

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

CWP No. 6446 of 2018 (O&M)

Date of Decision: 17.10.2018

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

Vs.

Appellate Authority and others
...Respondents

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

Present: Mr. Naresh Gopal Sharma, Advocate
for the petitioners.

RAJIV NARAIN RAINA, J. (Oral)

1. PUNSUP has approached this Court challenging the order of the Appellate Authority under Payment of Gratuity Act, 1972 dated 25.10.2017 awarding gratuity to the tune of Rs. 6,98, 030/- along with interest @ 9% per annum to the respondent ex-employee from the date of filing the application till the date of realization of whole amount.

2. Briefly the facts are as follows. The petitioner had been issued charge-sheets in the years 2003, 2004 and 2011. The enquiries could not be completed for reasons best known to PUNSUP but no fault has been attributed to the employee for delaying the departmental proceedings. The petitioner was allowed to retire from service on attaining the age of superannuation on 28.02.2015. Not only was he allowed to retire in the face of charge-sheets but was also given extension of two years after completion of 58 years of age which is

clear from the retirement order Ex. AW/1.

3. The controversy falling for consideration before the Controlling Authority was whether gratuity payable to the petitioner under the Act could be withheld or forfeited on account of pendency of departmental proceedings. The authority noticed the provisions of Section 4(6) of the Act which prescribes that gratuity payable to an employee may be wholly or partially forfeited only if the employee has been terminated for an act, willful omission or negligence causing any damage, loss or destruction to the property belonging to the employer. The present case is not about termination from service. He had been allowed to retire and was given two years extension which is an affirmation of good work and conduct otherwise the extension might have been denied. To reach the conclusion the Controlling Authority relied on the judgment of Supreme Court in Jaswant Singh Gill Vs. M/s Bharat Coking Coal Limited and others 2007 (1) RSJ 497 in which it is held that during the pendency of disciplinary proceedings gratuity cannot be withheld or forfeited. Forfeiture of gratuity amount can be effected only for the prescribed eventualities provided under Section 4(6) of the Act. The applicant-employee had rendered 38 years of service with the petitioner management from 14.02.1977 to 28.02.2015. His last drawn wages were Rs. 31, 840/- per month. The authority applied the formula for calculation of gratuity and awarded the sum of money due and payable. In reaching this conclusion I do not find any

legal infirmity in the order passed by the Controlling Authority/Assistant Labour Commissioner, Moga or the order of the Appellate Authority/Additional Labour Commissioner, Punjab Chandigarh dated 25.10.2017 confirming the order in appeal preferred by PUNSUP.

4. The plea of the management to resist payment of gratuity before the controlling authority that since loss caused by the workman was to be recovered and, therefore, his gratuity was liable to be withheld was not an acceptable contention as recorded by the Appellate Authority in its order. I have no reason to disagree with the finding.

5. For what has been said before, this petition is devoid of merit and is dismissed as the impugned order do not suffers from any error apparent on the face of record. The amount of gratuity as awarded by the authorities is the statutory right of the respondent employee due from the date of retirement and expiry of the period of extension and the same be disbursed to the respondent within two months from the date of receipt of certified copy of the order. Compliance report be placed on the record of this case.

6. With the directions and observations made above, the petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

17.10.2018

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