

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

CWP-20097-2023(O&M)
Date of decision : 15.09.2023

PUNJAB STATE CO-OPERATIVE SUPPLY AND MARKETING
FEDERATION LIMITED (MARKFED) ...Petitioner

Versus

TARLOCHAN SINGH AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Mayank Mathur, Advocate
for the petitioner.

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 21.04.2022 (Annexure P-1) and 06.05.2018 (Annexure P-2) passed by the Appellate Authority under the Payment of Gratuity Act, 1972 (for short 'the Act, 1972') and the learned Controlling Authority-cum-Assistant Labour Commissioner, Chandigarh, respectively; whereby, a direction has been issued to the petitioner-MARKFED to pay an amount of Rs.1,26,604/- to respondent No.1 (Tarlochan Singh) on account of interest for delay in making the payment of gratuity in terms of the provisions of the Act, 1972.

2. Briefly, respondent No.1-Tarlochan Singh, approached the Controlling Authority under the Act, 1972 on the plea that he was an employee of petitioner-MARKFED and superannuated from services of Punjab Markfed on 31.12.2011 as Senior Assistant from Chandigarh Office after serving MARKFED for 40 years. Respondent-Tarlochan Singh, claimed that he was not paid gratuity amount on his retirement as per the

Gratuity Act and even his representations and legal notice dated 12.09.2016 failed to evoke any response. Respondent claimed that he has been paid less gratuity than his due entitlement. Accordingly, prayer was made to the learned Controlling Authority to determine the amount of gratuity payable to respondent-Tarlochan Singh, with a further direction to the employer to pay the said amount of gratuity along with interest on the delayed payment of the due amount.

3. The claim of respondent No.1-Tarlochan Singh, was considered by the learned Controlling Authority and the same was disposed of on 06.05.2018, by holding 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 would be payable in all cases where the application for determination of the amount of gratuity is made after coming into force of sub section (3 A) or where the amount of gratuity is determined under sub section (2) of Section 7 of the Act after that date. Therefore, the non-applicant is liable to pay the interest for delayed period involved in the matter.

However, it is on record that the non-applicant made two payments of Rs.551945/- on 28.12.11 and Rs.222526/- dt. 16.10.17.

The simple interest @ 10% per annum on amount of Rs.219886/- (Rs.771531/- (-) Rs.551645) w.e.f. 28.12.11 to 16.10.17 comes to Rs.129244/-.

Thus as on 16.10.17 the non applicant was entitled to receive Rs.349130/- (Rs.219886/- + Rs.129244/-) but non applicant paid only Rs.222526/-. Hence, non applicant shall pay balance amount of Rs.126604/-.

Summing up my findings, I hold that the applicant is entitled to receive Rs.126604/-

ORDER

Therefore, this Controlling Authority directs the Non-applicant to pay a sum of Rs.126604/- to the applicant within 30 days from the date of receipt of this order.

Given under my hand and seal on this 6th May, 2018.”

4. Being dissatisfied, 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 21.04.2022 (Annexure P-1).

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

6. Learned counsel for the petitioner submits that the authorities under the Act, 1972, have failed to appreciate that respondent No.1-Tarlochan Singh, had been paid the amount of gratuity, which was due to him and it has wrongly calculated the amount due towards gratuity by wrongly considering the service of the respondent from the date of joining i.e. 18.01.1972 whereas, respondent-Tarlochan Singh, had joined as a regular employee only on 17.07.1972. It is submitted that the service rendered by the respondent prior to 17.07.1972 with the petitioner-MARKFED i.e. from 18.01.1972 upto 17.07.1972, was liable to be excluded for the purpose of calculating the due gratuity amount.

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

8. It is not disputed by learned counsel appearing for the petitioner that initially the gratuity was payable to respondent No.1-Tarlochan Singh, as per the Common Cadre Rules and the relevant Rule 4.6 of the Common Cadre Rules, came to be amended w.e.f. 04.05.2016; accordingly, the gratuity was to be paid as per the Act, 1972. It is further not disputed that petitioner-MARKFED, vide its policy letter dated 25.05.2016 provided that the gratuity amount as due under the Act, 1972 would be paid to everyone who had retired even prior to the amendment in the Rule and the same was made applicable w.e.f. 1972, itself. In this regard, the relevant extract of policy letter dated 25.05.2016 (Annexure

P-6) reads as under :-

*“THE PUNJAB STATE COOPERATIVE SUPPLY AND MARKETING
FEDERATION LIMITED SECTOR 35-B CHANDIGARH*

(PERSONNEL DEPARTMENT)

No. EST/EAG-1/2016/3596

Dated: 25/05/2016

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.

Subject: 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.12 in its meeting held on 4.3.2015 and as approved by Registrar Cooperative Societies Punjab vide memo no.RSS/Marketing/MS-1/Staffing Pattern/1150 dated 1.2.2016 and letter No.3921 dated 4.5.2016 following amendment is being made in Rule 4.6 of Markfed Common Cadre Rules 1990 :-

<i>Existing Provision</i>	<i>Amended Provision</i>
<i>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.</i>	<i>“On one’s retirement under Rules 2.21 of these rules or death, an employee shall be granted gratuity as per provisions of the Payment of Gratuity Act 1972, as amended from time to time. Board of Directors of Markfed shall be competent to fix the Maximum quantum of gratuity to be granted under the provisions of the Gratuity Act, 1972.”</i>

Thanking you,

*Yours faithfully,
Establishment Officer (G)
For Managing Director*

*Cc: Secretary to MD/AMD(G)/SSS to AMD(P), Markfed H.O.
Cc: Chief Manager (:aw)/E.O.(P), Markfed H.O.
Cc: All dealing Assistants working in Establishment General Branch, H.O.
Cc: Audit Officer Coop. Societies Markfed, Chandigarh.”*

From the above extracted letter, it is manifest that the amount of gratuity was payable to respondent No.1 in terms of the Act, 1972.

9. I have considered the submission of learned counsel for the

petitioner that the authorities under the Act, 1972 have wrongly calculated the due gratuity amount by considering the service of respondent-Tarlochan Singh w.e.f. 18.01.1972; whereas, respondent-Tarlochan Singh had joined as a regular employee on 17.07.1972; however, I do not find any force in the said submission, especially in view 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 observations, learned counsel for the

petitioner has not been able to refer to any fact or document so as to indicate that respondent- Tarlochan Singh, has not rendered continuous service w.e.f. 18.01.1972.

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 21.04.2022 (Annexure P-1) and 06.05.2018 (Annexure P-2) passed by the authorities under the Act, 1972. Accordingly, finding no merit in the present petition and 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:	Yes/No
Whether reportable:	Yes/No