

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

CWP-23477-2022(O&M)
Date of decision : 15.09.2023

THE PUNJAB STATE CO-OPERATIVE SUPPLY AND MARKETING
FEDERATION LIMITED (MARKFED), Markfed, SECTOR 35-B,
CHANDIGARH THROUGH ITS LAW OFFICER, AMANDEEP SINGH.
...Petitioner

Versus

APPELLATE AUTHORITY UNDER THE PAYMENT OF GRATUITY
ACT, 1972-CUM-ADDITIONAL LABOUR COMMISSIONER,
PUNJAB, SAS NAGAR (MOHALI) AND OTHERS
...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Vikas Singh, Advocate
for the petitioner.

Mr. Vipin Pal Yadav, Addl. A.G., Punjab.

HARSH BUNGER, J.

Petitioner-Punjab State Co-operative Supply and Marketing Federation Limited (for short 'MARKFED') has filed the instant writ petition, seeking a writ in the nature of *certiorari* for quashing the orders dated 29.08.2019 (Annexure P-2) and 16.12.2021 (Annexure P-4) passed by the Controlling Authority-cum-Assistant Labour Commissioner, Chandigarh and the Appellate Authority, under the Payment of Gratuity Act, 1972 (for short 'the Act, 1972'), respectively; whereby, a direction has been issued to the petitioner-MARKFED to pay an amount of Rs.49,048/- to respondent No.3-Nathu Ram as an amount of balance gratuity alongwith simple interest @ 10% p.a. from 07.03.2018 till the actual payment is made, in terms of the provisions of the Act, 1972.

2. Briefly, respondent No.3-Nathu Ram joined the service of petitioner-MARKFED on 01.09.1976 as Helper on daily wage basis. He

was regularized on 22.12.1977 and retired on 06.03.2016. It appears that the services of respondent No.3 were extended by two years in accordance with the policy of the Punjab Government and was relieved thereafter on 06.03.2018.

3. It appears that respondent No.3 submitted his claim under the Act, 1972 before the Controlling Authority on the plea that he has not been paid the full amount of gratuity and accordingly, he claimed an amount of Rs.49,047/-. The said claim was contested by the petitioner-MARKFED, on the plea that the Act, 1972 was not applicable on the day when respondent No.3 retired from service on 06.03.2016 as the said Act was adopted by petitioner-MARKFED only on 04.05.2016. Accordingly, it was claimed that the gratuity amount already paid was in accordance with the Service Rules w.e.f. 22.12.1977.

4. The learned Controlling Authority, vide its order dated 29.08.2019 (Annexure P-2) allowed the claim of respondent No.3, by observing as under :-

“In view of the above, I am of the clear opinion that interest under sub section 3(A) of Section 7 of the act is admissible to the applicant from the date of superannuation when the payment under the act becomes due, till the date of actual payment of gratuity @ 10% p.a. Therefore, the non-applicant is liable to pay the interest for delayed period involved in the matter.

The details calculations of gratuity amount is given hereunder :-

1.Date of initial appointment	01.09.1976
2.Date and cause of termination	06.03.2016
3.Total service rendered	39 years 6 months 06 days (40 years)
4.Wages last drawn	Rs.42508/-
5. Amount of gratuity already paid	Rs.9,31,906/-

Gratuity as per the Payment of Gratuity Act, 1972 – Gratuity payable @ 15 days for each completed year of service and part thereof, thus amount of gratuity for 35 years of continuous service is :-

$$\frac{42,508 \times 15 \times 40}{26} = \text{Rs.} 9,80,954/-$$

Gratuity already paid to the applicant by the non-applicant = Rs.9,31,906/-

Payable balance amount of gratuity = Rs.9,80,954/- - Rs.9,31,906 = Rs.49,048/-

In view the above, it is concluded that the applicant is entitled to receive balance gratuity an amount of Rs.49,048/- as per the payment of gratuity act alongwith simple interest @ 10% per annum from 07/03/2018 till the balance gratuity payment is made to the applicant by the non-applicant.

ORDER

Therefore, this Controlling Authority directs the non-applicant to pay a sum of Rs.49,048/- as an amount of balance gratuity alongwith simple interest @ 10% p.a. from 07/03/2018 till the actual payment is made to the applicant, within 30 days from the date of receipt of this order.”

5. Being dissatisfied with the aforesaid order dated 29.08.2019 (Annexure P-2), petitioner-MARKFED filed an appeal under Section 7(7) of the Act, 1972 before the Appellate Authority; however, the same was dismissed vide order dated 16.12.2021 (Annexure P-4).

6. In the afore-mentioned circumstances, the petitioner-MARKFED has filed the instant writ petition.

7. Learned counsel for the petitioner has assailed the impugned orders only on one ground that the Controlling Authority has wrongly considered the services of respondent No.3 w.e.f. 01.09.1976 when he was

appointed as a Helper on Daily Wages basis whereas, his services were

regularized only on 22.12.1977. It is submitted that the period from 01.09.1976 upto 22.12.1977 was liable to be excluded for calculating the gratuity amount due.

8. I have heard learned counsel for the petitioner-MARKFED and perused the paper book with his able assistance.

9. I have considered the submission of learned counsel for the petitioner that the authorities under the Act, 1972 have wrongly considered the service period of respondent No.3 w.e.f. 01.09.1976 when he joined as a Helper on daily wage basis whereas, his services were required to be calculated w.e.f. 22.12.1977 i.e. the day when his services were regularized; however, I do not find any merit in the said submission in the light of the observations made by the Hon'ble Supreme Court of India in *Netram Sahu vs State of Chhattisgarh and another (Civil Appeal No.1254 of 2018, decided on 23.03.2018)*.

10. In *Netram Sahu's* case (supra), the authorities under the Act, 1972 has held Netram entitled to gratuity amount by considering his service of 25 years and 03 months, out of which, 22 years and 01 month of service was as daily wager and 03 years and 02 months' service was as a Regular Work Charge Employee. Accordingly, the question before the Hon'ble Apex Court was as to whether the appellant therein (Netram) can be held to have rendered qualified service i.e. continuous service as specified in Section 2(e) read with Section 2A of the Act, so as to make him eligible to claim gratuity as provided under the Act.

The case put up by the State before the Hon'ble Apex Court was that Netram Sahu could not be held eligible to claim the gratuity amount because out of the total period of 25 years of his service, he worked for 22 years as Daily Wager and only 03 years as a regular employee.

Accordingly, it was contended that Netram Sahu could not be said to have worked continuously for a period of five years, as provided under the Act, so as to make him eligible to claim gratuity. However, the said argument of the State was not accepted by the Hon'ble Apex Court, by holding as under :-

“14. We do not agree with this submission of learned counsel for the respondent-State for more than one reason. First, the appellant has actually rendered the service for a period of 25 years; Second, the State actually regularized his services by passing the order dated 06.05.2008; Third, having regularized the services, the appellant became entitled to claim its benefit for counting the period of 22 years regardless of the post and the capacity on which he worked for 22 years; Fourth, no provision under the Act was brought to our notice which disentitled the appellant from claiming the gratuity and nor any provision was brought to our notice which prohibits the appellant from taking benefit of his long and continuous period of 22 years of service, which he rendered prior to his regularization for calculating his continuous service of five years.

15. xxx xxx xxx

16. In our considered opinion, once the State regularized the services of the appellant while he was in State services, the appellant became entitled to count his total period of service for claiming the gratuity amount subject to his proving continuous service of 5 years as specified under Section 2A of the Act which, in this case, the appellant has duly proved.

17. *In the circumstances appearing in the case, it would be the travesty of justice, if the appellant is denied his legitimate claim of gratuity despite rendering “continuous service” for a period of 25 years which even, according to the State, were regularized. The question as*

to from which date such services were regularized was of no significance for calculating the total length of service for claiming gratuity amount once the services were regularized by the State.

18. It was indeed the State who took 22 years to regularize the service of the appellant and went on taking work from the appellant on payment of a meager salary of Rs.2776/- per month for 22 long years uninterruptedly and only in the last three years, the State started paying a salary of Rs.11,107/- per month to the appellant. Having regularized the services of the appellant, the State had no justifiable reason to deny the benefit of gratuity to the appellant which was his statutory right under the Act. It being a welfare legislation meant for the benefit of the employees, who serve their employer for a long time, it is the duty of the State to voluntarily pay the gratuity amount to the appellant rather than to force the employee to approach the Court to get his genuine claim.

19. In view of the foregoing discussion, we cannot agree with the reasoning and the conclusion arrived at by the High Court which is legally unsustainable. It is really unfortunate that the genuine claim of the appellant was being denied by the State at every stage of the proceedings up to this Court and dragged him in fruitless litigation for all these years.

20. xxx xxx xxx

21. These observations apply in full force against the State in this case because just case of the appellant was being opposed by the State on technical grounds. As a consequence, the appeal succeeds and is allowed. Impugned judgment/order passed by the High court (Single Judge and Division Bench) are set aside and the orders of the Controlling Authority and Appellate Authority are restored with cost of Rs.25,000/- payable by

the State to the appellant. Cost to be paid by the State along with the payment of gratuity amount.”

11. In the light of above-said observation in *Netram Sahu’s* case (*supra*), it is not disputed by learned counsel for the petitioner that respondent No.3 joined the petitioner-MARKFED on 01.09.1976 as Helper on daily wage basis and thereafter, his services were regularized on 22.12.1977. Learned counsel for the petitioner has not referred to any fact or document so as to indicate that respondent No.3-Nathu Ram, has not rendered continuous service w.e.f. 01.09.1976.

12. No other point has been urged.

13. Keeping in view of the above discussion and also the legal position as indicated above, I do not see any illegality or perversity in the impugned orders dated 29.08.2019 (Annexure P-2) and 16.12.2021 (Annexure P-4) passed by the Controlling Authority-cum-Assistant Labour Commissioner, Chandigarh and the Appellate Authority, under the Act, 1972, respectively. Accordingly, finding no merit in the present petition, the same is hereby dismissed.

14. All pending application/s, if any, shall stand closed.

September 15th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No