

...

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CWP-7280-2016**
Date of Decision : August 30, 2018

Punjab State Civil Supplies Corporation Limited and another

.... Petitioners.

Versus

The Appellate Authority under the Payment of Gratuity Act
and others.

.... Respondents.

2. **CWP No.1152-2017**

The Punjab State Civil Supplies Corporation LimitedPetitioner.

Versus

The Appellate Authority under the Payment of Gratuity Act, 1972 and others
...Respondents.

3. **CWP No.1143-2017**

The Punjab State Civil Supplies Corporation LimitedPetitioner.

Versus

Appellate Authority under the Payment of Gratuity Act, 1972 and others.
...Respondents.

4. **CWP No.22201-2015**

Punjab State Civil Supplies Corporation Limited and another

....Petitioners.

...

Versus

Appellate Authority under the Payment of Gratuity Act, 1972 and others

...Respondents.

5. CWP No.22333-2015

Punjab State Civil Supplies Corporation Limited and another

....Petitioners.

Versus

Appellate Authority under the Payment of Gratuity Act, 1972 and others

...Respondents.

6. CWP No.3532-2017

Punjab State Civil Supplies Corporation Limited and another

....Petitioners.

Versus

The Controlling Authority under the Payment of Gratuity Act, 1972 & others

...Respondents.

7. CWP No.22208-2015

Punjab State Civil Supplies Corporation Limited and another

....Petitioners.

Versus

Ashok Kumar and others

...Respondents.

8. CWP No.13069-2017

Punjab State Civil Supplies Corporation Limited and another

...

....Petitioners.

Versus

Appellate Authority under the Payment of Gratuity Act, 1972 and others

...Respondents.

9. CWP No.24333-2016

Punjab State Civil Supplies Corporation LimitedPetitioner.

Versus

The Controlling Authority-Cum-Asstt. Labour Commissioner,
Ferozepur and another ...Respondents.

10. CWP No.24461-2016

Punjab State Civil Supplies Corporation Limited and another
....Petitioners.

Versus

The Controlling Authority-Cum-Asstt. Labour Commissioner, Moga and
another ...Respondents.

11. CWP No.4047-2016

Punjab State Civil Supplies Corporation Limited and another
....Petitioners.

Versus

The Controlling Authority-Cum-Asstt. Labour Commissioner, Moga and
another ...Respondents.

12. CWP No.8056-2016

...

Punjab State Civil Supplies Corporation LimitedPetitioner.

Versus

Appellate Authority under the Payment of Gratuity Act, 1972 and others

...Respondents.

13. CWP No.9120-2016

Punjab State Civil Supplies Corporation Limited and another

....Petitioners.

Versus

Appellate Authority under the Payment of Gratuity Act, 1972 and others

...Respondents.

14. CWP No.16061-2016

Punjab State Civil Supplies Corporation Limited and another

....Petitioners.

Versus

Appellate Authority under the Payment of Gratuity Act, 1972 and others

...Respondents.

15. CWP No.1987-2017

Punjab State Civil Supplies Corporation Limited

...Petitioner.

Versus

Amarjit Singh and another

...Respondents.

16. CWP No.14574-2018

...

Punjab State Civil Supplies Corporation LimitedPetitioner.

Versus

Surinder Nath Saini and others ...Respondents.

17. CWP No.13324-2016

The Punjab State Civil Supplies Corporation Limited and another

....Petitioners.

Versus

Appellate Authority under the Payment of Gratuity Act, 1972 and others

...Respondents.

18. CWP No.7164-2016

Nachhatar SinghPetitioner.

Versus

Managing Director, The Punjab State Civil Supply Corporation Ltd. and another ...Respondents.

19 CWP No.8054-2016

Surinder SinghPetitioner.

Versus

Managing Director, The Punjab State Civil Supply Corporation Ltd. and another ...Respondents.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Tarun Singla, Advocate for the petitioners
(in CWP-22201-2015 & 16061-2016).

...

Mr. Sumer Singh Brar, Advocate for the petitioners
(in CWP-1987-2017, 4047, 8056, 24461, 9120 & 24333-2016
and 14574-2018).

Ms. Suman Devi Saxena, Advocate, for
Ms. Deepali Puri, Advocate for the petitioner
(in CWP-22333-2015).

Mr. Anil Kumar Sharma, Advocate for the petitioner(s)
(in CWP-22208-2016 and 3532-2017).

Mr. Deepak Sabharwal, Advocate
for the petitioners (in CWP-7280-2016, 1143 & 1152-2017)
and for respondent (in CWP-7164 & 8054-2016).

Ms. Ritam Aggarwal, Advocate
for the petitioner (in CWP-7164 & 8054-2016) and
for respondent No.3 (in CWP-7280-2016).

Mr. Padam Kant Dwivedi, Advocate
for respondent No.3 (in CWP-1143, 1152-2017).

Mr. S.M. Goyal, Advocate, for
Mr. S.S. Grewal, Advocate, for respondent No.3
(in CWP-22201-2015).

Mr. Padamkant Dwivedi, Advocate, for respondent No.3
(in CWP-8056 and 9120-2016).

Mr. Anurag Chopra, Advocate, for respondent No.3
(in CWP-22333-2015).

Mr. Paramdeep, Advocate, for
Mr. Gaurav Chopra, Advocate, for respondent No.3
(in CWP-22201, 22333-2015).

SHEKHER DHAWAN, J.

In the above titled bunch of writ petitions (at Sr. No. 1 to 17)
filed by Punjab State Civil Supplies Corporation Limited (for short, “**the
petitioner-Corporation**”) and two writ petitions bearing CWP Nos. CWP
No.7164-2016 and CWP No.8054-2016 (Sr. No. 18 and 19) filed by the

...

retired employees under Articles 226/227 of the Constitution of India, the moot question involved is - Whether a retiree is entitled to the payment of gratuity, if he had caused any pecuniary loss to the employer and some disciplinary proceedings were initiated against him before the date of his retirement? Therefore, with the consent of the parties, all these writ petitions have been taken up together and are being disposed of by this common order. For facility of reference, facts are being taken from CWP No.7280 of 2016, **Punjab State Civil Supplies Corporation Ltd. Vs. The Appellate Authority under Payment of Gratuity Act and others.**

2. PUNSUP - petitioner-Corporation has challenged the order dated 23.10.2015 (Annexure P/3) and order dated 23.04.2014 (Annexure P/2) passed by Appellate Authority (respondent No.1) and Controlling Authority (Respondent No.2) under the Payment of Gratuity Act, 1972 (for short, "the Gratuity Act") on the ground that the same are illegal, violative of provisions of Punjab Civil Services Rules which govern the employees of petitioner-Corporation.

3. As per the petitioner, the employees of the petitioner-Corporation are governed by Punjab Civil Services Rules which are adopted for governing the terms and conditions of services of its employees. Respondent No.3, Nachhatar Singh was working as Inspector Grade II with the petitioner-Corporation and he retired on 31.1.2011. He had embezzled huge amount of the petitioner-Corporation for which various charge-sheets were issued to him and recovery proceedings to the tune of Rs.11,80,270/- and Rs. 5,72,544/- were initiated

...

against him, which are pending adjudication.

4. At the time of retirement, the retiral benefits, i.e. Gratuity was withheld pending departmental enquiries/civil cases in terms of charge sheets. However, the Controlling Authority, respondent No.2, directed the petitioner to release gratuity to the tune of Rs.6,13,830/- alongwith interest @ 12% per annum from the date it fell due i.e. 28.02.2011 vide impugned order dated 23.04.2014 (Annexure P/2). The petitioner preferred an appeal against the said order and vide order dated 23.10.2015 (Annexure P/3 the order, Annexure P/2 was modified only to the extent that simple interest was payable @ 9% per annum from the date of passing of the order by respondent No.2, i.e., 23.04.2014.

5. Learned counsel for the petitioner-Corporation contended that the impugned orders, Annexure P/2 and P/3, have been passed by the authorities under the Gratuity Act in contravention of Rule 2.2(b) of the Punjab Civil Services Rules (Vol-II). The relevant Rule 2.2(b) and ©, as reproduced in the writ petition, are extracted below:-

“Rule 2.2(b) The Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if, in a departmental or judicial proceeding, the pensioner is found guilty of grave mis-conduct or negligence during the period of his service, including service rendered upon re-employment after retirement :

Provided that –

(1) Such departmental proceedings, if instituted while the

...

officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced the same manner as if the officer had continued in service;

(2) Such departmental proceedings, if not instituted while the officer was in service whether before his retirement or during his re-employment-

- (i) shall not be instituted save with the sanction of the Government ;
- (ii) shall not be in respect of any event which took place more than four years before such institution ; and
- (iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service.

The Public Service Commission should be consulted before final orders are passed.

Explanation.- For the purpose of this rule—

- (a) **a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the officer or pensioner**, or if the officer has been placed under suspension from an earlier date, on such date ; and
- (b) a judicial proceeding shall be deemed to be instituted-
 - (i) **in the case of a criminal proceeding, on the date on which the complaint or report of the police officer on which the Magistrate takes cognizance, is made ; and**
 - (ii) **in the case of a civil proceeding, on the date of presentation of the plaint in the court .**

...

Note :- As soon as proceedings of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay intimate the fact to the Accountant-General. The amount of the pension withheld under clauses (b) should not ordinarily exceed one – third of pension originally sanctioned, including any amount of pension to be so withheld, regard should be had to the consideration whether the amount of the pension left to the pensioner in any case would be adequate for his maintenance.

Rule 2.2 (c)

(1) Where any departmental or judicial proceeding is instituted under clause (b) of rule 2.2 or where a departmental proceeding is continued under clause (i) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceedings, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to date immediately preceding to the date on which he was placed under suspension; **but no gratuity or Death–Cum–Retirement Gratuity shall be paid to him until the conclusion of such proceedings and of final orders thereon.**

The gratuity, if allowed to be drawn by the competent authority on the conclusion of the proceedings will be deemed to have fallen due on the date of issue of final orders by the competent authority.

(2) Payment of provisional pension made under sub – clause (1) shall be adjusted against the final retirement benefits sanctioned to such officer upon conclusion of the aforesaid proceedings but no

...

recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

Note.- The grant of pension under this rule shall not prejudice the operation of rule 6.4 ibid when final pension is sanctioned upon conclusion of the proceedings.”

6. Learned counsel for the petitioner-Corporation further contended that the impugned orders are liable to be set-aside as the same are contrary to the rules governing the employees of the petitioner-Corporation. However, respondent No. 3 can claim payment of gratuity if any, upon conclusion of departmental or judicial proceedings.

7. Reliance on this point was placed on the Hon`ble Full Bench judgment of this Court in **Dr. Ishar Singh, Ex.-Principal, Punjab Govt. Dental College and Hospital Vs. State of Punjab through the Secretary to Government, Department of Health and Family Affairs and Ors., (1993) 105 PLR 499 : 1994(3) RSJ 543**, wherein it was held as under:-

“81. As a result of the above discussion, I would conclude as under:-

(i) The Government has no right to withhold or postpone pension or the payment on account of commutation of pension. The State is bound to release 100 per cent pension at the time of superannuation, may be provisionally.

(ii) The Government can withhold the gratuity or other retiral benefits except pension or postpone payment of the same during pendency of an enquiry.

(iii) Pension cannot be adversely affected before a finding of guilt is returned.

(iv) The Government can initiate Departmental enquiry after long lapse before retirement, rather there is no limitation for initiating the

...

departmental enquiry from the date of incident before retirement. The delay and the explanation for the same may reasonably be taken note of keeping in view its likelihood to cause prejudice to the delinquent if the enquiry is challenged in appropriate proceedings.

(v) The enquiry proceedings cannot be quashed solely on the ground of long pendency.

(vi) There is no effect of superannuation on the pendency of the enquiry proceedings.

(vii) The recovery of the Government dues can be made from gratuity or other retiral benefits only.”

8. Learned counsel for the petitioner-Corporation has also relied upon the judgments of this Court in CWP No. 7041 of 2007 **Gurdial Singh Vs. Punjab State Civil Supplies Corporation and another** and **Punjab State Civil Supplies Corporation and Ors. Vs. Pyare Lal, 2013 (2) RSJ 750** and submitted that the present writ petition be accepted and the impugned orders be set-aside.

9. Learned counsel representing respondent No.3 urged that payment of gratuity is statutory right of an employee and the same cannot be withheld. He further submitted that the petitioner-Corporation has not sought any exemption under Section 5 of the Gratuity Act and the services of the respondent-workman were not terminated, but he retired from service on attaining the age of superannuation. The gratuity payable cannot be forfeited and respondent no. 3 is entitled to the payment of gratuity as rightly held by the Controlling Authority and Appellate Authority under the Gratuity Act and the present writ petition is liable to be set-aside.

...

10. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that the factual and legal question involved in these writ petitions is whether the petitioner-Corporation is well within its rights to withhold payment of gratuity as per provisions of Rule 2.2 (b) & (c) of the Punjab Civil Services Rules if some disciplinary proceedings, by way of charge sheet, was initiated against an employee during the period of employment.

11. In the writ petitions (Sr.No. 1 to 17), Petitioner-Corporation has come with the plea that disciplinary proceedings were initiated by issuance of charge sheet(s) against the employees and the allegations are of causing huge pecuniary loss to the petitioner-Corporation and the petitioner is to recover the said amount.

12. As per view taken by Hon`ble Full Bench of this Hon`ble Court in **Dr. Ishar Singh's case (supra)**, the Government can withhold the gratuity or other retiral benefits except pension or postpone payment of the same during pendency of an enquiry. Similar matter was before Hon`ble Apex Court in **Ch.cum Man. Director Mahanadi Coalfield Ltd. Vs. Rabindranath Choubey, SLP © No. 31583 of 2013**, decided on 29.10.2013, wherein the Hon`ble Apex Court observed as under :-

“25. It is the case of the appellant that in the charge sheet served upon the respondent herein, there are very serious allegations of misconduct alleging dishonestly causing coal stock shortage amounting to Rs.31.65 crores, and thereby causing substantial loss to the employer. If such a charge is proved and punishment of dismissal is given thereupon, the provisions of Section 4(6) of the Payment of Gratuity would naturally get

...

attracted and it would be within the discretion of the appellant to forfeit the gratuity payable to the respondent. As a corollary one can safely say that the employer has right to withhold the gratuity pending departmental inquiry. However, as explained above, this course of action is available only if disciplinary authority has necessary powers to impose the penalty of dismissal upon the respondent even after his retirement. Having regard to our discussion above of Jaswant Singh Gill (*supra*) and Ram Lal Bhaskar (*supra*), this issue needs to be considered authoritatively by a larger Bench. We, therefore, are of the opinion that present appeal be decided by a Bench of three Judges.”

13. In view of the above, as the matter in controversy has already been decided by the Hon`ble Full Bench in **Dr. Ishar Singh's case (*supra*)**, the impugned orders passed by the Controlling Authority and Appellate Authority under the Gratuity Act deserve to be set-aside.

14. However, before parting with the judgment, it would be apt to mention that in the writ petitions filed by the Management, it has been specifically pleaded that at the time of retirement of the employees, the retiral benefit only to the extent of gratuity was withheld pending departmental inquiries/court cases against them in terms of the charge sheet. This plea has gone un-rebutted as no individual written statement or contrary information has been filed by the retired-employees.

15. There is some conflict with regard to date of issuance of charge sheet as in some cases, the number of charge sheets is more than one and in some of the cases, even charge sheets were dropped before the date of retirement and subsequently some charge sheets were issued after the date of retirement of the respondent-employees. Accordingly,

...

direction is being issued to the Managing Director, Punjab State Civil Supplies Corporation Ltd. to pass a speaking order after taking into consideration the date of issuance of charge sheet, date of retirement of the employees concerned, pecuniary loss caused to the petitioner-Corporation, if any and the amount of gratuity payable to such employees. In case, it is found that the charge-sheet/disciplinary proceedings were initiated against a retired employee before the date of his retirement on account of allegations of causing pecuniary loss to the Corporation and same are still inconclusive, such retired employee would not be entitled to get amount of gratuity released till finalization of the disciplinary/recovery proceedings. However, in those cases, where the charge sheet/disciplinary proceedings have been initiated after the date of superannuation/retirement of the respondents/retirees or the charges are other than of causing pecuniary loss to the Corporation, the amount due towards gratuity would be released to them in terms of the provisions of the Gratuity Act.

16. With these observations, the writ petitions stand disposed of. Let the whole exercise be completed within a period of three months from the date of receipt of this order, failing which the retirees/claimants would be entitled to additional interest @ 6% per annum for the delayed period.

(SHEKHER DHAWAN)
JUDGE

August 30, 2018.

som

Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes