

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Writ Petition No.8130 of 2020

Date of Decision: *August 27, 2020*

Central Soil and Water Conservation Research and Training Institute, Sector
– 27A, Chandigarh & another

..... PETITIONER(S)

VERSUS

Jagira & another

..... RESPONDENT(S)

...

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

...

PRESENT: - Mr. Aman Chaudhary, Advocate, for the petitioners.

Mr. Arun Kumar Batra, Advocate, for the respondent
No.1.

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Sant Parkash, J

The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.

Through the instant petition filed under Article 226/227 of the Constitution of India, petitioners have prayed for issuance of a writ in the nature of certiorari, quashing impugned order dated 05.08.2019 (Annexure P-4) passed by the Assistant Labour Commissioner (Central), Chandigarh, under the Payment of Gratuity Act, 1972 (for short, 'Act'), whereby respondent No.1 has been held to be entitled to payment of ₹ 1,09,482/- as gratuity alongwith interest @ 10% per annum from July 01, 2015 till the

date of actual payment and to ₹ 44,477/- alongwith interest @ 10% per annum from 01.07.2015 to 19.07.2016, as well as for issuance of direction to stay the operation of impugned order.

Respondent No.1 filed an application under Section 4 of the Act for payment of balance gratuity alongwith interest from 30.06.2015 till 20.07.2016. Respondent No.1 had joined the petitioner – management in March 1974 as casual labourer. His services were regularized in the year 1986 as Skilled Supporting Staff (Group-C) and superannuated on 30.06.2015. He alleged that while calculating the gratuity, his service from March 1974 was not counted.

The petitioner – department filed reply to the aforesaid application stating that respondent – applicant was not entitled to any amount over and above the amount of gratuity already paid to him in terms of Central Civil Services (Pension) Rules, 1972 [for short, ‘CCS (Pension) Rules’] as applicable to the employees of Indian Council of Agricultural Research (ICAR) and its institutes. Replication was also filed by the respondent – applicant.

It is the contention of learned counsel for the petitioner, as recorded in order dated 16.06.2020, that Section 2(e) of the Act bars its applicability to an employee of the Central Government or State Government, who is governed by any other Act or Rule providing for payment of gratuity. Respondent No.1 is governed by the CCS (Pension) Rules and the said Rules also provide for payment of gratuity. Learned counsel has further contended that impugned order dated 05.08.2019 is against the settled law.

Learned counsel for the respondents has contended that respondent No.1, after his retirement, was agitated when less amount of gratuity was paid to him. He was in service w.e.f. 1974. The petitioner – department illegally withheld the gratuity of the respondent amounting to ₹ 3,07,988/- from 30.06.2015 till 20.07.2016 without any reason, without counting his continuous service from March 1974.

I have heard learned counsel for the parties and perused the record.

The question for determination in the present writ petition is whether respondent No.1 was entitled for payment of gratuity alongwith interest, as claimed ? Similar question came before this Court in **CWP No.5167 of 2014**, decided on 20.03.2014, titled '**Director, Central Soil & Water Conservation Research & Training Institute, Research Centre, Chandigarh & another Vs. Deva & others**', wherein this Court while referring to judgments of Hon'ble Supreme Court in **Municipal Corporation of Delhi vs. Dharam Prakash Sharma, 1998 (7) SCC 221** and **Allahabad Bank & others vs. All India Allahabad Bank Retired Employees Association, 2010 (1) RSJ 663** held as under:-

“4. Thus, it would be clear that a firm finding of fact was recorded that the employee was entitled for the said benefit, from the initial date of appointment, when he worked with the petitioner-Institute. The Apex Court in ***Municipal Corporation of Delhi Vs. Dharam Prakash Sharma 1998 (7) SCC 221*** held that the provisions of the Gratuity Act have an overriding effect. In ***Allahabad Bank & others Vs. All India Allahabad Bank Retired Employees Association 2010 (1) RSJ 663***, the Apex Court has examined the provisions of the Gratuity Act and held that it is a beneficial piece of legislation and the employee would be entitled to the said benefits. Relevant observations read as under:

“14. Gratuity payable to an employee on the termination of his employment after rendering continuous service for not less than 5 years and on superannuation or retirement or

resignation etc. being a statutory right cannot be taken away except in accordance with the provisions of the Act whereunder an exemption from such payment may be granted only by the appropriate Government under Section 5 of the Act which itself is a conditional power. No exemption could be granted by any Government unless it is established that the employees are in receipt of gratuity or pension benefits which are more favourable than the benefits conferred under the Act.”

5. There is no denial of the fact that respondent-employee was entitled under the provisions of the Gratuity Act and the only issue was as to whether he was entitled for the same from the year 1966. A finding of fact has been recorded that he worked from November, 1966 onwards. In such circumstances, no fault can be found in the decision of the authorities below. Accordingly, finding no merit in the present writ petition, the same is hereby dismissed.

A perusal of the above quoted judgment clearly depicts that respondent No.1 was entitled for amount of gratuity from the initial date of appointment when he worked with the petitioner – Institute. In this view of the matter, no fault can be found in the impugned order. Accordingly, finding no merit in the present writ petition, the same is hereby dismissed.

**(Sant Parkash)
Judge**

August 27, 2020

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Whether Speaking/ Reasoned:

Yes/ No

Whether Reportable:

Yes/ No