

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

CWP-15950-2023 (O&M)
Date of decision : 23.08.2023

M/S BAHRI HOSPITAL

...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. Vivek Salathia, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

CM-13861-2023

This is an application for placing on record Annexures P-12 and
P-13.

For the reasons mentioned in the application, the same is
allowed. Annexures P-12 and P-13 are taken on record, subject to all just
exceptions.

CWP-15950-2023

1. Petitioner (M/s Bahri Hospital) has filed the instant writ petition
under Articles 226/227 of the Constitution of India, seeking issuance of a
writ in the nature of *certiorari* for quashing of order dated 16.03.2022
(Annexure P-7) passed by the Controlling Authority under the Payment of
Gratuity Act, 1972 (here-in-after referred to as 'the 1972 Act'); whereby, the

claim of respondent No.3-Smt. Santosh Kumari, seeking gratuity from the petitioner was allowed *ex-parte*.

A further prayer has been made for setting aside/quashing of order dated 23.06.2023 (Annexure P-11) passed by the Appellate Authority under the 1972 Act; whereby the appeal filed by the petitioner-hospital has been dismissed.

2. Briefly, respondent No.3 submitted an application before the Controlling Authority in Form 'N' under the 1972 Act, seeking gratuity amount from the petitioner-hospital on the plea that she was working there as a Ward Attendant since April 1999 and she is stated to have worked upto 10.10.2019. Respondent no.3 claimed that at the time of her resignation, she was drawing Rs.10,000/- p.m. and had rendered 20 years-06 months of continuous service before she resigned from the petitioner-hospital on 10.10.2019. Respondent no.3 claimed an amount of Rs.1,15,384.61/- along with interest from the due date.

3. A perusal of the paper-book would reveal that notice was issued to the petitioner-hospital and Dr. Vijay Kumar Bahri appeared and filed his reply, by *inter alia* stating that respondent No.3 had already filed a case before the Industrial Tribunal, Amritsar claiming gratuity. It appears that no one on behalf of the petitioner-hospital appeared before the Controlling Authority below and was accordingly proceeded against *ex-parte* on 06.10.2021. However, on the basis of the pleadings of the parties, the following issues were framed :-

- “i. Whether the applicant is entitled to claim the gratuity from respondent as claimed in the petition ?
- ii. Relief.”

In support of her claim, respondent No.3 examined herself and tendered the following documents :-

<i>Sr. No.</i>	<i>Document</i>	<i>Exhibit</i>
<i>1</i>	<i>Experience Certificate dated 10.08.2013 issued by Dr. Vijay Kumar Bahri, M/s Bahri Hospital, G.T. Road, Dinanagar, District Guradaspur.</i>	<i>A-1</i>
<i>2</i>	<i>Resignation of Smt. Santosh Kumari, Ward Attendant dated 18.11.2019.</i>	<i>A-2</i>
<i>3</i>	<i>Letter dated 12.12.2019 for payment of service benefits.</i>	<i>A-3</i>
<i>4</i>	<i>Acceptance of resignation by Dr. Vijay Kumar Bahrim M/s Bahri Hospital, G.T. Road, Dinanagar, District Gurdaspur.</i>	<i>A-4</i>
<i>5</i>	<i>Reply to letter dated 21.12.2019 by Santosh Kumari.</i>	<i>A-5</i>

4. Considering the material/evidence available on the record, the Controlling Authority under the 1972 Act, passed an order dated 16.03.2022 (Annexure P-7), allowing the application of respondent No.3 by holding as under :-

“From the evidence led by the applicant, it is well proved that the applicant has worked with the respondent and joined in the month of April 1999 and worked upto 10.10.2019. She was drawing Rs.10,000/- p.m. The evidence led by the Applicant remained unrebutted.

Accordingly the respondent is responsible to pay the gratuity amount to the applicant but the applicant had not been paid her due gratuity. The applicant is entitled to gratuity amount as under :-

$$\frac{10,000 \times 15}{26} \times 21 = \text{Rs.1,21,154/-}$$

26

It is legal duty cast upon the employer to pay gratuity to the eligible employees under the Payment of Gratuity Act but in the present case the applicant was not paid any Gratuity. As per provisions of the act, the applicant is entitled to receive interest on the delayed payment. Hence I order the respondent to pay gratuity

amount of Rs.1,21,154/- along with simple interest to the applicant @ 8% p.a. from 10.11.2019 till actual realization.

Given this 16th the day of March, 2022, under my hand and seal of court at Gurdaspur.

*(Kunwar Davar)
Controlling Authority under the
Payment of Gratuity Act, 1972,
and Labour-cum-Conciliation
Officer, Gurdaspur.”*

5. The afore-said order dated 16.03.2022 (Annexure P-7) was challenged by the petitioner-hospital by filing the statutory appeal under Section 7(7) of the 1972 Act; however, the said appeal was dismissed by the Appellate Authority under the 1972 Act vide order dated 23.06.2023 (Annexure P-11), by holding as under :-

“5. I have gone through the record of the case and heard the arguments of the learned counsel for the parties. The main contention of the appellant in the present appeal is that since the respondent-employee had already filed a case for payment of gratuity before the Industrial Tribunal, Amritsar, therefore, the claim application filed for the same purpose before the Controlling Authority was apparent violation of the Principle of Res-judicata and further the ex-parte order dated 16.3.2022 passed against the appellant is patently illegal and erroneous on facts and law. On careful perusal of the record of the Controlling Authority, Gurdaspur, it has been found that upon notice, when the appellant appeared before the Controlling Authority on 7.7.2021 and raised objection regarding filing of case before the Industrial Tribunal, Amritsar, the Counsel for the Respondent employee got recorded his statement at the spot that the case before the Industrial Tribunal, Amritsar was filed by the respondent employee

for payment of leave encashment and the Industrial Tribunal has no jurisdiction to decide the issue regarding payment of gratuity. He had also made it clear that only the Controlling Authority has jurisdiction to decide the issue regarding payment of gratuity. He had also made it clear that only the Controlling Authority has jurisdiction to decide the claim for payment of gratuity from the record, it is evident that the Controlling Authority after considering the objection of the appellant, had adjourned the case for next date on 28.7.2021 for filing written statement by the appellant. However, the appellant did not attend the court of the Controlling Authority on 28.7.2021, 4.8.2021, 18.8.2021, 8.9.2021 and 15.9.2021. Even a fine of Rs.500/- was also imposed upon the appellant on 15.9.2021, but the appellant failed to appear in the court. Ultimately due to non-appearance in the proceedings, the appellant was proceeded against ex-parte on 6.10.2021 and the case was adjourned to next dates for ex-parte evidence of the respondent employee it is not out of place to mention here sub-rule (5) of Rule 11 of the Payment of Gratuity (Punjab) Rules, 1973, stipulates as under :-

“11. Procedure of dealing with application for direction :-

- (1) xx xx xx*
- (2) xx xx xx*
- (3) xx xx xx*
- (4) xx xx xx*

(5) If the employer concerned fails to appear on the specified date of hearing after due service of notice without sufficient cause, the Controlling Authority may proceed to hear and determine the application ex-parte. If the applicant fails to appear on the specified date of hearing without sufficient cause, the controlling authority may dismiss the application;

Provided that an order under this sub-rule may on good cause being shown within thirty days of the said

order be reviewed and the application re-heard after giving not less than fourteen days notice to the opposite party of the date fixed for re-hearing of the application.”

It is evident from the record that the appellant neither appeared nor made any efforts to get the ex-parte proceedings set-aside within the stipulated period as mentioned in the above rules. In view of these discussions, I do agree with the arguments of the Counsel for the Respondent employee that the Controlling Authority, Gurdaspur has jurisdiction to decide the claim application for payment of gratuity under the Act, 1972 and that the ex-parte proceedings in the case were within the knowledge of the appellant, but he willfully and intentionally avoided the case before the Controlling Authority. The contrary arguments advanced on behalf of the appellant have been found to be without any force of law. Thus, I have no reason to differ with the order passed by the Controlling Authority, Gurdaspur and as such the same is upheld. Accordingly, the appellant is not entitled to any relief by way of this appeal. The appeal of the appellant management has no merit and is dismissed. The parties are left to bear their own costs. The file be consigned to record.”

6. In the afore-mentioned circumstances, the petitioner-hospital has filed the instant writ petition before this Court.

7. Learned counsel for the petitioner-hospital submits that the authorities below have erred in law and facts in passing the impugned order. Learned counsel for the petitioner further submits that the Controlling Authority had wrongly proceeded *ex-parte* against the petitioner in a hasty manner and the Controlling Authority had passed the order without affording opportunity of hearing to the petitioner. It is submitted that the petitioner had appeared before the Controlling Authority and made a

statement that respondent No.3, herein had already filed a petition before the Industrial Tribunal, Amritsar; however, the said fact was not taken into consideration and the impugned order was passed by the Controlling Authority in a negligent manner, without conducting proper enquiry. Learned counsel for the petitioner further submits that respondent No.3 had failed to prove that she was working with petitioner-hospital for the last 20 years and therefore, it was not proved on record that she had rendered qualifying service for claiming the gratuity amount. It is submitted that the Controlling Authority has wrongly presumed that respondent No.3 was working since 1999 on the basis of certificate dated 10.08.2013, which the counsel for the petitioner submits, was never proved. It is submitted that even the date of resignation of respondent No.3 has not been verified. Learned counsel for the petitioner further submits that since respondent No.3 had already filed an application under Section 33(C)(2) of the Industrial Disputes Act, 1947 before the Industrial Tribunal, Amritsar; accordingly, she could not maintain the application for claiming gratuity before the authorities below. It is next submitted by learned counsel for the petitioner that even the Appellate Authority has failed to consider and appreciate the submissions made before it and has wrongly dismissed the appeal of the petitioner.

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

9. Before dealing with the case in hand, it would be appropriate to refer to the judgment rendered by the Hon'ble Supreme Court in the case of ***Allahabad Bank v. All India Allahabad Bank Retired Emps. Assn., 2010(1) SCT 531***, wherein Hon'ble Supreme Court had considered the provisions of the

Payment of Gratuity Act, 1972 and the findings rendered therein can be summarized as under:-

“ (a) There is no escape from payment of gratuity under the provisions of the Act unless the establishment is granted exemption from the operation of the provisions of the Act by the appropriate Government.

*(b) 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.*

*(c) In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect. Possibly for this reason, Section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act, if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. [**Municipal Corporation Delhi v. Dharam Prakash Sharma &Ors., 1999(2) SCT 297**].*

(d) An establishment is under the statutory obligation to pay gratuity as provided for under Section 4 of the Act which is required to be read along with Section 14 of the Act which says that the provisions of the Act shall have effect notwithstanding anything inconsistent therein contained in any enactment or in any instrument or contract having effect by virtue of any enactment other than this Act.

(e) The provisions of the Act prevail over all other enactment or instrument or contract so far as the payment of gratuity is concerned. The right to receive gratuity under the provisions of the Act cannot be defeated by any instrument or contract.

*(f) In **Hindustan Lever and Anr. v. State of Maharashtra & Anr.**, (2004)9 SCC 438 relying upon the decision in **Purshottam H. Judye v. V.B. Poddar**, (1966)2 SCR 353, it was held that the word 'instrument' would include award made by the Industrial Tribunal.*

(g) Section 2(d) of the Act defines Controlling Authority as an authority appointed by the appropriate Government under Section 3 of the Act. Under Section 3 the Controlling Authority is made responsible for the administration of the Act and it further provides for appointment of different authorities for different areas. Section 7 deals with for determination of the amount of gratuity. Every person who is eligible for payment of gratuity under the Act is required to send a written application to the employer in the prescribed form for payment of such gratuity. Sub-section (2) of Section 7 provides once the gratuity becomes payable, the employer shall, whether an application has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority specifying the amount of gratuity so determined and arrange to pay the amount of gratuity to the person to whom the gratuity is payable. The Scheme envisaged under Section 7 of the Act, is that in case of any dispute to the amount of gratuity payable to an employee under the Act or as to the admissibility of any claim of, or in relation to, an employee payable to gratuity etc. the employer is required to deposit with the Controlling Authority the admitted amount payable as gratuity. In case of any dispute parties may make an application to the Controlling Authority for deciding the dispute who after due inquiry and after giving the parties to the dispute, a reasonable opportunity of being heard, determine the matter

or matters in dispute and if, as result of such inquiry any amount is found to be payable to the employee, the Controlling Authority shall direct the employer to pay such amount to the employee. Sub-section (7) of Section 7, provides for an appeal against the order of the Controlling Authority. The Act, nowhere confers any jurisdiction upon the Controlling Authority to deal with any issue under sub-section (5) of Section 4 as to whether the terms of gratuity payable under any Award or agreement or contract is more beneficial to employees than the one provided for payment of gratuity under the Act. This Court's order could not have conferred any such jurisdiction upon the Controlling Authority to decide any matter under sub-section (5) of Section 4, since the Parliament in its wisdom had chosen to confer such jurisdiction only upon the appropriate Government and that too for the purposes of considering to grant exemption from the operation of the provisions of the Act.”

10. In view of the above, there is no dispute that the provisions of the 1972 Act, have an overriding effect. Further, it is also not disputed before this Court that the provisions of the 1972 Act, are applicable to the petitioner establishment. Therefore, the provisions of the 1972 Act would be applicable to the case of respondent No.3, herein.

11. As regards the contention of learned counsel for the petitioner that the Controlling Authority had not afforded any opportunity of hearing to the petitioner, it is observed that upon the receipt of application submitted by respondent No.3 before the Controlling Authority, a notice was issued to the petitioner-hospital; whereupon, Dr. Vijay Kumar Bahri, had appeared on behalf of the petitioner-hospital; however, subsequently, no one on behalf of the petitioner appeared before the Controlling Authority on various dates i.e. 28.07.2021, 04.08.2021, 18.08.2021, 08.09.2021 and 15.09.2021. It

appears that on 15.09.2021, even a fine of Rs.500/- was imposed upon the petitioner herein; however, they failed to appear and ultimately, the petitioner was proceeded against *ex-parte* on 06.10.2021 and the matter was listed for *ex-parte* evidence of respondent No.3, herein.

12. Here, it would be gainful to refer to Rule 11(5) of the Payment of Gratuity (Punjab) Rules, 1973, which reads as under :-

“11. Procedure of dealing with application for direction :-

(5) If the employer concerned fails to appear on the specified date of hearing after due service of notice without sufficient cause, the Controlling Authority may proceed to hear and determine the application ex-parte. If the applicant fails to appear on the specified date of hearing without sufficient cause, the controlling authority may dismiss the application;

Provided that an order under this sub-rule may on good cause being shown within thirty days of the said order be reviewed and the application re-heard after giving not less than fourteen days notice to the opposite party of the date fixed for re-hearing of the application.”

A perusal of the above extracted Rules would manifest that the Controlling Authority was well within its jurisdiction to proceed with the decision of the case once the petitioner-hospital had failed to appear before it and was proceeded against *ex-parte*. Still further, it appears that no efforts were made by the petitioner-hospital to get the *ex-parte* proceedings against it, set aside. Apparently, the proceedings pending before the Controlling Authority were well within the knowledge of the petitioner-hospital.

In this view of the matter, it cannot be agitated by the petitioner that no opportunity of hearing was afforded to them by the Controlling Authority.

13. As regards the other submission that the Controlling Authority has not conducted proper enquiry and there was no material on record to show that respondent No.3 has rendered qualifying service and/or 20 years of continuous service before she tendered her resignation; suffice it to say that respondent No.3, in support of her claim before the Controlling Authority, had tendered documents including an Experience Certificate dated 10.08.2013 (Annexure P-13), issued by petitioner-hospital itself, which reads as under :-

“EXPERIENCE CERTIFICATE

To whom it may concern

*This is to certify that Miss Santosh Kumari D/o Sh. Amar singh, V.P.O. Bhatoya, Teh. & Distt. Gurdaspur has been working as a Mid Wife/Ward Attendant in this Hospital since April, 1999 to till date. Her work & conduct is very satisfactory.
I wish her success in life.*

*Dr. Vijay Bahri
M.S”*

14. From a perusal of the afore-said Experience Certificate (Annexure P-13), issued by the petitioner-hospital itself, it is apparent that respondent No.3 had joined the hospital as Mid-wife/Ward Attendant since April 1999. Further, a perusal of the ‘Grounds of Appeal’ filed by the petitioner-hospital under Section 7(7) of the 1972 Act against the order dated 16.03.2022 passed by the Controlling Authority, the petitioner had made the following averments in para No.5 of its ‘Ground of Appeal’ (Annexure P-8), which reads as under :-

*“5. That despite this, the management of the appellant hospital still directed her to rejoin her duties, copy of the communication is attached as **Annexure A-4.** However, instead of rejoining her duties, respondent no.2*

submitted her resignation vide communication dated 18.11.2019, copy of which is attached as Annexure A-5.”

A perusal of the above extracted para would further indicate that respondent No.3 had submitted her resignation vide communication dated 18.11.2019, which was also within the knowledge of the petitioner-hospital. Therefore, it had come on record that respondent No.3 had rendered service from April, 1999 upto 18.11.2019 i.e. more than 20 years. Further as per Section 4 of the 1972 Act, it is provided that subject to provisions contained therein, any person, who has rendered continuous service for five years, is entitled to the gratuity amount. Consequently, there can be no dispute that respondent No.3 had rendered service for more than five years from April, 1999 onwards upto 18.11.2019 i.e. the date when she tendered her resignation. Therefore, respondent No.3 was entitled to claim gratuity amount, which has been rightly allowed by the authorities below.

15. As regards the plea of the petitioner that respondent No.3 had already invoked the jurisdiction of the Labour Court by filing an application under Section 33(C)(2) of the Industrial Disputes Act, 1947 and therefore, she could not have filed an application under the 1972 Act to claim gratuity; I do not find any merit in the said submission as the Industrial Tribunal has no jurisdiction to decide the issue regarding payment of gratuity, as it is only the Controlling Authority under the 1972 Act, who has the jurisdiction to decide the claim for payment of gratuity, as regards any establishment to which the Act applies.

16. In view of the above, there is no scope for any interference in the impugned orders passed by the authorities below, which may call for any interference by this Court. Resultantly, the instant writ petition fails and the

same is hereby dismissed.

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

August 23, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No