

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

CWP No. 17873 of 2018

Date of Decision: 09.01.2019

Deputy Director Sainik Welfare Punjab

...Petitioners

Vs.

State of Punjab & Others

...Respondents

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

Present: Mr. Harsh Chopra, Advocate for the petitioner.

RAJIV NARAIN RAINA, J. (Oral)

1. The 4th respondent served the petitioning Sainik Welfare Board, Punjab from 01.03.1991 onwards with notional breaks on contract basis. He was ultimately appointed as an Education Instructor. He rendered 21 years of service with the Board till he resigned from his post on 01.06.2012. It is not disputed fact that on completion of one year service tenure, he was offered fresh contract on year to year basis which were renewed and the breaks in service between any two spells were no more than 02-03 days, as is recorded in the order of the Appellate Authority passed under the Payment of Gratuity Act, 1972. Before he came to the service of the Board, the 4th respondent had retired from the Indian Army as a Subedar Major in the rank of Honorary Captain. He received his army pension and gratuity from the Government of India but that was before 1991.

2. Learned counsel for the Board argues that in terms of Section 4 of the Act, the 4th respondent had not rendered continuous

service of not less than 05 years since there were breaks in service. However, those breaks are notional, since they were caused by the employer and for no fault of the employee as every time he was taken back/retained in service albeit on contract basis. Explanation (2) to Section 4 of the Act provides the rate of payment of gratuity which for every completed year of service of part thereof in excess of six months, the employer shall be liable to pay gratuity to an employee at the rate of fifteen days' wages for every year of service based on the rate of wages last drawn by the employee concerned. Both the Controlling and Appellate authorities have accepted the application filed under Section 10(1) of the Act and held the 4th respondent entitled to gratuity having rendered 21 years continuous service.

3. On the plea of the Management that since the respondent had availed the benefit of gratuity as a retired defence personnel and that would disentitle him from the benefit under the Act, it is observed by the Appellate Authority in the impugned order that he will be entitled to gratuity from the Board as he was not claiming gratuity for the period he remained in the Army. I find no error or fundamental flaw in the order of the Appellate Authority warranting interference and would dismiss the petition.

(RAJIV NARAIN RAINA)
JUDGE

09.01.2019

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