

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

(201)

CWP-19439-2018

Date of Decision: April 02, 2019

Satinder Pal Singh Walia and anr

.. Petitioners

Versus

State of Punjab and another

.. Respondents

(202)

CWP-19776-2018

Mangat Singh

.. Petitioner

Versus

State of Punjab and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. V.K. Sandhir, Advocate, for the petitioners.

Mr. Mehardeep Singh, Addl. A.G., Punjab.

Mr. Ashwani Prashar, Advocate, for respondent No.2.

HARSIMRAN SINGH SETHI, J.(ORAL)

By this order, two writ petitions bearing CWP No.19439 of 2018 and CWP No.19776 of 2018, are being decided keeping in view the fact that both the writ petitions involve the same question of law and similar facts. For the purpose of the present order, the facts mentioned in CWP No.19439 of 2018 are being taken:-

As per the facts mentioned in the writ petition, the petitioners were working with the Municipal Corporation, Amritsar on the post of Inspector and Junior Engineer. The petitioners retired from service on attaining the age of superannuation in the year 2009. Petitioners by placing reliance upon a decision of this Court in CWP No.6905 of 2006 titled as

Krishan Lal Aggarwal and others Vs. State of Punjab and others, filed a writ petition being CWP No.7001 of 2017 claiming that the employees of the Municipal Corporation are entitled for the grant of gratuity by computing the same under the provisions of the Payment of Gratuity Act, 1972 and therefore, the payment of gratuity to them should be calculated under the provisions of the Payment of Gratuity Act, 1972 and not under the provisions of the Punjab Civil Services Rules, under which their gratuity was calculated and paid.

The said writ petition bearing CWP No.7001 of 2017 was disposed of by this Court on 20.07.2017 by passing following order:-

“By virtue of instant petition preferred under Article 226/227 of the Constitution of India, petitioners have sought issuance of a writ especially in the nature of mandamus directing the respondents to release pension benefit i.e. revised gratuity to the petitioners as per the provisions of the Payment of Gratuity Act, 1972 and arrears of gratuity along with 18% interest from the due date till the date of actual payment in terms of the law laid down by this Court in the matters of CWP No.6905 of 2006 titled as Krishan Lal Aggarwal and others Vs. State of Punjab and others in terms of CWP No.15423 of 2008, in Municipal Council, Pathankot Vs. the Appellate Authority.

2. *At the very outset, learned counsel for the petitioners submits that petitioners feel satisfied in case a direction is issued to the official respondent(s) to decide legal notice dated 02.01.2017 (Annexure P-8) within a stipulated period.*

3. *Instant petition is disposed of with a direction to the official respondent(s) to look into the grievances unfolded by the petitioners in their legal notice dated*

02.01.2017 (Annexure P-8) and to decide the same in accordance with law particularly keeping in view the judgment passed in CWP No.15423 of 2008 decided on 22.09.2008 captioned as Municipal Council, Pathankot Vs. the Appellate Authority as well as CWP No.7098 of 2016 decided on 21.04.2016 captioned as Harbhajan Singh (Retd.) and others Vs. State of Punjab and others, within a period of three months from the date of receipt of certified copy of this order. ”

In pursuance to the direction given by this Court vide order dated 20.07.2017, the Commissioner, Municipal Corporation, Amritsar passed an order on 20.06.2018 accepting the claim of the petitioners to the effect that the Corporation is ready to pay the petitioners, the gratuity under the Payment of Gratuity Act, 1972. It is noted herein that there were 13 petitioners in CWP No.7001 of 2017 and while calculating the amount which an employee, would have got under the provisions of Payment of Gratuity Act, 1972, the amount was calculated and reproduced in the order itself. Out of the 13 petitioners, 10 petitioners got a higher amount calculated as a gratuity payable to them under the Payment of Gratuity Act, 1972. Three persons were not found entitled for the higher gratuity rather, the calculation went against them which empowered the Municipal Corporation to recover the amount as three persons were entitled for the less payment of gratuity under the Payment of Gratuity Act, 1972. Two out of the three employees namely Satinder Pal Singh Walia and Vijay Kumar Arora have filed the present writ petition being CWP No.19439 of 2018 whereas the third employee namely Mangat Singh has filed CWP No.19776 of 2018, which are being disposed of by the present common order.

In the writ petition, the challenge is to the recovery, which is being made from the petitioners on the ground that under the Payment of Gratuity Act, 1972, they are entitled for a lesser amount as compared to what already have been paid to them after their retirement, which gratuity was calculated keeping in view the provisions of the Punjab Civil Services Rules, 1970 and therefore, once the petitioners themselves wanted the payment of gratuity under the Payment of Gratuity Act, 1972, they have to refund the excess amount which they have received from the Corporation.

Upon notice of motion, reply has been filed by the Corporation defending the action of recovery of the excess amount. Respondents, in their reply, have stated that it is only the petitioners, who had approached this Court for the grant of gratuity under the Payment of Gratuity Act, 1972 and keeping in view the directions given by this Court in CWP No.7001 of 2017, decided on 20.07.2017, the appropriate speaking order has been passed considering the claim as raised by them in their legal notice. Once, the excess payment has been made to the petitioners while considering the case of grant of gratuity under the Punjab Civil Services Rules, 1970, the same is liable to be recovered and no grievance can be made by the petitioners in this regard. The relevant averments made by the respondents in the reply are as under:-

“ 2. That order dated 20.6.2018 has been passed by the Municipal Corporation, Amritsar (in short the MC) in view of orders dated 20.07.2017 passed by this Hon'ble Court in CWP No.7001 of 2017, wherein the Hon'ble High Court directed to decide the legal notice dated 02.01.2017 in accordance with law keeping in view the judgments passed in CWP No.15423 of 2008 and CWP

No.7098 of 2016.

3. That after going through the legal notice dated 02.01.2017 and relevant official record, it revealed that petitioners No. 1 and 2 retired on 31.05.2009 and 31.10.2009 respectively. They were paid amount of gratuity as per CSR. Thus amount of Rs.4,49,097/- and Rs.4,55,350/- was paid as amount of gratuity to the petitioners No. 1 and 2 respectively.

4. That in the legal notice it was claimed that they should be paid gratuity as per provisions of Gratuity Act, 1972. Thus in view of directions issued by the Hon'ble High Court on 20.07.2017, legal notice dated 02.01.2017 was decided by the MC, wherein it was held that the maximum amount under Gratuity Act, 1972 payable to the petitioners is Rs.3,50,000/-. Thus it was concluded that the amount which has been paid in excess i.e. more than their entitlement under Gratuity Act, 1972, the same may be recovered.

5. That the legal notice has been decided strictly in accordance with the provisions of Gratuity Act, 1972, legal notice dated 02.01.2017 and directions issued by this Hon'ble Court. At the relevant time, the maximum ceiling for payment under Gratuity Act, was Rs.3.50 Lakh and admittedly petitioners were paid more than their entitlement as mentioned above. The MC did not initiate any action on its own rather it was on the insistence of the petitioners that they may be made payment as per Gratuity Act, 1972, which has resulted into recovery of excess amount from the petitioners. Thus the present petition is liable to be dismissed as the answering respondent has strictly complied with the directions of this Hon'ble Court.”

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

Learned counsel for the petitioners admits that the impugned order was passed at their asking. In fact, the petitioners had approached this Court claiming the calculation and payment of gratuity under the Payment of Gratuity Act, 1972, though the gratuity had already been paid by calculating the same under the provisions of Punjab Civil Services Rules, 1970. Now respondents found that the petitioners are entitled for less gratuity if the same is calculated under the provisions of Payment of Gratuity Act, 1972 and passed the orders for recovery of the excess amount paid to them.

Learned counsel for the petitioners states that the petitioners are ready to withdraw their legal notice and therefore, once the legal notice qua the petitioners, is withdrawn, the petitioners should be allowed to retain the amount of gratuity as calculated/paid under the Punjab Civil Services Rules, 1970.

Learned counsel for the respondents opposes the same.

Learned counsel for the respondents states that once there is an order passed by this Court directing the Corporation to decide the legal notice and once the legal notice has been decided, the same cannot be withdrawn by the petitioners at this belated stage. Recovery of the excess amount has been invited by the petitioners themselves.

Counsel for the respondents argues that before approaching the Court and praying for release of gratuity under the Payment of Gratuity Act, 1972, the petitioners should have calculated as to whether they will be getting more amount or there will be recovery from the gratuity already paid as they have been paid in excess.

Under the Payment of Gratuity Act, 1972, there is a provision being Section 4 (5) under which, an employee has a right to receive a better term of gratuity under any award or agreement or a contract with the employer, the relevant provisions is as under:-

“4. Payment of Gratuity.- (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-

(a) on his superannuation, or

(b) on his retirement or resignation,

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

1 xxx xxx xxx xxx

(2) xxx xxx xxx xxx

(3) xxx xxx xxx xxx

(4) xxx xxx xxx xxx

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer

Once, the petitioners were governed under the Punjab Civil Services Rules, 1970 after their appointment and the petitioners were also entitled for computation of their gratuity under the said Punjab Civil Services Rules, 1970, the petitioners will be entitled for the higher amount of gratuity, available to them.

In the present case, though the petitioners made request for computation of the payment of gratuity under the Payment of Gratuity Act,

1972, the respondents have to keep in mind the provisions of the Payment of Gratuity Act, 1972 reproduced hereinbefore. Therefore, once after the calculations, the respondents found that as per the computation of gratuity under the Payment of Gratuity Act, 1972 was not to the benefit of the petitioners, an option should have been given to them to withdraw their request before passing any order of recovery.

Keeping in view the above, once the petitioners have been paid the gratuity computed under the Punjab Civil Services Rules, 1970, which is beneficial to the petitioners, the respondents shall not recover the amount already paid to the petitioners keeping in view the provisions of Section 4 (5) of the Payment of Gratuity Act as the same is beneficial to them.

The present writ petitions are allowed and the respondents are restrained from recovering the excess amount of gratuity in pursuance to the order passed by the Commissioner dated 20.06.2018 (Annexure P-2).

April 02, 2019
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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