IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19196-2023 (O&M)
Date of decision :12.12.2023

PUNJAB WATER RESOURCES MANAGEMENT AND DEVELOPMENT CORPORATION LIMITED THROUGH ITS MANAGING DIRECTOR.

…Petitioner

Versus

THE CONTROLLING AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT, 1972, CHANDIGARH AND OTHERS

…Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Rahul Verma, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

Petitioner (Punjab Water Resources Management and Development Corporation Limited) has filed the instant writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing the order dated 03.02.2023 (Annexure P-6) passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (for short `the 1972 Act'); whereby, an application filed by respondent No.3, herein (Jaswant Singh Rawat) claiming gratuity under the 1972 Act had been allowed and the petitioner-Corporation was directed to make the payment of balance amount of gratuity.

Petitioner has also laid challenge to the order dated 01.08.2023 (Annexure P-7) passed by the Appellate Authority under the 1972 Act, whereby, the appeal filed by the petitioner-Corporation against the order (Annexure P-6) passed by the Controlling Authority, has been dismissed.

2. Briefly, the respondent No.3, herein filed an application under the 1972 Act, claiming the amount of gratuity on the plea that he was appointed as a Senior Assistant on 06.03.1978 and he remained in continuous employment with the petitioner-Corporation from where he got retired upon attaining the age of superannuation on 30.11.2018. Respondent no.3 claimed that at the time of his retirement, he was drawing a salary of Rs.53,056/- p.m. and he was entitled for gratuity amounting to Rs.12,54,978/-; however, the petitioner-Corporation had made payment of gratuity amount of only Rs.10,00,000/- and that too, after a delay of more than three months. Therefore, respondent No.3 prayed that an appropriate directions be issued to the petitioner-Corporation to pay the balance amount of gratuity of Rs.2,54,978/- along with interest till the date of payment as per the provisions of the 1972 Act.

3. The afore-said claim of respondent No.3 was contested by the petitioner-Corporation; wherein, a preliminary objection regarding territorial jurisdiction was raised. It was the further stand of the petitioner-Corporation that it is a non-profit making Government Undertaking, having no source of revenue of its own and was fully dependent upon the Government of Punjab for release of funds even for the purposes of payment of salary to its employees and also the retiral benefits i.e. gratuity, leave encashment etc. to the retired employees. On merits, the petitioner-Corporation denied all the averments made by respondent No.3 in his petition.

4. From the pleadings of the parties, the Controlling Authority

framed the following issues :-

"(1) Whether the applicant is entitled for the amount of gratuity as claimed or not ?

(2) Relief, if any?"

5. The parties led their evidence in support of their respective claims.

6. The Controlling Authority, vide order dated 03.02.2023 (Annexure P-6) allowed the application of respondent No.3, by holding as under :-

"Issue No.01 & 02:

These issues are co-related, hence, the same shall be decided together. From the perusal of the record and evidence place on file, it is concluded that the respondent/corporation has released the amount of gratuity of Rs.10 lacs to the applicant on 03-04-2019 but without any interest on the delayed payment of gratuity as per the provisions of the Payment of Gratuity Act, 1972. Further, the witness of the respondent has admitted that they have paid the amount of gratuity. Moreover, as per the notification dated 29-03-2018 issued by the Govt. of India regarding ceiling cap of gratuity amount from Rs.10 lacs to Rs.20 lacs, therefore, as per the present claim application, it is decided that since as per the calculation of the length of service and last wages drawn by the applicant, his total amount of gratuity was Rs.12,54,978/- whereas he has paid disbursed an amount of Rs.10 lacs on 03-04-2019 after the enhancement of the ceiling cap by the Govt. of India under the PG Act, 1972 which is applicable upon the respondent/management. Now, it is decided that the respondent/management is directed to deposit the balance amount of Rs.2,54,978/- as a part of gratuity and the interest @ 9% thereupon from the due date 01-01-2019 till the actual realization of the amount.

It is also decided that the applicant is entitled for interest @ 6% upon the amount of Rs.10 lacs from 01-01-2019 to 02-04-2019 as per the provisions of the Payment of Gratuity Act, 1972.

In view of the above, the respondent/corporation is accordingly directed to deposit the balance amount of gratuity of Rs.2,54,978/- with interest @ 9% thereupon from due date 01-01-2019 till the actual realization of the amount of interest @ 6% upon the amount of Rs.10 lacs from 01-01-2019 to 02-04-2019 in this court within a period of 20 days from the date of this order, failing which the said amount shall be recovered along with a further penal interest @ 12% p.a. from the date of this order up to the date of actual payment."

7. Being dissatisfied with the afore-said award, the petitioner-Corporation filed an appeal before the Appellate Authority under the 1972 Act; however, the same was also dismissed vide its order dated 01.08.2023 (Annexure P-7) by holding as under :-

"12. After hearing arguments advanced by learned counsel for the parties and perusing the record of this case, it is not disputed that the claimant was appointed as Senior Assistant on 06.03.1978 with the Appellant Corporation and he retired on 30.11.2018 from service upon attaining the age of superannuation. It is also not disputed that he was drawing a salary of Rs.53,056/- per month at the time of retirement. Further, it is also not disputed that the appellant has already made payment of gratuity amount of Rs.10 lacs on 03.04.2019. The claimant while filing the application before Learned Controlling Authority has stated that the gratuity amount after calculation goes to Rs.12,54,978/- and that a sum of Rs.2,54,978/- yet to be paid. The learned Controlling Authority has ordered to pay the remaining amount of

gratuity i.e. Rs.2,54,978/- along with the interest as detailed in the order dated 03.02.2023.

13. It is submitted on behalf of the Appellant Corporation that the notification dated 29.03.2018 issued by the Govt. of India vide which the limit of Gratuity amount has been increased from Rs.10 lacs to 20 lacs is not applicable upon the appellant corporation. It is further submitted that the Govt. of Punjab, Department of Finance issued a letter on 13.09.2019 vide which the enhancement of payment of Gratuity had already been withdrawn. Hence, the learned Controlling Authority has committed error while granting gratuity in excess of Rs.10 Lacs. On the other hand, it is submitted on behalf of claimant that no such plea was taken by the Appellant before the Controlling Authority. It is further submitted that the notification dated 29.03.2018 was issued by the Central Govt. regarding enhancement of limit of Gratuity from Rs.10 Lacs to 20 Lacs and same is applicable from the date of notification i.e. 29.03.2018 and no separate order was required for its applicability/implementation. After hearing the contention on the aforesaid point on behalf of both the learned counsels, I am of the view that the contention so raised by the appellant is not tenable in the eyes of law. Firstly no such plea was taken by the appellant before learned Controlling Authority. Secondly, the notification dated 29.03.2018 is issued by the Central Govt. and it is applicable as such without its formal adoption by any state. Moreover, the letter dated 13.09.2019 allegedly issued by Govt. of Punjab, Department of Finance, cannot have overriding effect over the notification dated 29.03.2018. Even otherwise, the letter dated 13.09.2019 allegedly issued by the Govt. of Punjab, Department of Finance, was issued after the date of retirement of the Respondent No.2. Hence, by any stretch of imagination, the said letter has no applicability *while determining the amount of Gratuity to be paid to the claimant.*

14. The appellant has also taken a plea that the claimant does not fall within the definition of employee as per the Gratuity Act and that payment of Gratuity Act has no applicability on the Appellant Corporation. The said plea is also devoid of merit as the witness of appellant corporation before learned Controlling Authority categorically admitted in his cross examination that employee of the appellant corporation are governed by the rules of Payment of Gratuity Act, 1972. Moreover, the amount of Gratuity of Rs.10 Lacs has already been paid to the claimant as per the Payment of Gratuity Rules applicable to the appellant corporation. Hence, now the appellant cannot take a stand contrary to the record.

15. Plea has also been taken on behalf of the Appellant Corporation that learned Controlling Authority had no jurisdiction to entertain the application filed on behalf of claimant. Perusal of the file transpires that the said plea was also raised before learned Controlling Authority upon which additional issue was also framed and vide order dated 13.07.2022, the said issue was decided in favour of the claimant and it was held that learned Controlling Authority has jurisdiction to entertain the said application. Further, perusal of the file also transpires that when the claimant retired from his service i.e. on 30.11.2018, the Appellant Corporation had their head office in Chandigarh itself. Thus, the cause of action regarding non-payment of gratuity arose within the jurisdiction of Chandigarh. Thus, mere fact that subsequently the head office has been changed from Chandigarh to Mohali does not divest the Controlling Authority at Chandigarh to entertain the application filed by the claimant. Thus, the said contention is also devoid of merit.

16. It is also submitted on behalf of the appellant that learned Controlling Authority has also granted interest @ 12% per annum on the award amount which is also not as per the provisions of the Act. Whereas, it is submitted on behalf of the claimant that the interest has been awarded as per the provisions of the Act. Perusal of the file shows that learned Controlling Authority has awarded interest on the amount of Rs.2,54,978/- @ 9% from 01.01.2019 till its realization. The learned Controlling Authority has also ordered for payment of interest @ 6% upon the amount of Rs.10 lacs from 01.01.2019 to 02.04.2019 for a period of 30 days from the date of order failing which a penal interest @ 12% per annum has been ordered till the actual payment. The awarding of penal interest @ 12% per annum on the delay in payment cannot be said to be beyond the provisions of the Act. Hence, the amount of interest has been ordered as per the provisions of the Act and learned Controlling Authority was well within his discretion to grant penal interest @ 12% per annum in case of non-payment within the stipulated time. Hence, it cannot be said that learned Controlling Authority has not complied with the provisions of the Act.

17. In view of the above discussion, this Court is of the considered opinion that order passed by learned Controlling Authority is legal and justified and there is no illegality or irregularity in the same.

18. In view of the above, finding no merits, the present appeal filed by the Appellant Corporation stands dismissed. However, no order as to costs. Parties be informed accordingly. Present case file be consigned to record after due compliance."

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

9. Learned counsel for the petitioner submits that the learned authorities below have erred in law and facts in passing the impugned orders. It is submitted that the learned authorities below have wrongly applied the notification dated 29.03.2018 upon the petitioner-Corporation as the same was not applicable as the Punjab Government has already issued a letter withdrawing the enhancement in payment of gratuity. It is further submitted that the authorities below have wrongly assumed jurisdiction as regards the claim of gratuity by respondent No.3 is concerned as the petitioner-Corporation had shifted its office in Mohali; therefore, the Controlling Authority at Chandigarh had no jurisdiction in the matter. It is also submitted by learned counsel for the petitioner-Corporation that respondent No.3 had not approached the authorities under the 1972 Act with clean hands as he had suppressed the material fact that he had already received an amount of Rs.10,00,000/- on account of gratuity and nothing was due from the petitioner-Corporation.

10. With the afore-said submissions, it is prayed that the impugned orders be set aside/quashed.

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

12. In ***Allahabad Bank v. All India Allahabad Bank Retired Emps. Assn., 2010(1) SCT 531***, Hon'ble Supreme Court while considering the provisions of the Payment of Gratuity Act, 1972; has held 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.*

13. Coming to the case in hand, there is no dispute about the fact that the respondent No. 3 (Jaswant Singh Rawat) has remained in continuous employment of petitioner-Corporation w.e.f. 06.03.1978 upto 30.11.2018, when he retired upon attaining the age of superannuation. The applicability of 1972 Act upon the petitioner-corporation also stands admitted by the petitioner's witnesses appearing before the controlling authority.

14. Sub-section (1) of Section 4 of 1972 Act provides that the gratuity shall be payable to an employee on termination of his employment after he has rendered continuous service for not less than five years, on his superannuation or retirement or resignation or death or disablement due to accident or disease.

Sub-section (2) of Section 4 provides that for every completed year of service or part thereof in excess of six months the employer shall pay gratuity to an employee at the rate of 15 (fifteen) days wages based on the rate of wages last drawn by the concerned employee.

Sub-section (3) of Section 4 which is of importance reads as under:

> *"(3) The amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government from time to time."*

As per above extracted provision, the amount of gratuity payable to an employee would not exceed such amount as may be notified by the Central Government from time to time. Thus, the ceiling limit for payment of gratuity is provided in sub-section (3) of Section 4.

15. In exercise of such delegated powers of legislation, the Central Government has issued a notification dated 29.03.2018 which reads as under:

> *"S.O. 1420 (E).-In exercise of the powers conferred by sub-section (3) of section 4 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies that the amount of gratuity payable to an employee under the said Act shall not exceed twenty lakh rupees."*

It is thus evident that this revised ceiling would apply to all establishments irrespective of whether they are controlled or governed by the State or the Central Government.

16. In the light of the legal position indicated in foregoing paras that the provisions of 1972 Act prevail over all other enactment or instrument or contract so far as the payment of gratuity is concerned and also in terms of express provisions contained in sub-section (3) of Section 4 of 1972 Act, there is no force in the contention of the petitioner that the Notification dated 29.03.2018 issued by the Central Government has no

applicability to the petitioner-corporation or that the Punjab Government has issued a letter whereby enhancement of payment of gratuity has been withdrawn.

17. As regards the contention of the petitioner that the Authorities under the 1972 Act have wrongly assumed jurisdiction as the Petitioner-Corporation has its office at Mohali, it is observed that the said contention was duly considered and rejected by the Appellate Authority below by holding that at the time of retirement of petitioner from service on 30.11.2018, the Petitioner-Corporation had its office at Chandigarh itself, thus the cause of action regarding non-payment of gratuity arose within the jurisdiction of Chandigarh and merely because subsequently the Petitioner-Corporation has shifted its office to Mohali, would not divest the Controlling Authority at Chandigarh to entertain the application filed by respondent No. 3 (Jaswant Singh Rawat). I am in full agreement with the aforesaid finding returned by the Appellate Authority below.

In terms of Section 7(2) of 1972 Act, as soon as gratuity becomes payable, the employer, whether any application has been made or not, is obliged to 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. Under Section 7(3) of 1972 Act, the employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable.

It is not disputed that the day when the petitioner retired from service, the office of the Petitioner-Corporation was at Chandigarh itself, thus the cause of action regarding non-payment of gratuity arose within the jurisdiction of Chandigarh. Therefore, no fault can be found with the impugned orders on the ground of jurisdiction, as contended on behalf of Petitioner-Corporation.

18. No other argument has been raised.

19. Considering the totality of circumstances, there is no scope for any interference in the impugned order dated 03.02.2023 (Annexure P-6) and order dated 01.08.2023 (Annexure P-7), resultantly, the instant petition fails and the same is accordingly dismissed.

20. All pending applications (if any) shall stand disposed of.

December 12, 2023 **(HARSH BUNGER)**
gurpreet **JUDGE**

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