IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-9943-2016
Date of decision: - 14.12.2018

Kanwar Singh

....Petitioner

Versus

Haryana State Minor Irrigation & Tubewells Corporation Limited and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Raj Kaushik, Advocate, for the petitioner.

Mr. Pritam Saini, Advocate, for the respondents.

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HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the challenge by the petitioner is to the order dated 20.03.2015 by which the respondents gave the calculations for the retiral amount for which the petitioner was entitled for.

The brief matrix of the case is that the petitioner was working with the Haryana State Minor Irrigation & Tubewells Corporation Limited. Due to certain reasons, the State of Haryana decided to close the Corporation w.e.f. 30.06.2002 and then started the procedure of making the payment of dues to the employees, who were working on the said day with the Corporation. After the closure of the Corporation, the employees were entitled for the gratuity as well as leave encashment. After the closure, public notices were issued by the Corporation that 'No Dues Certificate' should be submitted by the employees to the respective Officers under whom they were working so that the payment of leave encashment, gratuity and provident fund or the other dues for which they were entitled for, could be released.

After completing the due formalities, the benefits for which the employees were entitled for were computed as per the provisions of Haryana Civil Services Rules and the payments were made to the employees.

Not satisfied with the amount of gratuity paid by the respondents by computing such under the Haryana Civil Services Rules, petitioner approached the Controlling Authority under the Payment of Gratuity Act, 1972 (in short 'the Act of 1972') for calculating the amount of gratuity, which he would have been entitled under the Act of 1972. The Controlling Authority after hearing the parties, directed that the petitioner be paid the gratuity as asked by them under the Act of 1972.

After the said direction was given by the Controlling Authority under the Act of 1972, the respondents decided that the employees have either to choose the Act for payment of the dues for which they were entitled for after the Corporation was closed on 30.06.2002 or the provisions of Haryana Civil Services Rules. They cannot have the benefit of Haryana Civil Services Rules as well as the provisions of the Act of 1972.

After that the orders were passed by the Controlling Authority under the Act of 1972. The respondents calculated the entitlement of each employee by passing separate order(s). The employees had already been paid the leave encashment for 300 days as per their entitlement under the Haryana Civil Services Rules but after the employees approached the Controlling Authority under the Act of 1972, the respondents found that under the Act of 1972, they were only entitled for 30 days leave encashment instead of 300 days, which had already been paid to them. After doing the calculations, the order was passed for paying the difference of amount which the petitioner was found entitled under the Act of 1972, which order has been impugned by the petitioner in the present writ petition.

During the course of hearing today, learned counsel for the petitioner states that petitioner will not press the respondents for implementation of order passed in his favour by the Controlling Authority under the Act of 1972 and the petitioner will be satisfied in case his emoluments are calculated as per the provisions of Haryana Civil Services Rules and Service Bye-laws 1980.

Keeping in view the said statement which has been made on behalf of the petitioner, learned counsel for the respondents states that the respondents have already calculated and paid all the dues for which the employees were entitled for under the Haryana Civil Services Rules read with 1980 Rules and no further payment is left to be paid as per their entitlement.

Learned counsel for the petitioner states that the payments, which were calculated by the respondents under the provisions of Haryana Civil Services Rules, were incorrect as a portion of DA was not included by the respondents while calculating the payment after the Corporation close down in the year 2002. Learned counsel for the petitioner states that the petitioner be given liberty to raise this plea before the respondents to claim the amount for which he is entitled for and he be permitted to file a representation in this regard with the respondents within a period of four weeks from today.

Learned counsel for the respondents has no objection to the proposal given by learned counsel for the petitioner and agrees that in case any representation is filed by the employees/petitioner claiming higher amount on any account, the same will be considered by the authorities with open mind and appropriate orders will be passed on the same.

The present writ petition is disposed of with directions to the respondents that in case petitioner files any representation within a period of four weeks from today, the respondents shall pass a speaking order deciding the same within a period of next three months. In case after the passing of the order, the petitioner is found entitled for any monetary benefits, the same shall also be released to the petitioner within a period of next two months.

The writ petition stands disposed of in the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

December 14, 2018
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Whether reasoned/speaking? Yes
Whether reportable? No