2023:PHHC:166466

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

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CWP-20651-2023
Date of Decision: 12.12.2023

The Punjab Water Resources Management and Development Corporation Limited and another

..... Petitioners

Versus

The Controlling Authority under the Payment of Gratuity Act, 1972-cum-Assistant Labour Commissioner, Circle No.4, Ludhiana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Rahul Verma, 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 order dated 27.02.2023 (Annexure P-5) passed by the Controlling Authority under the Payment of Gratuity Act, 1972-cum-Assistant Labour Commissioner, Circle-4, Ludhiana; whereby, an application filed by respondent No.2 herein (Naresh Dutta) claiming gratuity under the Payment of Gratuity Act, 1972 (for short 'the 1972 Act') had been allowed and the petitioner-Corporation was directed to make the payment of balance amount of gratuity to respondent No.2.

2. Briefly, respondent No.2 herein filed an application under the 1972 Act, claiming the amount of gratuity on the plea that he worked as

Assistant Engineer/S.D.E. (Charge Holder) with the petitioner-Corporation w.e.f. 13.09.1979 to 31.08.2018, when he retired from service upon attaining the age of superannuation; and as such, he rendered almost thirty nine years of continuous service with the petitioner-Corporation. Respondent No.2 claimed that at the time of his retirement, he was drawing a salary of Rs.95,637/- p.m. and he was entitled for gratuity amounting to Rs.20,00,000/-; however, the petitioner-Corporation had made payment of gratuity amount of only Rs.10,00,000/-, regarding which, he is stated to have submitted an application under the 1972 Act on 15.01.2020, however, the petitioner-Corporation refused to entertain the same. Therefore, respondent No.2 prayed that an appropriate direction be issued to the petitioner-Corporation to pay the balance amount of gratuity of Rs.10,00,000/- 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-Corporation; wherein, a preliminary objection was raised that the application filed by respondent No.2 was a mere abuse of the process of law and the same was filed just to mislead the Court. It was the further stand of the petitioner-Corporation that respondent No.2 had not come to the Court with clean hands and had suppressed the material facts from the Court; and that he has already received an amount of Rs.10,00,000/- on account of gratuity and now nothing is due towards the Corporation. On merits, the petitioner-Corporation denied all the averments made by respondent No.2 in his application.

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

> *"(i) Whether the applicant is entitled to the balance amount of gratuity as prayed for in the present claim application? OPA*

(ii) Whether the application is not maintainable in view of preliminary objections raised by the respondent in its written statement? OPR

(iii) Relief."

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

6. The Controlling Authority, vide order dated 27.02.2023 (Annexure P-5) allowed the application of respondent No.2, by holding as under :-

> "*6. I heard the arguments of the parties. After hearing the arguments, I have carefully gone through the case file. Based on the contents of the claim application, written statement of the respondents, documents placed on record and also having heard the arguments of the parties, my findings on the above issues are given hereinafter. However, before deciding the issue No. (i) regarding entitlement of the applicant for payment of gratuity, I would like to decide Issue No. (ii) first which relates to maintainability of application as under:*
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> ***ISSUE NO. (ii)***
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> *The main contention of the respondents in their written statement is that the applicant has not come to this court with clean hands and has suppressed the material facts from this court and since the applicant has already received an amount of Rs.10,00,000/- on account of gratuity, therefore, now nothing is due towards respondents and as such the present application is not maintainable. On the other hand, the Counsel for the applicant pleaded that there is no dispute between the parties that the Payment of Gratuity Act, 1972 is applicable to the Respondent Corporation. He invited my attention towards the statement of Sh. Vishwas Arora, R.W. who during cross-examination clearly stated that he does not know which facts have been suppressed by the applicant. He also admitted that Exbt. A/2 was issued by their office. The Counsel for the applicant argued that the perusal of Exbt. A/2*

clearly reveals that the Respondent Corporation keeping in view the last drawn wages of the applicant, has itself calculated the gratuity of the applicant under the Act, 1972 as Rs.21,51,832/-, but it has paid gratuity of Rs.10,00,000/- to the applicant in accordance with the earlier provisions of the Act. He further pleaded that the R.W. has further admitted that Exbt. A/4 is the notification of the Government of India. In this regard, the Counsel for the applicant argued that since the Central Government vide notification dated 29th March, 2018 (Exbt. A/4) in exercise of the powers conferred by sub-section (3) of Section 4 of the Payment of Gratuity Act, 1972 specifies that the amount of gratuity payable to an employee under the said Act shall not twenty lakh rupees, therefore, the applicant in the present case has become entitled to receive gratuity up to Rs. 20 lakh as per calculation made by the respondent Corporation vide Exbt. A/2, because the said notification was issued prior to the date of retirement of the applicant i.e. before 31.8.2018. He further argued that the amendment in Payment of Gratuity Act, 1972 automatically became applicable to the Corporation and it is the statutory obligation of the Corporation to comply with the provisions of this Act. On careful consideration of the matter, I am inclined to agree with the arguments of the Counsel for the applicant and has come to the conclusion that since the respondent has already paid 10 lakh rupees to the applicant, therefore, his claim application for the balance amount of gratuity payable under the Act is maintainable. The contrary arguments advanced on behalf of respondents have been found to be without any force of law. Accordingly, the claim application filed by the applicant is held to be maintainable. This issue stands decided in favour of applicant and against the respondents.

ISSUE NO. (i)

The applicant Naresh Dutta rendered total service of 38 years 11 months 17 days (say 39 years) with the respondent w.e.f. 14.09.1979 to 31.8.2018, which have nowhere been rebutted by the respondents. Similarly, the last drawn wages of *the applicant were Rs.32660/- (basic pay) + 6600/- (grade pay) + 1963/- (I.R.) + 54414/- (D.A.) = Rs.95637/- p.m. These facts have clearly been confirmed from the document Exbt. A/2 duly admitted to be true by R.W. Sh. Vishwas Arora. Accordingly, keeping view the total 39 years' service and Rs.95637/- last drawn wages of the applicant, his gratuity under the Act, 1972 is calculated as under -*

(95637 X 15)/26 X 39 = Rs.21,51,832/-

However, as per ceiling prescribed under Section 4(3) of the Payment of Gratuity Act, 1972 vide Central Government Notification dated 29th March, 2018, the maximum amount of gratuity payable to the applicant at the time of his retirement i.e. on 31.8.2018, could not exceed Rs. 20 lakh. Thus, the applicant was entitled for payment of Rs.20 Lakh on account of gratuity payable under the Act, 1972. Since the applicant has already received gratuity of Rs.10,00,000/- at the time of his retirement, therefore, after adjusting the said amount, he is entitled for payment of the balance gratuity amounting to Rs.10,00,000/- only. Issue No.(i) is decided accordingly.

RELIEF

As discussed above, the applicant Naresh Dutta has been found to be entitled for payment of Rs.10 lakh on account of balance amount of gratuity payable under the Act, 1972. It is settled law that gratuity is no longer any bounty by the employer rather it has become valuable right and property in the hands of an employee and any culpable delay in payment of gratuity must be visited with the penalty of payment of interest. Admittedly, the applicant was retired from service on 31.8.2019 i.e. after publication of the Notification dated 29 March 2018 by the Central Government in official Gazette (supra) and the respondent employer failed to make payment of the said amount of gratuity to the applicant within the stipulated period. Therefore, keeping in view the provisions of Section 7 (3-A) of the Act, the applicant was also entitled to payment of interest on the said amount due to delay in payment. Thus, the respondent employer is directed to make *payment of the balance amount of gratuity to the tune of Rs.10,00,000/- with interest @ 9% per annum on this amount from the date the gratuity became payable to Sh. Naresh Dutta i.e. 30 days after the date of his retirement from service till the date of realization of the whole amount. The application filed by the applicant is disposed of accordingly. There is no order as to costs. The file be consigned to the record.*"

7. Being aggrieved against the aforesaid order, the petitioner-Corporation has filed the instant writ petition before this Court.

8. Learned counsel for the petitioner submits that the learned Controlling Authority has erred in law and facts in passing order dated 27.02.2023 (Annexure P-5). It is submitted that the learned Controlling Authority has 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 also submitted by learned counsel for the petitioner-Corporation that respondent No.2 had already received an amount of Rs.10,00,000/- on account of gratuity and nothing was due from the petitioner-Corporation.

9. With the aforesaid submissions, it is prayed that the order dated 27.02.2023 (Annexure P-5) be set aside/quashed.

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

11. At the outset, it is apposite to state here that impugned order dated 27.02.2023 (Annexure P-5) passed by the Controlling Authority is appealable under Section 7(7) of the 1972 Act, however, the petitioner-Corporation has not filed the statutory appeal and in paragraph No.17 of the writ petition, the following averment has been made:-

"*17. That the petitioner have remedy to file appeal but due to*

> *financial crises the department is not in the position to deposit the decreed amount, before the Learned Appellate Authority. So, the petitioner approaches this Hon'ble Court by filing of the present writ petition. It is pertinent to mention here that the petitioner had already been filed a Civil Writ Petition No.16960 of 2023 and the same was withdrawn with the liberty to file fresh one with better particulars and on the same cause of action.*"

In my considered view, financial constraint is no ground for not filing appeal by the Government Department, moreso when no material has been placed on record to justify the said stand taken by petitioner-Corporation.

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.*
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> *(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.*
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> *(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.2 (Naresh Dutta) has remained in continuous employment of petitioner-Corporation w.e.f. 13.09.1979 up to 31.08.2018, 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; coupled with the fact that applicability of the provisions of 1972 Act upon the petitioner-Corporation is not disputed; I do not find any force in contention of the petitioner that 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. Concededly, respondent No.2 retired from the service of petitioner-Corporation on 31.08.2018, which is subsequent to the issuance of Notification dated 29.03.2018 by the Central Government enhancing the ceiling limit of gratuity to Rs.20,00,000/-.

Furthermore, it has come on record by way of statement of respondent No.2 (Naresh Dutta) that his gratuity was calculated as Rs.21,51,832/- by the Department vide Ex. A/2 and the petitioner-

Corporation's witness namely Sh. Vishwas Arora (R.W.), during his cross-examination, admitted that Ex. A/2 was issued by their office.

18. In view of the above discussion, it is held that respondent No.2 was entitled to gratuity in terms of Notification dated 29.03.2018 issued by the Central Government, which is admittedly applicable upon the petitioner-Corporation.

19. No other argument has been raised.

20. Considering the totality of circumstances and in view of above discussion, there is no scope for any interference in the impugned order dated 27.02.2023 (Annexure P-5) passed by the Controlling Authority; resultantly, the instant petition fails and the same is accordingly dismissed.

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

12.12.2023 **(HARSH BUNGER)**
Apurva **JUDGE**

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