore, the order passed by the Controlling Authority was liable to be set aside. It was further submitted that the Controlling Authority had failed to appreciate the existence of the notification dated August 31, 2007 of the Government of Punjab, Department of Labour, exempting the employees of Urban Local Bodies from the purview of the provisions of the Act.

7. On the other hand, it is the case of the workman that as per calculation his gratuity comes to ₹5,04,196/- of which sum he has already received ₹3,64,761/- under the PCS rules. The balance amount as per provisions of the Gratuity Act could be claimed as arrears.

8. It is further argued by the learned counsel that as per the Government notification dated August 31, 2007, employees covered by it are entitled to pension which the respondent-workman is not. The last para of the notification dated August 31, 2007 is referred to in the order and for convenience it is set down below:-

“Now, in exercise of the powers conferred by sub-section (2) of Section 5 of the Payment of Gratuity Act, 1972, the Governor of Punjab is pleased to exempt such employees who have opted for Punjab Municipal Employees Pension and General Provident Fund Rules, 1994, the Punjab Municipal Corporation Employees Pension and General Provident Fund

Rule, 1994 from the provisions of the Payment of Gratuity Act, 1972 w.e.f. 1.4.1990 subject to the condition that this notification will not prejudicially affect the interests of any person as provided under sub section (3) of Section (5) of the Payment of Gratuity Act, 1972.”

9. In the first para of the notification the Local Government Department sought exemption from the purview of the Act with regard to the employees of the Municipal bodies who were appointed on or after April 01, 1990 and are governed by the PCS rules w.e.f. April 01, 1990. To the contrary, the respondent-Workman was appointed with the petitioner-Municipality w.e.f. March 01, 1971 i.e before the cut off date. Therefore, by any stretch of imagination, the aforesaid notification cannot be made applicable to the respondent-workman as he was appointed almost two decades before the coming into force of the notification of 2007. The conclusion arrived at by the authority a quo was that the respondent is entitled to the difference of amount of gratuity between the rules and the Act, the quantum in the Act being more beneficial.

10. I find absolutely no cogent reason to tinker with the well reasoned orders passed by the authorities. There is no error of law or fact much less fundamental. It appears that the petition has been filed only to postpone execution of the award. It is over ten years since the award was made and its implementation has been kept pending in litigation from the date of order of the Controlling Authority onward.

11. As a result of the above position, this petition has no life in it and is dismissed. The amount of gratuity awarded with 9% simple interest as directed by the authorities from March 01, 2008 till realization be

calculated and disbursed to the respondent workman. If the amount determined as due and payable is not paid within two months from the date of receipt of a certified copy of this order, interest will accrue on the principal sum at the rate of 12% from March 01, 2008 till payment as a composite measure of penalty, costs of litigation and damages over and above the prescription in Section 7 (3-A) of the Act.

10.10.2018
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(RAJIV NARAIN RAINA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>