IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 5393 of 2018
Date of decision : 16.11.2019

Kuldeep Singh

....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. M.K. Dogra, Advocate for the petitioner.

Mr. Rana Harjasdeep Singh, Deputy Advocate General, Punjab.

Mr. Sunish Bindlish, Advocate for respondent No. 2.

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Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the grievance which is being raised by the petitioner is that he is entitled for the gratuity amount at the maximum ceiling of ₹10 lacs instead of ₹3.5 lacs, which has been made applicable upon the petitioner while calculating the pensionary benefits of the petitioner.

The facts as mentioned in the present writ petition are that petitioner retired on attaining the age of superannuation on 31.10.2007. On the said date, keeping in view the maximum ceiling of the gratuity as admissible under the Payment of Gratuity Act, 1972, the same was calculated and released to the petitioner.

Government of Punjab revised the pay and certain other benefits of the employees of the Government of Punjab vide a Notification dated 17.08.2009 (Annexure P-1). The said revision was to come into effect w.e.f. 01.01.2006. In the said revision, the Government of Punjab raised the maximum ceiling of gratuity to ₹10 lacs w.e.f. 01.01.2006. Petitioner is claiming the benefit under the said Notification dated 17.08.2009 (Annexure P-1) issued by the Government of Punjab that gratuity admissible to the petitioner be calculated at the maximum ceiling of ₹10 lacs instead of ₹3.5 lacs. To claim the said benefit, petitioner is also placing reliance upon the judgment of this Court in ***CWP No. 15363 of 2011*** titled as ***Nathu Ram and others Vs. State of Punjab and others,*** decided on 31.10.2014 (Annexure P-4), which is related to Markfed.

Upon notice of motion, respondents have filed the reply and in the reply it has been stated that Notification dated 17.08.2009 (Annexure P-1) was never adopted by respondent No. 2-Punjab Agro Industries Corporation Limited and rather upon the receipt of a Clarification dated 05.07.2010, a decision was taken by the competent authority of the respondent-Corporation that the revised gratuity will be applicable only from the date of the amendment to the Payment of Gratuity Act, 1972 effected the Payment of Gratuity (Amendment) Act, 2010 i.e. with effect from 24.05.2010. The relevant paragraphs of the reply are as under:-

> *"Thereafter, vide letter dated 05.07.2010 (Annexure R-2) it was intimated by the Punjab Government that the Payment of Gratuity Act, 1972 was amended by the Parliament with effect from 24.05.2010 by enforcing the Payment of Gratuity (Amendment) Act, 2010 and the maximum gratuity payable to*

the retired employees was increased from Rs. 3.50 lakhs to Rs. 10 lakhs. Various corporations/departments including the respondent No. 2 were accordingly directed to implement the said amendment in case of employees retiring after 24.05.2010 i.e. after the date of coming into force of the Payment of Gratuity (Amendment) Act, 2010.

The aforesaid directions of the Punjab government were adopted by the respondent No. 2 and a specific order was passed in that regard on 22.07.2010 (Annexure-R-3).

A perusal of the aforesaid sequence of events would clearly reveal that the instructions contained in the letter dated 17.8.2009 of the Punjab Government in respect of enhancement/revision in gratuity were not adopted by the respondent No. 2, rather on receipt of a clarification dated 05.07.2010 from the Punjab Government a decision was taken that enhanced/revised gratuity would be given only cases of employees retiring after 24.5.2010 i.e. after the coming into force of the Payment of Gratuity (Amendment) Act, 2010 whereas all employees retiring prior to the said date would continue to be governed by the un-amended provisions of the Payment of Gratuity Act, 1972. Therefore, the employees retiring before the said date are not entitled to the revised/enhanced gratuity as stipulated by the Payment of Gratuity (Amendment) Act, 2010.

The Payment of Gratuity Act, 1972 was amended as regards the maximum amount of gratuity through section 4 raising the limit to Rs. 10 lakhs by virtue of act 15 of 2010 effective from 24.5.2010. This benefit would, therefore, apply only to persons, who retired after 24.5.2010 and cannot be extended retrospectively. Therefore,as the petitioner retired much prior to 24.5.2010 his allegation that he is entitled to revised/enhanced gratuity is therefore completely ill-founded and deserves to be rejected by this Hon'ble Court. It is settled *law that if there are specific enactments, with govern the entitlements to certain benefits, it shall be those enactments that must be allowed full play and they cannot be allowed to be eclipsed by other rules or provisions relating to grant of pay and allowances. Reference in that regard may be made to the judgment dated 13.3.2012 rendered by this Hon'ble Court in the case of* **Ram Niwas Doon Vs. Haryana Land Reclamation and Development Corporation being CWP No. 12933 of 2011."**

There is no replication, which has been filed by the petitioner controverting the averments made in the written statement, which have been recorded above.

I have heard learned counsel for the parties and have gone through the pleadings with the able assistance of learned counsel for the parties.

The question raised in this writ petition for the determination of this Court is that whether, petitioner will be entitled for gratuity on the enhanced ceiling of ₹10 lacs w.e.f. 01.01.2006, as admissible to the employees of the Government of Punjab.

This question has already been answered by this Court while deciding ***CWP No. 28539 of 2018*** titled as ***Dhani Ram and others Vs. State of Punjab and others,*** on 24.01.2019. This Court has held that the Notification dated 17.08.2009 (Annexure P-1) is only applicable to the employees of the Government of Punjab and not to the other independent institutions unless the said Notification is adopted. It was held by this Court that unless a particular institution decide to adopt the letter dated 17.08.2019 the same does not become operative upon the employees of the various independent institutions automatically and the amendment done to the Payment of Gratuity Act, 1972 will be applicable from the date the same was carried out by the Government of India i.e. 24.05.2010. The relevant paragraph of the said judgment is as under-

> *"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.*
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> *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 :-*
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> ***"19 GRATUITY:***
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> *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."*
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> *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."

The said question again came up for consideration before this Court in ***CWP No. 6799 of 2017*** titled as ***Ravi Chand and others Vs. The Punjab State Civil Supplies Corporation Limited and another,*** decided on 01.05.2019. This Court again held that keeping in view the decision in ***Dhani Ram's case (supra),*** petitioner is not entitled for the benefit of the maximum ceiling of the gratuity as carried out by the Government of Punjab w.e.f. 01.01.2006 but the maximum ceiling of gratuity will only be applicable prospectively from the date of amendment done to the Payment of Gratuity Act, 1972.

Learned counsel for the petitioner places reliance upon the order passed by the Co-ordinate Bench of this Court in ***Nathu Ram's case (supra)*** to claim benefit of gratuity on the basis of higher ceiling of ₹10 lakhs. This Court while passing the order in ***Ravi Chand's case (supra)***, decision of Co-ordinate Bench of this Court in ***Nathu Ram's case (supra)*** was also considered and distinguished in terms that in ***Nathu Ram's case (supra)*** the Markfed had adopted the Notification issued by the Government of Punjab that all the benefits, which are being extended to the employees of the Government of Punjab will be applicable to the employees of Markfed as well and, therefore, benefit of gratuity at the maximum ceiling of ₹10 lacs w.e.f. 01.01.2006 was extended by this Court to the employees of the Markfed and as in the cases of ***Ravi Chand's case (supra),*** which related to PUNSUP and ***Dhani Ram's case (supra)***, which related to Milkfed, as there was no adoption of the letter issued by the Government of Punjab by the said authorities, therefore, the benefit of gratuity at the maximum ceiling of ₹10 lacs was denied to the employees, who had retired prior to 24.05.2010, when the amendment to Payment of Gratuity Act, 1972 was effected. In the present case, it is admitted that the respondent No. 2-Punjab Agro Industries Corporation Limited had taken a conscious decision to implement the amendment to the Payment of Gratuity Act, 1972 prospectively w.e.f. the date of amendment and never adopted the Notification of the Government of Punjab dated 17.08.2009 (Annexure P-1) and, therefore, petitioner will be governed by the decisions rendered by this Court in ***Dhani Ram's case and***

Ravi Chand's case (supra), wherein, it has been held that the employees will be entitled for the benefit of maximum ceiling of gratuity only from the date of amendment and not from 01.01.2006.

In the present case, petitioner retired on 31.10.2007 which is much prior to the date of amendment and, therefore, the case of the petitioner will be covered by ***Dhani Ram's case and Ravi Chand's case (supra)*** and is totally distinguishable from ***Nathu Ram's case (supra).***

In view of the above, the claim of the petitioner has rightly been declined by the respondents. Therefore, no ground is made out to interfere and consequently the present writ petition is hereby dismissed.

Dismissed.

November 16, 2019 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

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