

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 28539 of 2018
Date of Decision : 24.01.2019

Dhani Ram and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Tapish Kumar Gupta, Advocate for the petitioners.

Harsimran Singh Sethi, J.(Oral)

In the present writ petition, the prayer which has been made by the petitioners is that the petitioners, who retired prior to 24.05.2010, should also be given the benefit of the amendment to the Payment of Gratuity Act, 1972 by which maximum ceiling of the gratuity was enhanced from 3.5 lacs to 10 lacs.

The petitioners are the employees of the Milk Fed and Milk Unions. They have retired from the service starting from the year 2007 onwards till 31.01.2010.

The prayer which has been made by the petitioners is that though they retired prior to the amendment carried out by the Government of India vide Act No. 15 of 2010 on 17.05.2010 enhancing the maximum ceiling under the Payment of Gratuity Act, 1972 from 3.5 lacs to 10 lacs, the same should be implemented retrospectively w.e.f. 01.01.2006 and the petitioners should be granted the said benefit. In this regard, the petitioners served a legal notice dated 20.11.2017 (Annexure P-11) and the said legal notice was decided by the respondents vide order dated 15.06.2018

(Annexure P-13) declining the claim of the petitioners, which order has been impugned by the petitioners in the present writ petition.

Learned counsel for the petitioners states that the petitioners are entitled for the grant of enhanced gratuity as per the Notification dated 17.08.2009 (Annexure P-2). Learned counsel for the petitioners states that as order dated 17.08.2009 (Annexure P-2) has been implemented w.e.f. 01.01.2006, the petitioners are entitled for the gratuity at the enhanced rate w.e.f. 01.01.2006.

The arguments of learned counsel for the petitioners is fallacious. Annexure P-2 is the Notification issued by the Government of Punjab by which the pay scales of the government employees were revised in the year 2009 w.e.f. 01.01.2006. The said Notification was issued in August, 2009 and does not talk of the grant of gratuity at a higher rate. This is for the reason that the amendment to the Payment of Gratuity Act, 1972 was done by the Government of India only on 17.05.2010, therefore, question of granting benefit of the enhanced gratuity to the employees vide Notification dated 17.08.2009 (Annexure P-2) is not at all possible.

Further, the petitioners are the employees of the Milk Fed and Milk Union, which are totally independent autonomous bodies. They are governed by their own Rules called 'The Cooperative Milk Producers Union Employees Service (Non-Common Cadre), Rules 1996'. Under Rule 19 of the said Rules, an employee is only entitled for gratuity as per the provisions of Payment of Gratuity Act, 1972. Relevant Rule 19 of the said Rules is as under :-

“19 GRATUITY:

Every employee of the Milk Union, irrespective of the post held and salary drawn by him shall be entitled to

the payment of gratuity as per the provisions contained in the Payment of Gratuity Act, 1972 and the rules framed there under, as may be in force from time to time. The calculations of gratuity shall be made on the basis of wages last drawn by him.”

On the day when the petitioners retired, the maximum ceiling for the payment of gratuity was 3.5 lacs, which has already been paid to the petitioners. The amendment to the Act was prospective and on the day when the amendment was done to the Payment of Gratuity Act, 1972 by the Government of India on 17.05.2010, the petitioners were not in service and there is no retrospective operation of the said amendment. It can be safely said that as per the amendment, only the employees, who retired after the amendment, are entitled for the benefit of the enhanced gratuity ceiling as amended by the Government of India vide Act No. 15 of 2010 on 17.05.2010.

Further, it has been admitted by the counsel for the petitioners that the said relief has not been extended to anyone, who retired prior to 17.05.2010 by the respondent-Corporation. Therefore, once all the employees of the Milk Fed and Milk Unions are being treated in the same manner and there is no discrimination in respect of implementing the Notification issued by the Government of India amending the Payment of Gratuity Act, 1972 with prospective effect only, no grievance can be made by the petitioners.

As the petitioners had already retired from the service much prior to the date of amendment and no similarly situated person has been extended the said benefit, no interference is called for by this Court in respect of the impugned order dated 15.06.2018 by which the claim of the

petitioners is rejected.

At this juncture, learned counsel for the petitioners states that the Milk Federation and Milk Union is the Government body for all intents and purposes as the same is being managed by a Managing Director, who is an IAS Officer. Counsel says that therefore, the Milk Federation should be treated as a Government Organization for all intents and purposes.

In this writ petition, there is no pleading as to why and how the said Milk Federation and Milk Union are to be treated as Government Organization. Merely an IAS Officer has been appointed to oversee affairs of an Autonomous Body on deputation, the same cannot be treated as a Government Organization for all intents and purposes. No fact has been brought to the notice of this Court, according to which it can be said that the Government has deep persuasive control on the Milk Fed and Milk Union as the case may be, so as to be treated as Government department and hence, in the absence of said material, no finding can be recorded, either for or against the said argument, which is primarily a factual assertion.

Learned counsel for the petitioners further states that the Markfed has granted the benefit of enhanced gratuity to its employees w.e.f. 01.01.2006. Counsel states that once Markfed has adopted the said amendment w.e.f. 01.01.2006, the same should automatically become applicable upon the other autonomous body as well namely Milk Fed and Milk Union.

Merely an autonomous body had passed a Resolution granting some benefits to its employees, the other autonomous body does not become bound to adopt the same irrespective of their functioning. Every autonomous body has right to decide its own pay structure and relief to its

employees. If the Markfed has granted the said benefit to its employee, it does not become a precedent for the other autonomous body to follow the same. No benefit can be granted to the petitioners, who retired from Milk Fed/Milk Unions on the basis of a benefit which has been extended by Markfed to its employees.

In view of the above, the present writ petition is dismissed with no order as to cost.

January 24, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? *Yes*
Whether reportable? *Yes*