

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Sr. No.211

CWP No.8826 of 2020

DATE OF DECISION: January 22, 2021

DARSHAN SINGH

..PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Sameer Sachdeva, Advocate,
for the petitioner.

Ms. Akshita Chauhan, AAG, Punjab.

SUDHIR MITTAL, J. (ORAL)

The petitioner was employed as Lecturer in Government College, Malerkotla (respondent No.4) on contract basis on 08.09.1992. Thereafter, he served either in Government College, Sangrur or Government College, Malerkotla till 13.03.1999 with notional breaks as is evident from the chart given under paragraph 2 of the written statement filed on behalf of respondents No.1 to 3. From 04.09.2000 till 16.06.2020, he has been in continuous employment without break. On 16.06.2020, the petitioner attained the age of 58 years i.e. age of superannuation and in anticipation of the same, he approached this Court vide CWP No.8028 of 2020 for directions to the respondents to allow him to continue in service till 30.09.2020 in accordance with the extension policy dated 02.03.2020. The writ petition was disposed of vide order dated 11.06.2020 with a direction to

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3rd respondent therein to consider his pending representation in the light of extension policy dated 02.03.2020. Thereafter, the 3rd respondent passed order dated 15.06.2020 rejecting the claim for extension of service on the ground that the extension policy is not applicable to employees appointed on contract basis. The Principal of respondent No.4 passed order dated 23.06.2020 relieving him from service as he had attained the age of superannuation on 16.06.2020.

2. In this writ petition, the petitioner has claimed payment of retiral dues. However, at the time of argument, learned counsel for the petitioner has confined his claim to payment of gratuity. On the basis of the provisions of the Payment of Gratuity Act, 1972 it has been argued that the petitioner is entitled for payment of gratuity as he has been in continuous service in excess of 05 years and gratuity is payable to him in terms of Section 4 of the Act.

3. In response, learned State counsel submits that being a contractual employee, the petitioner is not entitled to the benefit of payment of gratuity.

4. Section 2(e) of the Act defining the term 'employee' is reproduced below:-

“(e) 'employee' means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not

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include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.”

5. Section 2-A(1) of the Act is also relevant for deciding the controversy. The same is also reproduced:

“2-A. Continuous service.--*For the purposes of this Act,--*

(1) an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order [* *] treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act;*

(2) xxxxxx

(3) xxxxxx”

6. Section 4 regarding eligibility for payment of gratuity is as follows:

4. Payment of gratuity:--

(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,--

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

[Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.]

Explanation.-- For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) xxxxx

(3) xxxxx

(4) xxxxx

(5) xxxxx

(6) xxxxx”

7. A perusal of the aforementioned provisions shows that an employee who has rendered continuous service of not less than 05 years is

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entitled to payment of gratuity on his retirement. The rate of payment of gratuity is in accordance with sub-Section 2 of Section 4. The term 'employee' is defined by Section 2(e) and it includes any person who is employed for wages whether the terms of employment are express or implied. Admittedly, the petitioner was employed on contract basis and thus, the terms of his employment were express. Continuous service is defined by Section 2-A of the Act and it means uninterrupted service including service which may be interrupted on account of reasons mentioned therein.

8. It is not in dispute that the petitioner has served without any break for the period from 04.09.2000 to 16.06.2020. Thus, he has worked continuously for the said period and is covered by the definition of 'employee'. Accordingly, he is entitled to payment of gratuity under Section 4 of the Act at the rate provided therein.

9. Accordingly, the writ petition is partly allowed. The respondents are directed to pay gratuity for the aforementioned period at the rate mentioned in Section 4 of the Act within a period of 04 weeks from the date of receipt of a certified copy of this order.

January 22, 2021
Ankur

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No