

In the High Court of Punjab and Haryana at Chandigarh

CWP No.548 of 2017

Date of decision: November 27, 2018

Saligram Bhatti and others

..... Petitioners

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gagan Inder Singh, Advocate for the petitioners.
Ms. Anju Arora, Additional Advocate General, Punjab.
Mr. Dilraj Singh, Advocate for
Ms. Preeti Singh, Advocate
for respondent No.2.

HARSIMRAN SINGH SETHI, J. (ORAL)

The present writ petition has been filed by the petitioners seeking higher rate of gratuity in view of the decision of the Punjab State Cooperative Supply & Marketing Federation Limited (for short as the "Markfed") dated 19.10.2011 vide which the gratuity amount was enhanced from ₹3.5 lacs to ₹10 lacs w.e.f. 01.01.2006.

The petitioners who were serving with respondents on various posts retired starting from the year 2006 onwards. Petitioner Nos.1 to 4 retired in the year 2009 whereas petitioner No.5 retired in October, 2006 and whatever the amount of gratuity they were

entitled for was paid to them.

It has been contended by the petitioner that the Markfed passed a resolution amending the provisions of the Markfed Common Cadre Rules, 1990. As per the amended Rules, the employees were entitled for the retirement-cum-death gratuity as per the instructions enforced, amended from time to time, which are applicable to the Punjab Government Employees. As per the instructions issued by the Government of Punjab dated 17.08.2009, the gratuity has already been enhanced from ₹3.5 lacs to ₹10 lacs w.e.f. 01.01.2006 and, therefore, the claim was made by the petitioners that as they had retired after 01.01.2006 and Rule 4.6 of Markfed Common Cadre Rules has already been amended by adopting the circular issued by the State of Punjab dated 17.08.2009, they are entitled for a higher gratuity as per the amended provisions, which came into being w.e.f. 01.01.2006.

In the writ petition, the petitioner has also placed reliance upon order passed by this Court in CWP No.15363 of 2011 decided on 31.10.2014 titled as **Nathu Ram and others Vs. State of Punjab and others**. In the said case also, those who retired between 01.01.2006 till 31.07.2009 were asking for the higher gratuity in view of the amended provisions of Rule 4.6 of Markfed Common Cadre Rules, 1990. The denial of the higher emoluments was only on the ground that amendments were carried out in the year 2011 and all the petitioners therein (CWP No.15363 of 2011) retired prior to the date of amendment and hence as the amendment was perspective in

nature, the petitioners therein were not entitled for higher amount of gratuity.

This Court considered the case in detail including the amendment which was carried out by the respondents to the Rule 4.6 of the Markfed Common Cadre Rules, 1990. After reproducing the letter dated 19.10.2011, this Court held that even though the decision was applicable w.e.f. 13.09.2011 but the conscious decision was taken by the Markfed that the same will be applicable w.e.f. 01.01.2006 and all the employees to whom the common cadre Rules applied, they were held entitled for the higher rate of retirement-cum-death gratuity. The relevant paragraph of the order dated 31.10.2014 is as under:

“Thus, even though the decision was applicable w.e.f. 13.09.2011 i.e. the amended provisions came into effect from that date, upon approval by the Registrar, yet, by a conscious decision taken, the enhancement in the amount of gratuity payable, upon the retirement of an employee, was made applicable from 01.01.2016, for employees of MARKFED, to whom the Common Cadre Rules apply.

Hence, it is obvious that once the Common Cadre Rules have been held by this Court to be applicable to the petitioners, the letters of the Punjab Government, Annexures P1 to P3 would also apply to them, in terms of MARKFEDs' own letter dated 19.10.2011, issued by respondent No.2.”

During the course of arguments, it has been admitted by the counsel for the respondents that the petitioners are also similarly situated as the petitioners in CWP No.15363 of 2011. Rather than

granting the benefit to them under the judgments, Markfed has again taken the same objection, which did not find favour with the coordinate bench of this Court while deciding CWP No.15363 of 2011.

Once the petitioners are similarly situated, it is natural corollary that they will also be entitled for the same relief as held by this Court while deciding CWP No.15363 of 2011. Similarly situated employees cannot be discriminated. The Markfed should have extended the relief to the petitioners themselves as the CWP No.15363 of 2011 had already been decided in October, 2004. Further it has been admitted that the decision in CWP No.15363 of 2011 already stands implemented qua the petitioners therein. Hence, there was no justifying reason with the respondents to discriminate and deny the said relief to the petitioners, who are similarly situated.

In view of the above, the present writ petition is allowed and a direction is given to the respondents to pay the petitioners enhanced amount of gratuity along with interest @ 6% per annum. The interest will be calculated from January, 2017 onwards when the petitioners approached this Court till the payment is made. No order as to costs.

(HARSIMRAN SINGH SETHI)
JUDGE

November 27, 2018

jt

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