IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6799 of 2017
DATE OF DECISION:01.05.2019

Ravi Chand

... Petitioner

Versus

The Punjab State Civil Supplies Corporation Limited and another

... Respondents

CWP No.6832 of 2017

Bhupinder Singh

... Petitioner

Versus

The Punjab State Civil Supplies Corporation Limited and another

... Respondents

CWP No.6817 of 2017

Roshan Lal Khanduja

... Petitioner

Versus

The Punjab State Civil Supplies Corporation Limited and another

... Respondents

CWP No.6814 of 2017

Teja Singh and others

... Petitioners

Versus

The Punjab State Civil Supplies Corporation Limited and another

... Respondents

CWP No.6833 of 2017

Hardev Singh

... Petitioner

Versus

The Punjab State Civil Supplies Corporation Limited and another

... Respondents

CWP No.6848 of 2017

Darshan Singh

... Petitioner

Versus

The Punjab State Civil Supplies Corporation Limited and another

... Respondents

CWP No.6915 of 2017

Samarjit Kaur

... Petitioner

Versus

The Punjab State Civil Supplies Corporation Limited and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vivek Sharma, Advocate for the petitioner.

Ms. Suman Devi Sexena, Advocate for
Ms. Deepali Puri, Advocate
for respondent-PUNSUP (CWP-6848-2017).

Mr. Mehardeep Singh, Advocate
for respondent-PUNSUP (CWP-6817-2017).

Ms. Manpreet Kaur, Advocate for
Mr. A.D.S. Jattana, Advocate
for respondent-PUNSUP (CWP No.6832 of 2017).

****

HARSIMRAN SINGH SETHI, J. (ORAL)

By this common order, bunch of writ petitions, details of which have been given in the heading, are being decided as all the writ petitions involve the same question of law and similar facts. For the purpose of this order, the facts are being taken from CWP No.6799 of 2017.

The claim of the petitioner in the present writ petition is that he is entitled for the grant of the gratuity upto the sealing of ₹10 lacs keeping in view the amendment which has been carried out in the Payment of Gratuity Act, 1972 by the Government of India on 24.05.2010. The said prayer of the petitioner has been declined by the respondent-Corporation on the ground that the petitioner had already retired from service prior to the date when the amendment was done to the Payment of Gratuity Act, 1972 on 24.05.2010 whereby maximum limit was enhanced to ₹10 lacs and, therefore, as the amendment is prospective, the petitioner is not entitled for the grant of the said benefit as he was not in service on the said date.

The facts as stated in the writ petition are as under:

The petitioner was appointed as Daftri with the respondents-department on 27.01.1976 and he retired on 31.08.2009 and he was paid the retiral benefits including the gratuity amounting to ₹3,34,403/- and the claim of the petitioner for the grant of retiral benefits stood decided.

The prayer of the petitioner is that as the State of Punjab has extended the benefit of enhanced gratuity of ₹10 lakhs to its employees w.e.f. 01.01.2006 and the same benefit has also been extended by the another institution, namely, MARKFED to its employees, the same benefit needs to be extended to the petitioner as well, who is the employee of PUNSUP.

The said request of the petitioner was rejected by the respondents vide letter dated 10.10.2016 on the ground that the employees of the respondent-PUNSUP are governed by the provisons of Payment of Gratuity Act, 1972 and not the Punjab Civil Services Rules and as the amendment to the 1972 Act has been carried out by the Government of India on 24.05.2010 and is prospective, the employees retired before the said date are not entitled for the same. The said order of rejection of the claim for the grant of gratuity on a higher sealing of ₹10 lakhs has been impugned by the petitioner in the present writ petition.

Upon notice of motion, reply has been filed by the respondent-Punjab State Civil Supplies Corporation Limited (PUNSUP). In the reply also, the respondents have stated that the employees of the Board, Corporation PUNSUP are governed by the Payment of Gratuity Act, 1972 and as the amendment to the Gratuity Act has been implemented from 24.05.2010, the employees who retired prior to the said date are not entitled for the benefit of the said amendment. Further, the respondents have mentioned that the Board of Directors of the PUNSUP in their 187th meeting held that the recommendation of the 5th Pay Commission in respect of gratuity and ex-gratia to be got approved at the level of the Chairman of the PUNSUP and after the approval of the Chairman, the payment of gratuity of enhanced rate was only implemented from the date of amendment of Payment of Gratuity Act, 1972 i.e. 24.05.2010. The relevant reply in this regard is as under:

> "It is submitted that to implement the recommendations of 5th pay commission, meeting of PUNSUP Board of Directors was held on 26.11.2009 and an agenda item No.189.4 was placed before the Board in which at point 6 (Annexure R-4), it was mentioned that, "In the PUNSUP Service By-laws 1978 Payment of Gratuity, rules have been framed as payment of Gratuity will be regulated by provision contained in the Payment of Gratuity Act 1972. Gratuity to the employees who are not covered by the above said Act shall be paid in accordance with the rules prevailing in the Punjab Government. In PUNSUP revised Service By-laws, 1985, it was made clear that payment of gratuity will be regulated by decision taken by Board from time to time. In accordance with above decisions payment of gratuity to the retiring employees as well as legal heirs of the deceased officials is made under the provisions of Payment of Gratuity Act, 1972 for which maximum limit is Rs.3.50 lakhs. So far as payment of ex-gratia in case of deceased is concerned it is also being paid in accordance with State Government instructions being issued from time to time. Now the Government of Punjab Department of Finance (Finance Pension Policy & Coordination Branch) vide letter No.3/23/09/3 FPPC/879 dated 7.8.2009 has issued instructions with regard to implementation of recommendations of 5th Punjab Pay Commission regarding Pension & other retirement benefits. Since no pension scheme is inoperative in PUNSUP as it is covered under the Employees provident funds and Miscellaneous provisions Act 1952, for which 12% matching shares with the deductions made from the salary of employees is contributed with Regional Provident Fund Commissioner Chandigarh (Government of India) on month to month

basis, hence the matter related only to Rates of Retirement-cum-death Gratuity & Ex-gratia payment.

The PUNSUP Board of Directors approved in principle to accept the recommendations of 5th pay commission, stating that "As regards gratuity and ex-gratia, the Board decided that before implementing the recommendation of 5th Pay Commission instructions of Department of Public enterprises be checked in this regard and be got approved at the level of chairman of PUNSUP." A copy of the order passed in this regard is appended herein as Annexure R-5.

It is further submitted that as per decision of the Board of Directors in the meeting held on 26.11.2009, the matter was referred to BPE, Department of Finance, Punjab for seeking clarification with regard to date of payment of gratuity enhanced from Rs.3.5 lakhs to Rs.10 lakhs under the provisions of Payment of Gratuity Act (Amendment Act), 2010. The Joint Director (Finance & Account), Directorate of Disinvestment vide letter/circular dated 24.5.2010 addressed to all MDs of Public Sector Undertakings/Corporative Societies made it clear that Parliament has amended the Payment of Gratuity Act, 1972 w.e.f. 24.5.2010 (in Section 4) in which maximum limit of gratuity Rs.3.5 lakhs has been extended up to Rs.10 lakhs vide the abovementioned letter/circular. The Directorate of Disinvestment further directed the Managing Directors that if their employees are being paid as per the Payment of Gratuity Act, 1972, then the Payment of Gratuity Act, 2010, as implemented by Central Government will be implemented w.e.f. 24.5.2010.

In view of said circular letter issued by Department of Finance, the case was forwarded to Hon'ble Chairment, PUNSUP for seeking approval in accordance with the decision of Board of Directors and subsequent clarification from Department of Disinvestment, Department of

Finance, Punjab. After the approval of worthy Chairman, the amended Payment of Gratuity Act, 2010 was implemented w.e.f. 24.5.2010. Payment of gratuity with the maximum limit of Rs.10 lakhs is made to those retiring employees who retired after 23.5.2010.

Therefore, it is most humbly and respectfully submitted that the averment made by the petitioner in the prayer clause of the present writ petition is misconceived, wrongly interpreted and hence denied. It has been made clear by above made submissions that the petitioner is not entitled to enhanced gratuity."

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

It is a matter of fact that the petitioner in the present writ petiton and petitioners in the other connected cases have retired prior to the amendment which was carried out by the Government of India to the Payment of Gratuity Act on 24.05.2010. Prior to the amendment to the Payment of Gratuity Act, 1972 done on 24.05.2010, the maximum limit was ₹3.5 lacs. All the petitioners have already been paid the gratuity on the basis of the said limit. Claim of the petitioner now is that the said amendment which has been carried out by the Government of India on 24.05.2010 should be implemented w.e.f. 01.01.2006. Once the amendment has been done by the Government of India and as per the bye-laws of the PUNSUP, the employees are governed by the provisions of Payment of Gratuity Act, 1972, the employees will only be entitled for the gratuity on enhanced sealing after the amendment only. The amendment made by the government of India on 24.05.2010 is not retrospective. Once the same is not retrospective, the petitioner cannot claim the said benefit with retrospective effect.

As far as the argument of the counsel for the petitioner that the employees of the State of Punjab have been given the benefit of enhanced gratuity of ₹10 lacs from 01.01.2006, the same will not confer any right upon the petitioner to claim the same benefit. The employees of the Government of Punjab are not covered under the payment of Gratuity Act, 1972 but they are covered under the Punjab Civil Services Rules for the payment of gratuity. Various departments of Government of Punjab are exempted from the applicability of the Payment of Gratuity Act, 1972. State of Punjab while revising the pay of its employee also enhanced the gratuity to ₹10 lacs w.e.f. 01.01.2006. The said enhancement of gratuity by Government of Punjab to its employees is not applicable upon the PUNSUP automatically till the same is adopted. In the present case, the Board of Directors have adopted the amendment of the payment of gratuity at enhanced rate to its employees only from the date of amendment which has been carried out by the Government of India to the Payment of Gratuity Act on 24.05.2010. Therefore, the petitioners cannot equate themselves with the employees of the government of Punjab, who are not similarly situated as the petitioner. Petitioners will be governed by the decision of the competent authority of the PUNSUP and according to the said decision, gratuity at the higher limit will be granted from the date of amendement which action is not in challenge.

Further argument raised by the counsel for the petitioner is that an independent institution such as MARKFED has also allowed the benefits to its employees by giving them the gratuity at the enhanced rate w.e.f. 01.01.2006 and the said case has been allowed by this Court while deciding CWP No.15363 of 2011 decided on 31.10.2014 and, therefore, on the same analogy, the petitioner and the similarly situated employees of the PUNSUP are also entitled for the same relief. A bare perusal of the order passed by this Court in CWP No.15363 of 2011 (Annexure P-6) decided on 31.10.2014 titled as **Nathu Ram and others Vs. State of Punjab and other**s, would show that a categoric finding has been recorded by the Court that MARKFED has passed a resolution allowing its employees the same benefit as being extended to the Government of Punjab of granting gratuity at the higher limit w.e.f. 01.01.2006 and by interpreting the said resolution of the MARKFED, this Court has held that once the MARKFED has treated its employees on the same footing for the grant of benefit as being given to the Punjab Government employees, the employees of the MARKFED will be entitled for the gratuity at the higher rate w.e.f. 01.01.2016. The relevant para of the order passed by the coordinate Bench in Nathu Ram's case (supra) is as under:-

> "13. Coming now to the second argument of learned counsel for respondent-MARKFED, though, without doubt, MARKFED being an independent entity, the instructions and policies of the Punjab Government can only be made applicable to it upon adoption by MARKFED itself, however, the stand taken by the respondents in their reply itself is contrary to the letter dated 09.10.2011, which has been produced in Court and has not been denied by the respondents, even after the matter was adjourned on 17.10.2014.

The letter reads as under:-

"The Punjab State Cooperative Supply and Marketing Federation Limited Sector 35-B Chandigarh

(PERSONNEL DEPARTMENT)

No.EST/EAG-6/11/4120 Dated 19/10/2011

1. All the Officers of Markfed at H.O. Chandigarh.
2. All the District Managers, Markfed in the Punjab State
3. All General Managers/Managers, Markfed Plants/Units in the State
4. O.S.D. (C), Markfed, Bathinda
5. Liaison Officer, Markfed, C-212, Defence Colony, New Delhi

Sub: Amendement in Rule 4.6 in Markfed Common Cadre Rules, 1990

Dear Sir(s),

I am directed to address you on the subject noted above and to inform that as per decision taken by Board of Directors of Markfed vide agenda item No.4 in its meeting held on 17.2.2011 and as approved by Registrar Cooperative Societies Punjab Vide memo No.RSS/MANDI/MS-45-B/13163 dated 13.09.2011 following amendement is being in Rule 4.6 of Markfed Common Cadre Rules 1990/-.

Existing Provision	Amended Provision
On one's retirement,under Rule 2.21 of these Rules or death an employee shall be granted gratuity of an amount equal to one month's wages for each completed year of service or part thereof in excess of six months with the Markfed provided that the total amount of gratuity shall not exceed 15 times the amount of wages last drawn.	On one's retirement, under Rule 2.21 of these rules or death an employee shall be granted retirement-cum-death gratuity as per rules/instructions in force and amended from time to time applicable to Punjab Govt. employees.

The above decision is applicable from the date of approval of Registrar, Cooperative Societies Punjab i.e. w.e.f. 13.09.2011. However, the instructions issued by the State Govt. vide No.3/33/09/3FPPC/879 dated 17.08.2009 with regard to enhancement of maximum limit of payment of gratuity from Rs.3.50 lacs to Rs.10.00 lacs will be applicable w.e.f. 1.1.2006.

Thanking you,

Yours faithfully,

sd/-
Establishment Officer (C),
for Managing Director."

Thus, even though the decision was applicable w.e.f. 13.09.2011, i.e. The amended provisions came into effect from that date, upon approval by the Registrar, yet, by a conscious decision taken, the enhancement in the amount of gratuity payable, upon the retirement of an employee, was made applicable from 01.01.2006, for employees of MARKFED, to whom the Common Cadre Rules apply.

Hence, it is obvious that once the Common Cadre Rules have been held by this Court to be applicable to the petitioners, the letters of the Punjab Government, Annexures P1 to P3 would also apply to them, in terms of MARKFEDs' own letter dated 19.10.2011, issued by respondent No.2."

The facts in the present case are different. There is no such resolution which has been passed by the PUNSUP giving the benefit of enhanced gratuity to its employees from 01.01.2006. The stand of the respondents is that a conscious possession has been taken by the respondent-Corporation to grant the benefit of the amended provisions of the Payment of Gratuity Act, 1972 as amended on 24.05.2010 prospectively of the employees, who were in service on the said date. Therefore, the judgment of this Court in **Nathu Ram's**

case (supra) is not applicable in the present case.

Further, this Court had an occasion to decide the same question of law in respect of the employee of the Milk Fedreation (for short as 'the MILKFED'), who had also approached this Court for the grant of gratuity at higher rate w.e.f. 01.01.2006 as being paid to the employees of the MARKFED and the employees of the government of Punjab.

While deciding CWP No.28539 of 2018, titled as **Dhani Ram and others Vs. State of Punjab and others** decided on 24.01.2019, this Court held that as the employee of the MILKFED and the MILK Unions are an independent body and are governed by the Payment of Gratuity Act, 1972, the amendment in the Payment of Gratuity Act, 1972 by the Government of India on 24.05.2010, will only be applicable prospectively and the employees, who retired prior to the said date, will not be entitled for the benefit of higher gratuity as granted by the said amendment. The order passed in CWP No.28539 of 2018 is as under:

> "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. "

Counsel for the petitioner is unable to distinguish the case of the petitioners in this bunch of writ petitions from the case of the petitioners in CWP No.28539 of 2018 titled as **Dhani Ram and others Vs. State of Punjab and others** in any manner.

Under these circumstances, the claim of the petitioner for the grant of benefit of gratuity on higher limit of ₹10 lakhs w.e.f. 01.01.2006 as per the amendment dated 24.05.2010, is not at all maintainable and cannot be accepted as no fault can be found in the impugned order by which the said claim of the petitioner has been rejected by the respondent-Corporation.

In view of the above, no interference is called for in the impugned order and the present writ petitions stands dismissed with no order as to cost.

May 01, 2019
jt **(HARSIMRAN SINGH SETHI)**
JUDGE

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