IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-25675-2018
Date of decision : 09.02.2023

Kaushalya Rani ...... Petitioner

versus

State of Punjab and others ...... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

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Present: Mr. Manpreet Singh Longia, Advocate
for the petitioner.

Mr. Sehajbir S. Aulakh, AAG, Punjab.

Mr. S.P. Garg, Advocate
for respondent No.4.

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PANKAJ JAIN, J. (Oral)

Petitioner herein prays for issuance of a writ in the nature of mandamus directing the respondents to release the balance amount of gratuity, arrears of pay, pension and other admissible benefits to the petitioner w.r.t. the terminal benefits of Shri Darshan Kumar s/o Bihari Lal, husband of the petitioner, who went missing on 30.08.2007.

2. Husband of the petitioner Darshan Kumar was employed as Junior Assistant with respondent No.4. After completing more than 38 years of service, suddenly he went missing on 30.08.2007. He was due to retire on 31.08.2008. The petitioner applied for terminal benefits qua her missing husband vide application dated 06.10.2008 and the same have been paid as under:-

Name of Payment	Payment Due	Payment made on first time	Payment made on second time	Payments of balance
Gratuity	2099+66/2=692769 Limit 350000 According to the instructions of the Government the limit of 10 Lac of Gratuity has been applicable from 25.05.2010 (Copy enclosed)	Rs. 340956/- Cheque No.723326 dated 29.04.2011	Rs.9044/- Cheque No. 056698 dated 02.02.2017	NIL
Leave Enchashment	20993*300/30 = 209930/-	Rs. 2066440/- Cheque No.723326 Dated 29.04.2011	Rs. 20/- Cheque No.056698 dated 02.02.2017	3270/-
Ex-gratia	100000/-	0	Rs.1,00,000/- Cheque No.056698 dated 02.02.2017	NIL
Salary from 01.08.2007 to 29.08.2007	22388/-	0	Rs. 22,388/- Cheque No. 056698 dated 02.02.2017	NIL
Balance of Pay Scale from 01.01.2006 to 29.08.2017	608802/-	54771/-	--	6031/-
Payment of Leaves of Saturday and Sunday	193566/-	Rs. 192566/- Cheque No.000294 dated 16.12.2016	--	NIL
P.F. Amount	32975/-	Rs.32975/- Cheque No.953059 dated 21.04.2011	--	NIL
TOTAL	968661/-	827908/-	131452/-	9301/

3. Counsel for the petitioner has raised two fold submissions. He submits that the gratuity amount paid to the petitioner is not in terms of the

rules applicable. An amount of Rs.3,50,000/- has been paid whereas even as per the calculation of the respondents as given in their order dated 26.12.2017 (Annexure P-21), the same was calculated to be Rs.6,92,769/-. In the same table, the reason given to limit the same upto 3.5 lacks reads as under:-

> "As per the State instructions, limit of gratuity has been enhanced upto Rs.10 lac only w.e.f. 25.05.2010."

4. In the written statement, the stand of the respondents is that the gratuity payable under the provision of payment of Gratuity Act and thus the said ceiling of Rs.3.5 lac was to be adhered to.

5. Counsel for the petitioner submits that the service of the husband of the petitioner was governed by the Punjab Municipal Service (Recruitment and Conditions of Service) Rules, 1975. Service as defined under Rule 2(m) means a municipal service constituted by the Government under Section 38(1) of the Punjab Municipal Act, 1911. The Government as defined under Rule 2(i) means the Government of the State of Punjab. Gratuity permissible to the members of the service are governed by Rule 17. He thus submits that the gratuity payable has to be as notified by the Government from time to time. Government vide notification dated 17.08.2009 while implementing recommendation of 5th Pay Commission regarding pension and other retirement benefits increased the limit of retirement cum death gratuity from Rs.3.5 lacs to Rs.10 lacs. As per the said notification, the revised provisions shall apply to the employees, who retired/died in harness on or after 01.01.2006. Thus, it is claimed that the conjoint reading of the 1971 Rules and the notification/office order dated 17.08.2009 makes it clear that the ceiling for death cum gratuity stands enhanced from Rs.3.5 lacs to Rs.10 lacs and is applicable to the case of the

employees who retired/died in harness on or after 01.01.2006. Resultantly, the case of the petitioner has to be considered in terms thereof and will be eligible for gratuity amount of Rs.6,92,769/- and the same cannot be pegged down to Rs.3.5 lacs.

6. The other contention of the counsel representing the petitioner is that the case of the missing employees is governed by the instructions dated 27.03.1991 which have been issued with an intent to ease out the difficulties faced by the family members of the employees. He thus submits that the petitioner was entitled for interest on the terminal benefits as per the same.

7. I have heard counsel for the parties and have gone through the records of the case.

8. Rule 17 of the 1975 Rules needs to be perused:-

> "17. Gratuity.(1) The members shall at their option be entitled to gratuity at such rates as may from time to time be notified by the government or to the amount of gratuity to which they may be entitled under the conditions of service applicable to them immediately before becoming members of a service, whichever is more beneficial to them :
>
> Provided that the total service of a member under different Municipal Committees he has served shall be taken into account for calculating the amount of gratuity due to him :
>
> Provided further that on transfer of a member from one Municipal Committee to another, the gratuity to which he may be entitled shall be transferred to the Municipal Committee to which such a member has been transferred and the member shall be entitled to claim the entire amount of gratuity payable from the Municipal Committee last served.

> (2) The incidence of gratuity on the funds of the concerned Municipal Committee shall be in proportion to the length of service in each such Municipal Committee."

9. Thus, it is clear therefrom that the ceiling payable to the petitioner is to be governed by the notification issued by Punjab Government. Thus, the ceiling would be as notified by State of Punjab. Resultantly, the petitioner shall be entitled for gratuity amount of Rs. 6,92,769/-. So far as the interest part is concerned, admittedly, the payments have been made in the year 2011/2016. Instructions dated 27.03.1991 read as under:-

> "I have been directed to draw your attention towards the subject cited above that as per prevailing system, the employees, who goes missing all of sudden and their whereabouts are not found, their heirs are paid Pension and other retiral benefits after a period of 7 years. This period of 7 years is based on section 108 of Indian Evidence Act. This period is pretty long and the family members of the employee have to face a lot of problems. In this connection, while adopting the guidelines of Government of India, as issued vide its letter No. 1/17/86 P & W.P. dated 29.8.86, after due deliberation, Punjab Government as decided as follows:-
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> 1) If any Government employee is missing, the payment of pay, leave encashment and G.P. Fund amount etc. may be first made to the family member nominated by the said employees.
>
> 2) After the completion of one year period, the family members of missing employee may be given other family pension benefits viz. Gratuity/family pension etc.
>
> 2. The above noted pensionery benefits can be

sanctioned according to the following conditions:-

a) A report regarding missing of concerned employee may have been got recorded by family members of said employee in the concerned Police Station and the said report may have been obtained from the Police and the said missing employee could not be traced out despite due efforts.

b) An Indemnity Bond be obtained from dependent/nominated member of family of said employees to the effect that in case the missing person is found, the amounts so paid on account of pension benefits, as is being claimed by him, will be got adjusted.

4. The Head of Departments/Offices will have to assess that recovery of all the dues towards the employee has been effected as per rules/directions.

5. The family members of concerned employee may apply for sanction of family pension and gratuity before Head of Department/Office after one year from the date of missing of said employees by way of submitting the application in prescribed form. In the event of non-payment of gratuity to the applicant within a period of three months from the application to be given by applicant in the office, the Department/Office will also have to pay interest at the rate to be applicable from time to time and the accountability of concerned official officer, liable for delayed payment of gratuity, will be fixed and disciplinary proceeding will be conducted against him.

6. It is requested that these directions may be brought to the notice of all concerned."

10. The terminal benefits of the petitioner would obviously become payable from the date of missing of her husband i.e. 30.08.2007. The benefits became payable a year thereafter i.e. on 30.08.2008. The petitioner

applied on 06.10.2008. As per the instructions 03 months have to be granted to the authorities to pay the same. Resultantly, the petitioner will be entitled for interest on delayed payment w.e.f. 06.01.2009 @ 7% per annum till the date of actual realization. In terms of the aforesaid, present writ petition is allowed. Respondents are directed to pay the amount of gratuity and the interest on delayed payment to the petitioner within a period of 03 months from the date of receipt of certified copy of the order in terms of instructions (P-9).

11. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

09.02.2023
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No