IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-10331-2016
Date of decision: - 25.01.2019

Satpal Singh and others

....Petitioners

Versus

P.R.T.C. Patiala and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Ms. Sukhmani T. Patwalia, Advocate
for Mr. Vikas Singh, Advocate
for the petitioners.

Mr. Anupam Singla, Advocate
for the respondents.

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HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the claim which has been made is for the grant of gratuity at the higher rate i.e. ₹10 lakhs in view of the fact that the similar situated personnel, who had approached this Court for the grant of the same relief, has been paid the gratuity upto ₹10 lakhs as enhanced by the Government of India under the Payments of Gratuity Act, 1972.

The facts as pleaded in the present writ petition are that the petitioners retired from the service of the Pepsu Road Transport Corporation starting from the year 2006 onwards. Petitioner No.1 retired as Senior Assistant on 31.12.2007; petitioner No.2 retired as Junior

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Assistant on 28.02.2006; petitioner No.3 retired as Inspector 31.12.2008 and petitioner No.4 retired as Inspector on 30.04.2010.

As per the averments made in the writ petition, the pensionary benefits of the petitioners are not released till today. Even the arrears on account of revision of pay-scales w.e.f. 01.01.2006 are yet to be paid to them. Further, in paragraph 3 of the writ petition, it has been mentioned that maximum ceiling for the payment of gratuity was enhanced from ₹3.5 Lakhs to ₹10 Lakhs w.e.f. 01.01.2006. The claim made by the petitioners is that as the petitioners have retired after 01.01.2006, they are entitled for the payment of gratuity by treating the maximum ceiling as ₹10 lakhs.

In respect of claim of gratuity at a higher ceiling upto ₹10 lakhs, the reliance has been placed by the petitioners on the proceedings undertaken by the similarly situated personnel before this Court. A bunch of writ petitions were filed by the employees wherein the claim was made for the release of their pensionary benefits, which were not being paid by the respondents' Corporation. While disposing of their claim for the grant of retiral benefits, this Court passed various directions for the release of the pensionary benefits as per the entitlement of the employees. The CWP No.19084 of 2009 and other connected cases were decided by the said order dated 03.03.2011.

As the directions given by this Court, vide order dated 03.03.2011, were not complied with, a number of contempt petitions were filed before this Court. All those contempt petitions were disposed of by this Court, vide order dated 30.05.2012 and the relevant directions given

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by this Court while disposing of the contempt petitions are as under: -

> "[17] Keeping in view the totality of circumstances and in the best interest of the petitioners as also to give little more space to the Corporation to recover its dues and discharge the liabilities, these contempt proceedings are hereby disposed of with the following clarificatory directions:-
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> i) The respondents shall be duty bound to release the due amount of gratuity, leave encashment, revised pension, arrears of revised pay, revised gratuity, revised leave encashment and medical reimbursement to every retiree who retired upto 29.2.2012, before 30.6.2012. The General Manager of each depot of the Corporation shall be required to send a No Claim Certificate before the above-stated date to the Head Office of the Corporation certifying that all the retirees in his depot have been paid the above-stated benefits;
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> ii) If the General Manger of a depot is unable to release the retiral dues to the above-mentioned retirees due to paucity of funds, he shall demand additional funds from the Corporation before 11.6.2012, which shall be made available before 22.6.2012 and shall then be disbursed to the retirees before 30.6.2012. Any lapse in this regard shall make the officer(s) personally responsible for 'interest' on delayed payments;
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> iii) Those who have retired between 1.3.2012 to 31.5.2012 shall be paid the above-stated retiral benefits within a period of three months from the respective date of their retirement, i.e., each one of them before 31.8.2012 and if so required, the General Manager of the Depot or Head Office shall act upon in the same time bound manner as directed at Sr.No.(ii) above;
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> iv) Those retirees who have opted for contributory provident fund instead of pension are also admittedly entitled to gratuity at the enhanced rate at par with those who have

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opted for pension scheme. The enhanced amount of gratuity shall be paid to them before 31.7.2012 (if retired upto 29.2.2012) and upto 30.9.2012 (if retired after 29.2.2012 and upto 31.5.2012);

v) A Grievance Cell shall be established in the Head Office within a week nominating three senior officers of the Corporation whose mobile numbers shall be made available to all the retirees to enable them to directly contact the officers between 9.00 a.m. to 5.00 p.m. and lodge complaint against non-payment of the retiral benefits within the time fixed above;

vi) If an individual claim of a retiree has not been settled so far, liberty is granted to him to submit a representation to the Managing Director of the Corporation and the same shall be disposed of by passing a speaking order within a period of three months from the date of its receipt in the Head Office;

vii) Since retirement of employees is an ongoing process and the respondent-authorities are equally obligated to release the retiral benefits of subsequent retirees also, it is directed that a time bound scheme for the release of retiral dues (other than the commuted value of pension, overtime allowance and LTC) shall be notified and circulated amongst the employees retiring till 31.12.2012 so that they do not rush to the Courts for the release of their due benefits as the cost of litigation itself is a wholly unwarranted burden on the employees as well as the Corporation. The Authorities shall ensure that time bound schedule so notified is strictly adhered to by them;

viii) The aforesaid direction No.(vii) shall not be construed to mean as if the petitioners or other retirees are not entitled to commuted value of pension, overtime allowance, LTC or interest on the delayed payments. Realization of these claims is merely suspended and/or kept in abeyance for the time being till the Corporation re-gains financial viability;

ix) Some of the retirees/employees are aggrieved by the deductions made from their retiral benefits or otherwise on

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account of re-fixation of their pay etc. It could not be seriously disputed that the service benefits withdrawn from the retirees/employees were not secured by them through fraudulent means or by mis-representing the facts. That being so, the recovered/with-held amount shall be released before 30.9.2012, following the dictum of the Full Bench of this Court in **Budh Ram and others versus State of Haryana and others, 2009 (3) S.C.T.333.**

x) The Corporation, as per its assurance given today, shall release an additional sum of Rs.2.35 crores to be disbursed to the operators of Kilometer Scheme Buses by 15.6.2012. The Corporation shall thereafter augment its resources to write off the claims pending till 31.3.2012, before 31.8.2012;

xi) It was informed during the course of hearing that about Rs.12.00 crores are still re-imburseable by various Government Departments to the Corporation each quarter. The obligation of the Chief Secretary to the Government of Punjab, therefore, is not over only on convening the meeting dated 27.3.2012. He shall again impress upon the departments in arrears to release their respective due amounts within one month of their falling due each quarter so that the Corporation is able to meet its obligation in a regular manner, from time to time.

[18] With the above-mentioned directions and observations, the contempt petitions stand disposed of."

A bare perusal of the above directions would show that as per direction No.17(iv), the employees were held entitled for gratuity at the enhanced rate at par with those who have opted for pension scheme. As the respondents' Corporation did not implement the directions given by this Court while disposing of the contempt petitions on 30.05.2012, another contempt petition being COCP No.1859 of 2015 was filed against

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the respondents-Corporation for violating the orders including the directions given by this Court while disposing of the earlier contempt petition on 30.05.2012.

In reply to stand contempt petition, the respondents' Corporation filed the reply that as the amendment to the Payments of Gratuity Act, 1972 was effected by the Government of India only on 24.05.2010, only the employees retiring after the said date can claim the maximum ceiling of ₹10 lakhs in gratuity under the Payments of Gratuity Act, 1972.

As the Contempt Court directed to implement the direction already given, the respondents/Corporation, filed a CM No.20961-CII-2018 in COCP No.739 of 2012 for seeking the clarification of the directions given by this Court on 30.05.2012. This Court passed the following order while deciding the said application and held that there is no ambiguity in the observations made in para 17(iv) of the order dated 30.05.2012 which required any clarification/modification. The relevant order is as under: -

> "There is no ambiguity in the observations made in para 17 (iv) of the order dated 30.05.2012, which may require further clarification/ modification."

Not satisfied with this, the respondents/Corporation filed a Special Leave Petition before the Hon'ble Supreme Court challenging the directions given by this Court while deciding the contempt petitions on 30.05.2012 as well as order by which the application for the modification of the direction was dismissed. The SLP No.31096 of 2018 was also

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dismissed by the Hon'ble Supreme Court Court on 07.12.2018.

Counsel for the petitioner contends that after the matter was finalized, the payment of gratuity has already been made to the petitioners of the contempt petitions, who had approached this Court and similarly situated as the petitioners herein, at a higher ceiling of ₹10 lakhs in compliance of the directions given by this Court while deciding the contempt petitions on 30.05.2012. On the basis of this, a prayer has been made that the petitioners are also entitled for the said benefit as has been extended to the similarly situated employees.

Counsel for the respondents does not dispute the above-mentioned factual position narrated before. It has been admitted that only the petitioners, who had approached this Court, seeking the relief and in whose cases/contempt petitions, the directions were passed by this Court on 30.05.2012, have only been released the benefit and not to all the employees as being claimed by the petitioners. It has been admitted that there is no difference of status between the petitioners herein and the employees to whom the benefit, as being claimed by the petitioners herein, has been released. However, again the same plea has been raised by the counsel for the respondents that as the amendment in the payment of the Payments of Gratuity Act, 1972 was carried out only on 24.05.2010, the petitioners are not entitled for the gratuity at the higher ceiling of ₹10 lakhs as they had retired prior to the said date.

I have heard counsel for the parties and gone through the record with their able assistance.

Once, the factual narration made hereinbefore is not disputed

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by the counsel for the respondents that the similarly situated employees, who had approached this Court for the grant of the same relief, have already been given the gratuity at the higher ceiling upto ₹10 lakhs, how can the same benefit be denied to the present petitioners. Similarly situated personnel cannot be discriminated by a public authority for the grant of benefit.

It is a settled principle of law settled by the Division Bench of this Court in case '**Satbir Singh Vs. State of Haryana, 2002(2) S.C.T. 354,** wherein a Division Bench of this Court has held that when the judgment attains finality, duty is casted upon the State to grant relief to all the similarly situated employees. It is not necessary for the State to require each one of its employees to approach the Courts of law for the grant of a relief which the State ought to grant the employees in normal course of its administration. The relevant portion of the said judgment is as under: -

> "When judgments attain finality to which the State is a party, duty is casted upon the State to grant relief to its employees who are similarly situated and on identical facts. Benefit of such approach are many and it causes no disadvantage to the interests of the State. It is not necessary for the State to require each one of its employees to approach the Courts of law for grant of a relief which the State ought to grant to the employees in normal course of its administration, particularly, the cases of the kind afore-referred. Such principles is well known and accepted for years now. By referring to few judgments we would only predicate the principle with greater emphasis of its application in the day-to-day affairs of the State. In the case of **Dr. (Mrs.) Santosh Kumari v. Union of India and others, JT 1994 (7) SC 565 : 1995(1) SCT 527 (SC)** the Hon'ble Apex Court held as under : -

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> "The allotment of seats should go according to merit. It does not depend upon who comes to Court and who does not. The matter is one of principle and should not depend upon who comes to the court. A more deserving candidate may not have the means of approach the Court."

After the said judgment of the Division Bench, even the instructions have been issued by the Government of Punjab on 15.07.2002, according to which, it has already been mentioned that everyone should not be forced to run to the Court to seek the similar relief and once an order has become final, the relief should be extended to all the similarly situated persons.

Once, there is no denial by the respondents that the similarly situated personnel, who had approached this Court, has already been extended the benefit, this Court is of the view that the same cannot be denied to the petitioners as well. If the benefit is denied to the petitioners, then there is a likelihood that an anomaly will be created as a person who has retired in the year 2010, will be getting the gratuity at the maximum ceiling of ₹3.5 lakhs, whereas, the benefit of amendment of the maximum ceiling of gratuity of ₹10 lakhs has been allowed to an employee, who has retired in the year 2006 or 2007, as the case may be. In order to maintain the parity, the respondents are under obligation to grant the benefit of gratuity at a maximum ceiling upto ₹10 lakhs to the petitioners also.

Further, counsel for the petitioners states that in the writ petition, the petitioners have also claimed the interest on the delayed release of the retiral benefits and the same was also allowed by this Court

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while deciding the writ petition on 23.07.2016.

A bare perusal of the order dated 23.07.2016 would show that this Court had granted the interest @ 9% per annum starting after three months from the date of retirement of the petitioners till the actual payment is made. The relevant part of the said order is under:-

> "In view of the matter, all the above noted petitions are allowed directing the respondent to release the pensionary benefits to the petitioners as early as possible but not later than 6 months. Further, the delayed payment shall carry 9% per annum interest which shall start running after three months from the date of retirement of the petitioners till the payment is actually made."

This Court while allowing the application for recalling the said order, only recalled the order dated 23.07.2016 to the extent of the entitlement of the gratuity of the petitioners and the other part of order remained intact. The relevant part of order dated 07.11.2017 is as under: -

> "In view of the above, the present application is allowed. As such, the judgment and order dated 23.07.2016 passed by this Court in CWP No. 10331 of 2016 is recalled only to the extent for deciding the question of entitlement of gratuity of the petitioners.
>
> List CWP No. 10331 of 2016 as per roster."

Therefore, in respect of the grant of interest, the order dated 23.07.2016 is intact and still in operation. It is only the enhanced gratuity, which is being decided again by this Court's order. As the decision is rendered today, the petitioners will not entitled for interest on the enhanced gratuity.

In view of the above, the present writ petition is allowed.

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Let the gratuity for which the petitioners are entitled for be recalculated in terms of amendment that an employee is entitled for the gratuity at the maximum limit of ₹10 lakhs. The calculation of the amount for which the petitioners became entitled for be done within a period of three months from the date of receipt of certified copy of this order and whatever the amount the petitioners became entitled, the same shall be released to them within a period of one month thereafter.

Now, counsel for the respondents apprehend that the grant of the relief to the petitioner will open the flood gate.

In case, any employee approaches now, the Corporation is within its jurisdiction to raise all objections as available to them, including delay in approaching this Court, which will be dealt by the Court as and when need arises.

(HARSIMRAN SINGH SETHI)
JUDGE

January 25, 2019
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Whether reasoned/speaking? Yes
Whether reportable? Yes

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