

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-24763-2023 (O/M)

Date of decision : 03.11.2023

S.N. Sidheshwar Sr. Sec. Public School

..... Petitioner (s)

Versus

The Appellate Authority under Payment of Gratuity Act, 1972 and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Sumeet Jain, Advocate
for the petitioner.

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HARSH BUNGER, J.

1. The instant writ petition has been filed by petitioner (S.N. Sidheshwar Sr. Sec. Public School) under Articles 226/227 of the Constitution of India seeking a writ in the nature of certiorari for quashing the order dated 19.09.2022 (Annexure P-1), passed by the Controlling Authority under Payment of Gratuity Act, 1972 (respondent No. 2); whereby the claim application filed by respondent No. 3 (Archana Tewari), seeking payment of gratuity from petitioner-School, has been allowed.

Petitioner further seeks setting aside of the order dated 28.07.2023 (Annexure P-2), passed by Appellate Authority under Payment of Gratuity Act, 1972 (respondent No. 1 herein), whereby the statutory appeal filed by the petitioner-School under Section 7 (7) of Payment of Gratuity Act, 1972 (hereinafter referred to as '1972 Act'), has been dismissed.

2. Briefly, respondent No. 3 (Archana Tewari) filed an application

under 1972 Act before the Controlling Authority on the plea that she was employed by petitioner-School on 01.09.1992 and she retired on 13.03.2021 and her last drawn wages were Rs. 54,635/-. Respondent No. 3 claimed that she has been offered Rs. 6,55,620/- as gratuity, which was less than her due gratuity amount. Respondent No. 3 claimed that she has worked for 28 years, 6 months and 12 days (29 years) with petitioner-School and, therefore, she is entitled to gratuity amount.

3. The aforesaid claim of respondent No. 3 was contested by petitioner-School on the plea that she was employed as a teacher from 01.09.1992 till 13.03.2021 and petitioner-School had paid all her dues as per the provisions of 1972 Act and nothing was due to be paid to her. Petitioner-School maintained that at the time of retirement, an amount of Rs. 6,55,620/- was paid to respondent No. 3 as gratuity, which was duly received by her. It was further stated that infact an amount of Rs. 6,00,420/- was payable as gratuity and an excess payment of Rs. 55,200/- was paid, which was recoverable from respondent No. 3. Accordingly, prayer for dismissal of claim was made.

4. The Controlling Authority, on the basis of pleadings of the parties, framed the following issues :-

- “1. Whether the claim application is maintainable or not ?*
- 2. Whether the applicant is entitled to the amount of claim, as claimed ? If so, to what amount*
- 3. Relief.”*

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

6. The Controlling Authority, vide order dated 19.09.2022 (Annexure P-1), allowed the application of respondent No. 3 and held as under :-

“Issue No. 1 & 2.

The A.R. of the respondent argued that the applicant has received Rs. 655620/- at the time of retirement and as per the provisions of the Act, her total gratuity comes to Rs. 600420/- and in this way, she has received Rs. 55200/- in excess, which was returnable to the respondent and the applicant is not entitled to any amount as gratuity. He also relied upon the following case laws :-

- 1. Birla Institute of Technology Vs State of Jharkhand & others, 2019 Law Suit 9SC) 552 (SC) and*
- 2. Chairman cum Managing Director Ms Western Coalfields Ltd and others Vs Appellate Authority under Payment of Gratuity Act 1972 and Regional Commissioner (Central) and others, 2009 LLR 547 (Bombay)*

On the other hand, the A.R. of the applicant argued that the applicant had worked from 1.9.1992 to 13.3.2021 for 28 years, 6 months and 13 days and therefore, she is entitled to gratuity for 29 years, which is estimated to Rs. 950057/-, while the respondent had paid only Rs. 655620/- and therefore, Rs. 294437/- are still outstanding against the respondent.

A perusal of the case file shows that the respondent admitted that the applicant had worked from 1.9.1992 to 13.3.2021 and thus her total services comes to 28 years, 6 months and 13 days, rounded

to 29 years. Basic pay and DA of the applicant was Rs. 54635/- and thus her gratuity is calculated as Rs. 914086/-. Admittedly the applicant had received Rs. 655620/- and thus Rs. 258466/- are still due to the applicant.

The A.R. of the applicant further argued that as per the provisions of the Act, the gratuity was to be paid within one month, but the respondent did not do so and therefore, the applicant is also entitled to interest on the balance amount. In view of the above arguments advanced by the A.R. of the applicant, I hold that the applicant is also entitled to interest at the rate of 10% per annum from the next date of end of service i.e. 14.3.2021 to the date of this order on balance amount, which is calculated as Rs. 63979/-. Both these issues are decided accordingly in favour of the applicant.

Relief

In view of my above findings, I hereby direct the respondents to pay jointly and severally Rs. 258466/- as gratuity and Rs. 38770/- as interest total Rs. 297236/- (Rs. Two Lakh, Ninety Seven Thousand and Thirty Six Only) to the applicant by depositing with this Authority within 30 days from the date of this order, failing which, the respondent shall be liable to pay further interest at the rate of 10% per annum from the date of this order, till the date of actual deposit. No order as to costs.

Announced in open Court.

Dated : 19.09.2022

Controlling Authority
Under the Payment of Gratuity Act, 1972
Circle-5, Gurugram.”

7. Being dis-satisfied with the aforesaid order dated 19.09.2022 (Annexure P-1), the petitioner-School preferred a statutory appeal under Section 7 (7) of 1972 Act, however, the same was dismissed by the Appellate Authority, vide order dated 28.07.2023 (Annexure P-2).

8. It is required to be noticed here that in para 11 of the writ petition, it has been stated that the petitioner-School has deposited an amount of Rs. 2,97,236/- on 09.11.2022 under protest, vide cheque dated 09.11.2022, before the Controlling Authority.

9. In the aforementioned circumstances, the petitioner-School has filed the instant writ petition before this Court.

10. During the course of arguments, learned counsel for petitioner-School has not disputed the fact that respondent No. 3 would be entitled to payment of gratuity in terms of judgment rendered by Hon'ble the Supreme Court in Independent School's Federation of India (Regd.) Vs. Union of India and another, 2022 (4) SCT 119, however, it is submitted that the authorities below have wrongly calculated the period prior to 03.04.1997 as the 1972 Act was made applicable to the educational institutions with effect from 03.04.1997 itself and, therefore, the period prior to 03.04.1997 was not to be considered. Learned counsel for petitioner-School further submits that the authorities below have wrongly granted the interest on the delayed payment of gratuity, which was not payable to respondent No. 3. With the said submissions, learned counsel for petitioner-School prayed for setting aside of the impugned order.

11. I have heard learned counsel for petitioner-School and have also

perused the paperbook with his able assistance.

12. In Allahabad Bank v. All India Allahabad Bank Retired Emps. Assn., 2010(1) SCT 531, it was held that the provisions of 1972 Act have an overriding effect and the same are applicable to an employee in terms of provisions of 1972 Act and exemption from payment may be granted only by appropriate Government under Section 5 of 1972 Act unless it is established that the employees are in receipt of gratuity pension benefits, which are more favourable than the benefits under 1972 Act.

13. As far as applicability of the provisions of 1972 Act to the petitioner-School or for that matter the claim of respondent No. 3 is concerned, the said issue already stands decided by Hon'ble the Supreme Court in the case of Independent School's Federation of India (Regd.) (supra) wherein it was also held that the entire length of service including the service period prior to 03.04.1997 is to be counted for the purpose of computing the entitlement of an employee for determining the amount of gratuity. Furthermore, issue regarding entitlement of interest on the delayed payment of gratuity amount is also no more res integra and the same has been decided by Hon'ble the Supreme Court in the case of H. Gangahanume Gowda Vs. Karnataka Agro Industries Corpn. Ltd., 2003 (1) SCT 937.

14. Keeping in view the aforesaid legal position, once respondent No. 3 is entitled to payment of gratuity in terms of 1972 Act in pursuance to the amendment carried out in the Act on 03.04.1997 and considering the judicial interdict that the entire length of service is to be counted for determining the entitlement for payment of gratuity i.e. even the service

rendered prior to 03.04.1997, I do not find any illegality or perversity in the relief granted by the Controlling Authority (respondent No. 2 herein) to respondent No. 3 herein. Furthermore, in the case of H. Gangahanume Gowda (supra), Hon'ble the Supreme Court has clearly held entitlement of an employee to interest on the delayed payment of gratuity with further observation that there is no scope for any interference in the interest component. Therefore, it is held that the Controlling Authority has rightly granted the statutory interest on delayed payment of gratuity to respondent No. 3.

15. Considering the totality of circumstances, there is no scope for any interference in the impugned orders dated 19.09.2022 (Annexure P-1) and 28.07.2023 (Annexure P-2), passed by authorities below. Resultantly, the instant writ petition fails and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

03.11.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No