

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 13.02.2019****CWP No.20648 of 2012**

Philadelphia Mission Hospital

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Hemant Bassi, Advocate, for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. R.P.S.Ahluwalia, Advocate, for respondent No.4.

RAJIV NARAIN RAINA, J. (ORAL)

There is a serious dispute, whether the period of service for which gratuity is payable is 23 years or 27 years.

The case has a chequered history starting from 19.06.1996, when the services of respondent No.4/workman were terminated. He had served from 15.09.1978 to 19.06.1996 i.e. about 18 years. The legality of the termination order was the lis, which was determined by the Labour Court in proceedings under Section 10(1)(c) of the Industrial Disputes Act, 1947 (for short 'the Act'). The termination order was set aside. The workman was ordered to be reinstated with continuity of service and full back wages. The petitioner's challenge to the award failed before the Division Bench and that award has attained finality. Thereafter, in proceedings under Section 33-C(2) of the Act to determine the amount due under the award, an order was made in favour of the workman, but restricting the amount due and

payable till 31.12.2001 for the reason that the Labour Court found on evidence that the workman had worked w.e.f. 2002 in some other establishment. The workman's challenge to the order passed in proceedings under Section 33-C(2) was unsuccessful.

It is stated that in proceedings under Section 33-C(2) of the Act, the management paid amount in respect of back wages as well as gratuity. Thereafter, the workman approached the Authority under the Payment of Gratuity Act, 1972. By the impugned order dated 30.11.2010, the claim has been allowed and the Authority has taken into consideration 27 years of service to calculate gratuity instead of 23 years. The management's appeal to the Appellate Authority failed with pronouncement of order dated 18.11.2011 against which the present writ petition has been filed.

Having heard Mr. Hemant Bassi and Mr. Ahluwalia at considerable length, I do not find any cogent reason given by the authority under the Payment of Gratuity Act expanding the period to 27 years without taking stock of the previous litigation and the entire factual background while returning findings of fact by the Labour Court in proceedings under Section 33-C(2) of the ID Act and the limitations contained in those proceedings which are in the nature of execution of exiting rights. This exercise should have been done by the Authorities below. Apart from this, the amounts paid by the management as arrears of back wages, gratuity, provident fund etc. will be re-examined by the Appellate Authority and a fresh order passed in accordance with law dealing with all the issues involved in this case, which are mostly factual and based on orders and directions of Courts/Authorities.

As a result, the petition is partially allowed and the case is remitted to the Appellate Authority to pass a fresh order in accordance with law after returning findings on all the pleas raised by both the sides. In the wake of this order, the impugned order is set aside.

Parties are directed to appear before the Appellate Authority under the Payment of Gratuity Act, 1972 on 06.03.2019.

13.02.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>