

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 15.01.2019****CWP No.13734 of 2018 (O&M)**

The Punjab State Civil Supplies Corporation Ltd. (PUNSUP) & another

...Petitioners

Vs.

Sarabjit Kumar & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINAPresent: Mr. Anil Kumar Sharma, Advocate,
for the petitioners.**RAJIV NARAIN RAINA, J. (ORAL)****CM No.347 of 2019**

Application is allowed. Typed copy of Annexure P-2 is taken on record. The writ petition is ordered to be taken up for hearing today itself for disposal.

CWP No.13734 of 2018

The claim of respondent No.1 for gratuity has been allowed by the Controlling Authority and thereafter by the Appellate Authority under the Payment of Gratuity Act, 1972.

Respondent No.1 retired from service of Punjab State Civil Corporation Limited (PUNSUP) on 31.03.2013. However, by order dated 12.06.2015, he was dismissed from service by converting orders of retirement into order of dismissal citing Rule 5(ix) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. It is argued that even as per

Section 4(6)(b) of the Payment of Gratuity Act, 1972, gratuity can be forfeited if the services have not been terminated and person has retired. A reading of Section 4 shows to the contrary, as it provides for gratuity payable to an employee on termination of his employment in case he renders more than 5 years of service. Gratuity is also payable to person in any of the eventualities mentioned in Section 4 of the Act i.e. (a) on his superannuation, or; (b) on his retirement or resignation, or; & (c) on his death or disablement due to accident or disease. These are three modes of cessation of service. It is contended by Mr. Sharma that the fact of dismissal could not be brought to the notice of the Controlling Authority or the Appellate Tribunal and this has resulted in a miscarriage of justice.

I have heard counsel appearing for PUNSUP and have also been taken to the charge-sheets and related papers, but on asking him, I found that in all of them what is attributed is financial loss resulting from variation of the weight of wheat/food-grains due to long exposure to weather, moisture or loss of it and the natural elements. There is no charge of theft or embezzlement.

However none of these enquiries were concluded before the employee was peacefully allowed to retire on reaching the age of superannuation. Accordingly, gratuity; which is a statutory right cannot be arbitrarily withheld on a notion of loss as in this case. Thus, I find no error apparent on the face of record in the proceedings before the two authorities, which may justify interference in a proceeding under Article 226 of the Constitution.

Consequently, the present petition is found devoid of merit and is hereby dismissed. The orders are affirmed. Amounts pending payment be released without delay.

15.01.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

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