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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-7778-2013
Date of Decision: January 16, 2020

Hanuman .....Petitioner

Versus

State of Haryana and others ......Respondents

CORAM: HON'BLE MS.JUSTICE NIRMALJIT KAUR

Present: Mr.V.B.Aggarwal, Advocate
for the petitioner.
Mr.Gaurav Jindal, Addl.AG, Haryana.

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NIRMALJIT KAUR, J. (ORAL)

The present petition is filed for seeking a direction to the respondents to grant retiral benefits, i.e. pension, gratuity, leave encashment and also the benefit of revision of pay scale w.e.f. 01.01.2006 instead of 01.04.2010 in the pay band of Rs.4440-7440 plus Grade pay alongwith arrears of salary on that account.

The petitioner was initially appointed in Panchayat Samiti, Thanesar, as Mali on daily wages on D.C. rates in May 1983 and after that, his services were regularised in the Panchayat Samiti, Thanesar, vide order dated 22.11.1995 in pursuance to the order of the High Court dated 09.11.1992. He retired on attaining the age of superannuation on 30.11.2010.

As per reply, the petitioner has been given the benefit of CPF which was released to him and the petitioner already accepted the said sum of Rs.1,06,050/-. It is further stated that the Panchayat Samiti is dependent upon its own sources for its funds and as such, the petitioner has no right to file the present petition and demand the pension, leave encashment, gratuity, which are not admissible to the employees of the Panchayat Samiti.

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Heard.

As per Section 33(c) of the Punjab Panchayat Samiti and Zila Parsihads Act, 1961 (for short, 'the 1961 Act'), the employees of the said Panchayat Samiti are entitled to the pension or subscribe on their behalf for pension or gratuity. The relevant part of Section 33 of the 1961 Act is reproduced below:-

> "33. **Employment of Sevants.-(1) (a) to (b) XX XX XX**
>
> (c) grant them pension or subscribe on their behalf for pension or gratuity;
>
> Provided that-
>
> (i) the conditions of grant of leave allowance, Provident Fund, pension gratuity and annuity shall not be more favorable than those prescribed for persons in the service of the Government;
>
> (ii) no leave allowance, Provident Fund, pension, gratuity or annuity granted to a servant shall exceed the sum which, under any general or special order for the time being in force, such servant would be entitled to if his service had been under the Government."

Section 15 of the Punjab Panchayat Samitis and Zila Parishads Services Rules, 1965 (for short 'the 1965 Rules') provides for application of the provisions of the Punjab Civil Services Rules in case any matter is not expressly covered by the above mentioned Rules or any other Rule framed under the 1961 Act. Section 15 of the 1965 Rules reads thus:-

> "15(1) In matters not expressly covered by these rules or any other rules framed under the Punjab Panchayat Samitis and Zila Parishads Act, 1961, the members of the service shall be governed by the provisions of the Punjab Civil Services Rules as amended from time to time in so far as they are not inconsistent with the

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> provisions of the aforesaid Act, and the rules made thereunder:
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> Provided that for words "Government Servants" wherever they occur in the Punjab Civil Services Rules the words "Panchayat Samiti or Zila Parishad, as the case may be", and "member of the Punjab Panchayat Smitis and Zila Parishads Service" shall be deemed to have been constituted respectively.
>
> (2) The competent authority may construe the provisions of the rules referred to in sub-rule(1) above with such adaptations not affecting the substance thereof as may be necessary or proper in order to adapt them to the matter before such authority:
>
> Provided that if any doubt arises regarding the adaptations with which the said rules should be construed, the matter shall be referred to the Government and the decision of the Government on such reference shall be final."

Section 33 of the 1961 Act as reproduced above stood deleted by virtue of Section 13 of the Punjab Panchayat Samitis and Zila Parishads (Haryana Amendment) Act, 1973, which was published in the Haryana Gazette (Extra) Legislative Supplement, Para I, dated June 13, 1973. Therefore, it is apparent that Rule 15(1) shall come into operation vide which members of the service are held to be governed by the Punjab Civil Service Rules in case any matter is not covered by the said Act.

In the reply, it is not denied that Section 15(1) above would come into operation in case the same is not covered by the 1961 Act. The only objection raised is that the petitioner was never absorbed in the Government and the petitioner continued to work in Panchayat Samiti and retired as such. Further, the Panchayat Samiti is dependent upon its own

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sources and, therefore, is not liable to pay pension. However, the said argument does not help. Section 15(1) specifically states that members of the service of Punjab Panchayat Samitis and Zila Parishads shall be governed by the provisions of the Punjab Civil Services Rules and it is not denied that Punjab Civil Services Rules also include Pension Rules which allows pension, gratuity and leave encashment.

This Court in the case of **Shardha Ram @ Bashir Ahmed vs The State of Haryana and others** in CWP No.10051 of 1992 decided on 05.03.2012, while allowing to grant pension to petitioner, who was a Chowkidar and was treated as an employee under the Punjab Samiti and retired as such on 03.09.1991 was held to be entitled to the pension, gratuity and leave encashment. The argument that he was allowed pension as he was subsequently held an employee of State Government as the said employee was absorbed in the office of Deputy Commissioner does not help. In the said case, the instructions dated 24.11.1991 were invoked in order to grant the benefit of previous service in the Panchayat Samiti towards pension and gratuity. In the present case, Section 15(1) of the 1965 Rules makes it clear that the Punjab Civil Service Rules are applicable to the Panchayat Samiti. The applicability of Punjab Civil Service Rules to the petitioner is not denied either in the reply or before this Court.

Hence, this Court does not find any bar in granting the claim of the petitioner. The petition is accordingly allowed. In case, the amount of CPF has been received by the petitioner at the time of his retirement, the same be refunded alongwith interest and the same be adjusted against arrears of the pension payable to the petitioner.

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The petitioner, however, shall be entitled to the calculation of the gratuity in case he is found entitled under the said Rules/Payment of Gratuity Act, as the case may be. The arrears of pension shall be calculated and released within a period of eight weeks with interest @ 6% per annum from the date of his retirement till the date of payment.

January 16, 2020 **(NIRMALJIT KAUR)**
meenuss **JUDGE**

1. Whether speaking/reasoned ? Yes/No
2. Whether reportable ? Yes/No

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