2023:PHHC:166457

105 **IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**

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CWP-23284-2022
Date of Decision: 29.11.2023

Punjab State Co-operative Supply & Marketing Federation Ltd. (MARKFED) and another

..... Petitioners

Versus

The Appellate Authority under the Payment of Gratuity Act, 1972-cum-Addl. Labour Commissioner, Punjab, SAS Nagar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Ms. Jarnail Kaur Dhaliwal, Advocate
for the petitioners.

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HARSH BUNGER J.

1. Petitioners have 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 impugned order dated 17.12.2019 (Annexure P-1) passed by the Controlling Authority-cum-Assistant Labour Commissioner, Bathinda under the Payment of Gratuity Act, 1972 (for short 'the 1972 Act'); whereby, an application filed by respondent No.2 herein (Ishwar Chander) claiming gratuity under the 1972 Act had been allowed and the petitioners herein – MARKFED (hereinafter referred to as 'the petitioner-Management') was directed to make the payment of balance

amount of gratuity.

Petitioner has also laid challenge to the order dated 31.05.2021 (Annexure P-2) passed by the Appellate Authority-cum-Additional Labour Commissioner, Punjab, S.A.S. Nagar, whereby the appeal filed by the petitioner-Management against the order (Annexure P-1) passed by the Controlling Authority, has been dismissed.

2. Briefly, the respondent No.2 herein filed an application under the 1972 Act, claiming the amount of gratuity on the plea that he was appointed to the post of Store Clerk and joined the service on 11.10.1973. It was claimed by him that his services were governed by the terms and conditions provided in Punjab State Supply and Marketing Cooperative Services (Common Cadre) Rules, 1967. Respondent No.2 further claimed that he continuously served the petitioner-Management from 11.10.1973 to 31.03.2009, i.e. for a period of more than thirty five years; and he retired from the service upon attaining the age of superannuation on 31.03.2009. Respondent No.2 claimed that at the time of his retirement, he was drawing a salary of Rs.34,453/- p.m. and he was entitled for gratuity amounting to Rs.6,02,927/-; however, the petitioner-Management had made payment of gratuity amount of only Rs.3,50,000, regarding which, respondent No.2 sent representation dated 17.12.2018 to the petitioner-Management through registered post, by giving reference of judgment dated 31.10.2014 passed by Hon'ble High Court of Punjab and Haryana in CWP-15363-2011; however, neither the balance gratuity amount was paid to respondent No.2 nor any reply to the aforesaid representation was received from the petitioner-Management. Therefore, respondent No.2 prayed that an appropriate direction be issued to the petitioner-Management to pay the balance amount of gratuity of Rs.2,52,927/- along with interest till the date of payment as per

the provisions of the 1972 Act.

3. The aforesaid claim of respondent No.2 was contested by the petitioner-Management; wherein, a preliminary objection was raised by MARKFED that respondent No.2 was governed under the Factory Act and not under the Common Cadre Rules of MARKFED. It was stated by petitioner-Management that the maximum gratuity amount of Rs.3,50,000/- under the 1972 Act was already paid to respondent No.2 and that MARKFED had not adopted government circular about raising maximum limit of gratuity from Rs.3,50,000/- to Rs.10,00,000/-. On merits, the petitioner-Management admitted the employment of respondent No.2, his retirement from service and salary at the time of his retirement, however, the claim for balance gratuity amount made by respondent No.2 in his application was denied by petitioner-Management.

4. From the pleadings of the parties, the Controlling Authority framed the following issues:-

> *"(i) Whether application is not maintainable? (OPR)*
> *(ii) Whether applicant is entitled to gratuity? If so, to what extent? (OPA)*
> *(iii) Relief."*

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

6. The Controlling Authority, vide order dated 17.12.2019 (Annexure P-1) allowed the application of respondent No.2, by holding as under:-

> "***Issue No.1***
>
> *The onus to prove this issue was upon the respondents but their Authorised Representative has failed to show as to how the claim application is not maintainable. So issue no.1 is decided against the respondents and in favour of the applicant.*

Issue No.2

A.R. for the applicant has argued that Markfed vide its letter dated 19.10.2011, Ex. A-5, has enhanced maximum limit of gratuity from Rs.03,50,000/- to 10,00,000/- w.e.f. 01.01.2006 and since the applicant has retired from service on 31.03.2009, the applicant is entitled to gratuity by taking into account enhanced amount of Rs.10,00,000/-. He has further argued that Hon'ble High Court of Punjab and Haryana vide its Judgment dated 31.10.2014, Ex. A-6, has allowed claim of other 8 employees of Markfed for payment of enhanced gratuity and that said judgment is fully applicable to the case of the applicant. He has further argued that as per orders of Markfed and judgment of Hon'ble High Court, the total amount of gratuity works out to Rs.6,02,927/-. The respondents have paid gratuity amount of Rs.03,50,000/- to the applicant and therefore he is entitled to receive balance gratuity amount of Rs.02,52,927/- along with interest. There is no dispute between the parties about total service of 35 years and last drawn salary Rs.34,453/-. According to sanction order dated 12.03.2009, Ex.A-4, amount of gratuity works out to Rs.06,02,927/- (Rs.34,453/- X 17 ½ months). The applicant has already been paid gratuity amount of Rs.03,50,000/- and therefore he is held entitled to payment of balance gratuity amount of Rs.02,52,927/-. The applicant is also held entitled to interest @ 10% per annum on the balance amount of gratuity from 01.04.2009 till the date of actual payment in the light of judgment dated 31.10.2014 of Hon'ble High Court of Punjab and Haryana in CWP No.15363 of 2011. Issue No.2 is accordingly decided in the favour of the applicant and against the respondents.

Relief

In the light of my findings under issues no.1 and 2 above, applicant is held entitled to receive balance gratuity amount of Rs.02,52,927/- from the respondents along with interest @ 10% with effect from 01.04.2009 till the date of actual payment. Respondents are directed to pay balance

> *gratuity amount along with interest to applicant within 60 days from the date of receipt of copy of this order.*
> *Parties will bear their own costs.*"

7. Being dissatisfied with the aforesaid order, the petitioner-Management filed an appeal before the Appellate Authority-cum-Additional Labour Commissioner, Punjab, S.A.S. Nagar under the 1972 Act; however, the same was also dismissed vide its order dated 31.05.2021 (Annexure P-2) by holding as under:-

> "*6. As regards the preliminary submission of the respondent employee that the appeal has been filed after one hundred twenty days as prescribed under the Act. It has been argued by the appellant that the order was passed by the Controlling Authority on 17-12-2019 and it was received on 07-01-2020 by the appellant. Thereafter certain time was consumed in following procedure in getting the approval of competent authority. It has been further submitted that on account of pandemic Covid-19 the government has announced lockdown in March, 2020 and all the offices of the State Government were not functional and therefore, when the situation become some normal the appeal was filed on 27-07-2020. In this regard an application for condonation of delay along with affidavit of Sh. H.S. Dhaliwal, District Manager, Mansa has also been filed.*
> *7. Though there was a sufficient time for the appellant after the order was received on 07-01-2020 till the lockdown was imposed in the month of March, 2020 but on account of strict lockdown situated prevalent in the Country from March, 2020 onward, there was sufficient ground to prevent the appellant for filing the present appeal. So it can be assumed that the appellant was prevented from the prevailing situation of Covid-19 at the relevant time from filing the appeal. The objection regarding delay was also not seriously pressed by the representative of the respondent during the course of*

arguments. Therefore, I hold that the appeal is maintainable.

8. The counsel for the respondent employee has argued that similarly situated 8 employees, who were retired between 09-03-2008 to 09-05-2010 were given 3.50 lac on account of gratuity like the respondent. Those employees filed CWP No.15363 of 2011 before the Hon'ble Punjab and Haryana High Court claiming gratuity on the basis of enhanced limit of Rs. 10 lac. The Hon'ble High Court vide its judgment dated 31-10-2014 allowed the claim of these employees and directed Markfed to pay balance amount of gratuity along with interest at the rate of 10% per annum from the date of retirement till the date of actual payment along with costs of Rs.5000/- to be paid to each of the 8 employees. That judgment of Hon'ble High Court has been implemented by the Markfed vide its Letter No. Est/EAT-1/2015/496 dated 25-05-2015. It has been argued that the said judgment of the Hon'ble High Court has been fully applicable in the case of respondent. A copy of the judgment has been placed in the file maintained by Controlling Authority at Page No. 27-39. The order allowing the 8 retired employees be enhanced amount of gratuity along with costs of Rs.5000/- to each of the employees has been placed at Page No.40 of the Controlling Authority office file.

9. In view of the above discussion, I am of the considered view that the respondent employee is entitled to balance payment of Rs.2,52,927/- on account of gratuity on the basis of judgment dated 31-10-2014 of the Hon'ble High Court read with order dated 25-05-2015 issued by the Markfed itself. Therefore, the order dated 17-12-2019 passed by the Controlling Authority is absolutely perfect and in order. The appeal of the Markfed is therefore dismissed. The parties are left to bear their own costs. The file be consigned to record."

8. In the aforementioned circumstances, the petitioner-Management 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 respondent No.2 was governed under the Factory Act and not under the Common Cadre Rules of MARKFED. It is further submitted that as per circular dated 17.08.2009 issued by the State Government raising amount of gratuity from Rs.3,50,000/- to Rs.10,00,000/- has been made applicable upon common cadre employees from 13.09.2011, however, respondent No.2 retired on 31.03.2009, and accordingly he was paid the maximum gratuity amount of Rs.3,50,000/- under the 1972 Act. Learned counsel for the petitioners submits that the claim of respondent No.2 that his case is covered by judgment dated 31.10.2014 passed by this Court in CWP-15363-2011 is totally wrong as facts of both the cases are entirely different. It is further stated that respondent No.2 has already received maximum gratuity amount of Rs.3,50,000/- and nothing is due from the petitioner-Management.

10. With the aforesaid 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. A perusal of the impugned orders would show that the claim of respondent No.2 has been allowed, primarily relying upon a judgment rendered by this Court in ***CWP No. 15363 of 2011 titled as "Nathu Ram and Others versus State of Punjab and Others"***, which was also a case pertaining to the employees of the Punjab State Cooperative Supply & Marketing Federation Limited (MARKFED), i.e. petitioner in the instant case. It is not disputed that respondent No.2 has remained in continuous employment of petitioner, w.e.f. 11.10.1973 up to 31.03.2009, when he

retired from service upon attaining the age of superannuation.

In the case of ***Nathu Ram (supra)***, this court held as under:-

"13. Coming now to the second argument of learned counsel for respondent-MARKFED, though, without doubt, MARKFED being an independent entity, the instructions and policies of the Punjab Government can only be made applicable to it upon adoption by MARKFED itself, however, the stand taken by the respondents in their reply itself is contrary to the letter dated 09.10.2011, which has been produced in Court and has not been denied by the respondents, even after the matter was adjourned on 17.10.2014.

The letter reads as under: -

"The Punjab State Cooperative Supply and Marketing Federation Limited Sector-35-B Chandigarh

(PERSONNEL DEPARTMENT)

No.EST/EAG-6/11/4120 Dated 19/10/2011

1. All the Officers of Markfed at H.O. Chandigarh.

2. All the District Managers, Markfed in the Punjab State

3. All General Managers / Managers, Markfed Plants / Units in the State

4. O.S.D. (C), Markfed, Bathinda

5. Liaison Officer, Markfed, C-212, Defence Colony, New Delhi

Sub: Amendment in Rule 4.6 in Markfed Common Cadre Rules 1990.

Dear Sir(s),

I am directed to address you on the subject noted above and to inform that as per decision taken by Board of Directors of Markfed vide agenda item No.4 in its meeting held on 17.2.2011 and as approved by Registrar Cooperative Societies Punjab vide memo no. RSS/MANDI/MS45-B/13163 dated 13.09.2011 following amendment is being made in Rule 4.6 of Markfed Common Cadre Rules 1990:-

Existing Provision	***Amended Provision***
On one's retirement, under Rule 2.21 of these Rules or death an employee shall be granted gratuity of an amount equal to one month's wages for each completed year of service or part thereof in excess of six months with the Markfed provided that the total amount of gratuity shall not exceed 15 times the amount of wages last drawn.	*On one's retirement, under Rule 2.21 of these rules or death an employee shall be granted retirement-cum-death gratuity as per rules/ instructions in force and amended from time to time applicable to Punjab Govt. employees.*

The above decision is applicable from the date of approval of Registrar, Cooperative Societies Punjab i.e. w.e.f. 13.09.2011. However the instructions issued by the State Govt. vide No.3/33/09/3FPPC/879 dated 17.08.2009 with regard to enhancement of maximum limit of payment of gratuity from Rs.3.50 lacs to Rs.10.00 lacs will be applicable w.e.f. 1.1.2006.

Thanking you,

Yours faithfully,

sd/-

Establishment Officer (C),

For Managing Director."

Thus, even though the decision was applicable w.e.f. 13.09.2011, i.e. the amended provisions came into effect from that date, upon approval by the Registrar, yet, by a conscious decision taken, the enhancement in the amount of gratuity payable, upon the retirement of an employee, was made applicable from 01.01.2006, for employees of MARKFED, to whom the Common Cadre Rules apply.

Hence, it is obvious that once the Common Cadre Rules have been held by this Court to be applicable to the petitioners, the letters of the Punjab Government, Annexures P1 to P3 would also apply to them, in terms of MARKFEDs' own letter *dated 19.10.2011, issued by respondent No.2.*

14. As to why the respondents chose to file a reply contrary to the conditions of service given in the appointment letters of the petitioners and contrary to the decision taken by its own Board of Directors and as approved by the Registrar, Cooperative Societies, Punjab, is something which this Court cannot even begin to understand, except to say that either the reply has been filed in an extremely callous manner or, due to lack of funds or other reasons, MARKFED is now trying to backtrack on its decision, without any decision to the contrary taken by the competent authority, after 19.10.2011.

15. Thus, in the face of, first, the terms and conditions of the petitioners' appointments and then in the face of a specific decision amending Rule 4.6 of the Common Cadre Rules, by which retirement-cum death gratuity payable to employees of MARKFED was to be on the same terms as the Punjab Government employees, and still further, with the decision of the Punjab Government dated 17.08.2009 having been made specifically applicable from 01.01.2006 to the employees of MARKFED, the stand of the respondents, taken in the Court, is to be rejected and is, in fact, depreciable.

Consequently, this writ petition is allowed.

The respondents are directed to pay the enhanced amount of gratuity of Rs.10 lacs to the petitioners, with interest @ 10% per annum from the date of retirement till the date that the payment is actually made. If, of course, a lesser amount of gratuity is due to any of the petitioners, on account of calculable gratuity, even as per the instructions dated 17.08.2009, not actually amounting to the maximum payable (Rs.10 lacs), then the actual amount payable would be paid to such petitioners. A speaking order would be passed in such a case, giving detailed reasons as to how the amount of gratuity calculable, even in terms of the letter dated 17.08.2009 of the Punjab Government and that of respondent No.2 dated 19.10.2011, does not amount to Rs.10 lacs.

In addition, each of the petitioners would also be paid

> *costs of Rs.5,000/- by respondents No.2 and 3, which, if they so desire, they can recover from the persons responsible for filing a reply contrary to record before this Court, including from the Additional Managing Director, under whose signatures the reply was actually filed.*
>
> *The enhanced amount of gratuity and interest be paid to the petitioners, within 2 months from the date of receipt of a certified copy of this order…"*

13. Learned counsel for the petitioner has been unable to dispute the fact that in terms of the above extracted judgment rendered in the case of ***Nathu Ram (supra)***, the enhancement in the amount of gratuity payable, upon the retirement of an employee, was made applicable from 01.01.2006, for employees of MARKFED. Concededly respondent No.2 (Ishwar Chander) retired on 31.03.2009, therefore, he was entitled to his due amount of gratuity, which has been rightly allowed by the authorities below.

14. No other argument has been raised.

15. Considering the totality of circumstances, there is no scope for any interference in the impugned order dated 17.12.2019 (Annexure P-1) and order dated 31.05.2021 (Annexure P-2), resultantly, the instant petition fails and the same is accordingly dismissed.

16. All pending application(s), if any, shall also stand closed.

29.11.2023 **(HARSH BUNGER)**
Apurva **JUDGE**

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No