

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

203+204+205

Decided on: January 12, 2024

1.

CWP-4973-2023:

Desh Bhagat University, Mandi Gobindgarh, District Fatehgarh
Sahib

...Petitioner
- Versus

Vivek Bhambri and others

...Respondents
2.

CWP-4984-2023:

Desh Bhagat University, Mandi Gobindgarh, District Fatehgarh
Sahib

...Petitioner
- Versus

Rajan Manro and others

...Respondents
3.

CWP-5110-2023:

Desh Bhagat University, Mandi Gobindgarh, District Fatehgarh
Sahib

...Petitioner
- Versus

Arvind Bhatia and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Saurav Kumar Manchanda, Advocate,
for the petitioner.

Mr. Vivek Salathia, Advocate,
for respondent No(s). 1.

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SANJAY VASHISTH, J.

1. By this judgement, a batch of three writ petitions, i.e. **CWP Nos. 4973, 4984 and 5110, all of 2023**, filed by petitioner – Desh Bhagat University, Mandi Gobindgarh, District Fatehgarh Sahib, is being decided because similar facts and common question of law are involved therein.

2. Common questions of law involved in all these writ petitions are that –

(i) Once definition of ‘wages’, under Section 2(s) of the Payment of Gratuity Act, 1972 (for short, ‘the Act’), does not include bonus, commission, HRA, allowance, overtime wages and any other allowances, whether for the purpose of calculating the amount of gratuity, same would be taken into account or not? and

(ii) Whether consolidated salary of the employee would be considered as inclusive of all such allowances or not?

3. For brevity, facts are being referred from CWP No. 4973 of 2023, treating the same as lead case.

In this writ petition, petitioner-University has challenged order dated 03.02.2020 (Annexure P-2), passed by the Controlling Authority under

the Payment of Gratuity Act, 1972 and Labour-cum-Conciliation Officer,

Fatehgarh Sahib at Mandi Gobindgarh, directing it to make payment of gratuity to applicant/respondent No. 1 – Vivek Bhambri, to the tune of Rs.3,14,307/- alongwith interest @ 9% per annum, from the date gratuity became payable, i.e. 30 days after the date of his resignation, till the date of realization of the said amount.

Further, petitioner-University has also impugned the order dated 28.03.2022 (Annexure P-4), vide which Appellate Authority-cum-Additional Labour Commissioner, Punjab, has rejected its appeal, which was preferred against the order dated 03.02.2020 (Annexure P-2), being not maintainable.

4. As per claim application filed by respondent No. 1 – Vivek Bhambri, he worked as Assistant Professor in the Department of Computer Science, Desh Bhagat University, Mandi Gobindgarh, w.e.f. 08.08.2003 to 06.07.2015, and as such rendered total service of 11 years and 11 months. At the time of resignation from service, last drawn amount by him was Rs.45,400/- per month. Thus, respondent No. 1 raised a claim that he is entitled to the payment of Rs.3,14,307/- on account of gratuity, payable under the Act, alongwith interest.

5. In the written statement, petitioner-University has taken a stand that respondent No. 1 is not entitled to gratuity because he has committed certain illegal acts of instigating other teaching staff members and, thus, was served a show cause notice on 27.04.2015. A warning letter was also issued to him on 01.05.2015. As respondent No. 1 did not mend his behaviour, petitioner-University constituted a Disciplinary Committee against him.

Eventually, respondent No. 1 was held guilty and consequently, an order to

discontinue him from service was passed. Regarding gratuity amount, an objection was taken that since, the petitioner-University came in existence in the year 2012, it is wrong to allege that respondent No. 1 joined service on 08.08.2003.

6. While dealing with the issue, the Controlling Authority relied upon an experience certificate dated 14.06.2016 (Ex. A/15), issued by the Registrar of the petitioner-University, which states that respondent No. 1 – Vivek Bhambri has worked as Assistant Professor w.e.f. 08.08.2003 to 06.07.2015 in University School of Management & Computer Science, Desh Bhagat University, Mandi Gobindgarh. It is further stated in the experience certificate that he left the job on his own accord and stand relieved from his duty on 06.07.2015 and was drawing salary of Rs.45,400/- per month.

On the strength of the said experience certificate, it was urged before the Controlling Authority that undoubtedly, Vivek Bhambri (respondent No. 1) served as Assistant Professor and, thus, covered under the definition of 'employee', as given under Section 2(e) of the Act. Further, establishment i.e. petitioner-University was never granted exemption under Section 5 of the Act, from operation of the provisions of the Act by the appropriate Government.

The Controlling Authority found that respondent No. 1 has served for 11 years and 11 months w.e.f. 08.08.2003 to 06.07.2015 as Assistant Professor, which is equal to 12 years for the purpose of payment of gratuity under the Act. By taking last wage drawn as Rs.45,400/- per month, as confirmed by the experience certificate dated 14.06.2016 (Ex. A/15),

continuous service period of 12 years was taken into consideration and accordingly, respondent No. 1 was held entitled for payment of gratuity amount of Rs. 3,14,307/- alongwith interest.

7. The appeal filed against the order passed by the Controlling Authority was dismissed, hence, the petitioner-University is before this Court.

8. Learned counsel for the petitioner-University submits that wages have been defined under Section 2(s) of the Act and it does not include bonus, commission, HRA, allowance, overtime wages and any other allowances. The salary claimed by respondent No. 1 as Rs.45,400/- per month, is wrong because the gratuity is required to be calculated on basic pay and D.A. This way, petitioner-University claims that basic pay of respondent No. 1 was Rs.18,750/- and D.A. amount would come out as Rs.6,563/-. Therefore, rest of the amount is stated to be under the head of HRA and other allowances.

Learned counsel further submits that for the purpose of calculation of gratuity, salary is not to be taken as Rs.45,400/-. Rather, it has to be taken as per basic salary, which is Rs.18,750/- (basic pay) + Rs.6,563/- (D.A.). To substantiate the plea before this Court, for the first time petitioner-University has relied upon the certificate dated 02.03.2023 (Annexure P-1), wherein breakout of salary of respondent No. 1 – Vivek Bhambri, for the month of June 2015, has been given. For convenience, contents of certificate dated 02.03.2023 (Annexure P-1), are reproduced as under:-

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To Whom It May Concern

It is certified that on the basis of the salary sheet available in the record for the month of June, 2015 the salary components of Mr. Vivek Bhambri (Relieved on 06th July, 2015) are as follow:

S. No	Name of Employee	Designation	Basic Salary		Allowances				
			Basic	D.A. @ 5%	D.A Amount	HRA	Conveyance Allow.	Medical Allow.	Gross Salary
1.	Mr. Vivek Bhambri	Assistant Registrar	18750	35	6563	8000	11887	200	45400

*Sd/- 02/03/23
Registrar
Desh Bhagat University
Mandi Gobindgarh”*

9. In other writ petitions, issue addressed is the same. However, the amount projected by way of attaching/appending certificate for the first time with other writ petitions, i.e. CWP No. 4984 of 2023 and CWP No. 5110 of 2023, requires to be detailed. Accordingly, the same is reproduced as under:-

CWP-4984-2023:

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To Whom It May Concern

It is certified that on the basis of the salary sheet available in the record for the month of July, 2017 the salary components of Mr. Rajan Manro (Relieved on 10th August, 2017) are as follow:

S. No	Name of Employee	Designation	Basic Salary		Allowances						
			Basic	D.A. @ 5%	D.A Amount	HRA	Conveyance Allow.	Medical Allow.	Special allowance	Increment	Gross Salary
1.	Mr. Rajan Manro	Associate Director	18750	35	6563	2250	13399	200	4000	2900	48062

*Sd/- 02/03/23
Registrar
Desh Bhagat University
Mandi Gobindgarh”*

CWP-5110-2023:

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To Whom It May Concern

It is certified that on the basis of the salary sheet available in the record for the month of April, 2015 the salary components of Mr. Arvind Bhatia (Relieved on 08th May, 2015) are as follow:

S. No	Name of Employee	Designation	Basic Salary		Allowances				
			Basic	D.A. @ 5%	D.A Amount	Extra Special	Conveyance Allow.	Medical Allow.	Gross Salary
1.	Mr. Arvind Bhatia	Lecturer	19200	35	6720	2000	16583	200	44703

*Sd/- 02/03/23
Registrar
Desh Bhagat University
Mandi Gobindgarh”*

Rest of the factual aspects need not to be discussed, as except of the amount or the period, everything else is substantially same.

10. To repel the arguments addressed on behalf of the petitioner-University, learned counsel appearing for employee(s) i.e. respondent No. 1 in each case, submits that petitioner-University has not challenged the eligibility of respondent No(s) 1 in these writ petitions, for payment of gratuity. Even their length of service rendered by them is not under dispute. Only argument addressed by the petitioner-University through present writ petitions is that the respective amount in all the three writ petitions, i.e. CWP Nos. 4973, 4984 and 5110 of 2003, the amount of HRA and other allowances are also included, therefore, by removing the said part from the salary and only by calculating the basic pay and D.A., the gratuity is to be calculated.

11. I have considered the arguments addressed on behalf of the petitioner-University and found that the same are without any substance and cannot be accepted. First of all, certificate of salary appended with the present petitions, have seen light of the day for the first time in the proceedings before this Court. No other record or document has been produced by the petitioner-University to substantiate that whatever facts and figures have been mentioned, the same have been borrowed from the record already existed in the University or any other educational department. Particularly speaking, petitioner-University has failed in establishing that from where these facts and figures have emerged.

12. Even otherwise also, in the written statement filed by the petitioner-University before the Controlling Authority, no such plea or categorisation of the basic pay, D.A. or any other allowances, was detailed, though subsequently, petitioner-University was proceeded against *ex parte*. Thereafter also, while filing appeal before the Appellate Authority under the Act, petitioner-University failed in highlighting any such ground. Not only this, on the line which is argued before this Court, petitioner-University failed in cross-examining the witnesses appearing on behalf of the employee(s) [respondent No. 1 herein].

13. Thus at any stage, petitioner-University has not taken any such plea, which has been addressed before this Court for the first time. It is also interesting to note that the certificate(s) relied upon before this Court, are prepared just prior to the filing of the writ petitions, as the certificate(s) bear the date as '02.03.2023'. Apparently, the said certificates have been

prepared as an after thought.

14. I have gone through the contents of the writ petitions and the impugned orders assailed therein, and found that there is nothing to get impressed with the arguments addressed on behalf of the petitioner-University before this Court. Thus, by maintaining the direction issued by the Controlling Authority in these writ petitions, the impugned orders are affirmed.

In the net result, these writ petitions fail and the same are accordingly dismissed.

(SANJAY VASHISTH)
JUDGE

January 12, 2024
P Kapoor

Whether speaking/reasoned?	✓ Yes / No
Whether reportable?	Yes / No ✓