



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

226

1. **CWP-13542-2019 (O&M)**
Decided on : 13.05.2024

The Senior Superintendent of Post Offices,
Kapurthala Division, Kapurthala (Punjab).
Versus
Gian Chand and others
... Petitioner(s)
... Respondent(s)

2. **CWP-13541-2019 (O&M)**

The Senior Superintendent of Post Offices,
Kurukshetra
Versus
Surinder Kumar and others
... Petitioner(s)
... Respondent(s)

3. **CWP-14682-2019 (O&M)**

The Senior Superintendent of Post Offices,
Sonapat Division, Haryana
Versus
Shamsher Singh and others
... Petitioner(s)
... Respondent(s)

4. **CWP-14683-2019 (O&M)**

The Senior Superintendent of Post Offices,
Sonapat Division
Versus
Ved Pal and others
... Petitioner(s)
... Respondent(s)

5. **CWP-14684-2019 (O&M)**

The Senior Superintendent of Post Offices,
Sonapat Division, Haryana
Versus
Lekh Ram and others
... Petitioner(s)
... Respondent(s)



6.	<u>CWP-14685-2019 (O&M)</u>
The Senior Superintendent of Post Offices, Sonapat Division, Sonapat	... Petitioner(s)
Versus	
Sunil Kumar and others	... Respondent(s)
7.	<u>CWP-14687-2019 (O&M)</u>
The Senior Superintendent of Post Offices, Sonapat Division	... Petitioner(s)
Versus	
Brij Lal and others	... Respondent(s)
8.	<u>CWP-14688-2019 (O&M)</u>
The Senior Superintendent of Post Offices, Sonapat Division, Haryana	... Petitioner(s)
Versus	
Balbir Singh and others	... Respondent(s)
9.	<u>CWP-14691-2019 (O&M)</u>
The Senior Superintendent of Post Offices, Sonapat	... Petitioner(s)
Versus	
Rohtash and others	... Respondent(s)
10.	<u>CWP-14693-2019 (O&M)</u>
The Senior Superintendent of Post Offices, Sonapat	... Petitioner(s)
Versus	
Rameshwar Dass and others	... Respondent(s)
11.	<u>CWP-14695-2019 (O&M)</u>
The Senior Superintendent of Post Offices, Sonapat Division, Sonapat	... Petitioner(s)



	Versus	
Dharam Singh and others		. . . Respondent(s)
12.		<u>CWP-14696-2019 (O&M)</u>
The Senior Superintendent of Post Offices, Sonapat Division		. . . Petitioner(s)
	Versus	
Dilbagh Singh and others		. . . Respondent(s)
13.		<u>CWP-14697-2019 (O&M)</u>
The Senior Superintendent of Post Offices, Sonapat Division, Sonapat		. . . Petitioner(s)
	Versus	
Raj Pal Singh and others		. . . Respondent(s)
14.		<u>CWP-14700-2019 (O&M)</u>
The Senior Superintendent of Post Offices, Sonapat Division		. . . Petitioner(s)
	Versus	
Om Parkash and others		. . . Respondent(s)
15.		<u>CWP-14701-2019 (O&M)</u>
The Senior Superintendent of Post Offices, Sonapat		. . . Petitioner(s)
	Versus	
Dharamvir Tyagi and others		. . . Respondent(s)
16.		<u>CWP-14704-2019 (O&M)</u>
The Senior Superintendent of Post Offices, Sonapat		. . . Petitioner(s)
	Versus	
Jaipal Dahiya and others		. . . Respondent(s)



17.	<u>CWP-14705-2019 (O&M)</u>
The Senior Superintendent of Post Offices, Sonapat Division	... Petitioner(s)
Versus	
Ram Kishan and others	... Respondent(s)
18.	<u>CWP-14706-2019 (O&M)</u>
The Senior Superintendent of Post Offices, Sonapat	... Petitioner(s)
Versus	
Har Gopal and others	... Respondent(s)
19.	<u>CWP-14708-2019 (O&M)</u>
The Senior Superintendent of Post Offices, Sonapat Division, Sonapat	... Petitioner(s)
Versus	
Dalbir Singh and others	... Respondent(s)
20.	<u>CWP-14709-2019 (O&M)</u>
The Senior Superintendent of Post Offices, Sonapat Division, Haryana	... Petitioner(s)
Versus	
Hari Singh and others	... Respondent(s)
21.	<u>CWP-14913-2019 (O&M)</u>
The Senior Superintendent of Post Offices, Sonapat Division	... Petitioner(s)
Versus	
Krishan Singh and others	... Respondent(s)
22.	<u>CWP-14916-2019 (O&M)</u>
The Senior Superintendent of Post Offices, Sonapat Division	... Petitioner(s)



Ishwar Singh and others
Versus
... Respondent(s)

23. CWP-14918-2019 (O&M)

The Senior Superintendent of Post Offices
Versus
... Petitioner(s)

Rajinder Singh and others
... Respondent(s)

24. CWP-15623-2019 (O&M)

The Senior Superintendent of Post Offices
Versus
... Petitioner(s)

Kundan Lal and others
... Respondent(s)

25. CWP-15750-2019 (O&M)

The Senior Superintendent of Post Offices
Versus
... Petitioner(s)

Satyavir and others
... Respondent(s)

26. CWP-19687-2019 (O&M)

The Senior Superintendent of Post Offices,
Rohtak Division, Rohtak
Versus
... Petitioner(s)

Ramesh Kumar Bhardwaj and others
... Respondent(s)

27. CWP-19700-2019 (O&M)

The Senior Superintendent of Post Offices,
Rohtak
Versus
... Petitioner(s)

Shri Parkash and others
... Respondent(s)

28. CWP-19795-2019 (O&M)

The Senior Superintendent of Post Offices,



Rohtak Division, Rohtak
Versus . . . Petitioner(s)

Ram Kunwar and others
. . . Respondent(s)

29. CWP-30889-2019 (O&M)

The Senior Superintendent of Post Offices,
Kurukshetra Division
Versus . . . Petitioner(s)

Babu Ram and others
. . . Respondent(s)

30. CWP-30933-2019 (O&M)

The Senior Superintendent of Post Offices
Versus . . . Petitioner(s)

Sat Pal and others
. . . Respondent(s)

31. CWP-30936-2019 (O&M)

The Senior Superintendent of Post Offices,
Kurukshetra
Versus . . . Petitioner(s)

Savitri Devi and others
. . . Respondent(s)

32. CWP-31005-2019 (O&M)

The Senior Superintendent of Post Offices
Versus . . . Petitioner(s)

Phool Kumar and others
. . . Respondent(s)

33. CWP-31040-2019 (O&M)

The Senior Superintendent of Post Offices
Versus . . . Petitioner(s)

Isro Devi and others
. . . Respondent(s)



CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Piyush Khanna, Advocate
for the petitioner(s) (in CWP-15623-2019).

Mr. Lalit K. Gupta, Advocate
for the petitioner(s) (in CWPs-14684, 14685, 14701, 14704 &
14705 of 2019).

Mr. Ravi Sodhi, Senior Panel Counsel with
Mr. Umesh Pandey, Advocate
for the petitioner(s) (in CWPs-14682, 14695, 14918, 14706,
14709, 14687, 14683, 14696, 14688, 14697, 14700, 15750 &
19700 of 2019).

Mr. Praveen Chander Goyal, Advocate
for the petitioner(s) (in CWPs-13542, 19795, 19687, 13541,
14691, 14693, 14708, 30889, 30933, 30936, 31005 & 31040 of
2019).

Mr. G.C. Shahpuri, Advocate
for respondent No.1 – workmen
(in CWPs-14682, 14683, 14684, 14687, 14688, 14691, 14697,
14704, 14916, 14918, 14685, 14693, 14695, 14696, 14700,
14701, 14705, 14706, 14708, 14709, 14913 & 15750 of 2019).

SANJAY VASHISTH, J. (Oral)

1. By this common judgment, total 33 writ petitions would be disposed of, as in all the aforementioned writ petitions, common question of law and facts are involved.

For the purpose of determining the entitlement to the gratuity amount, one common question of law is involved i.e.; “*Whether the Gram Dak Sevak (GDS) is an **employee** as per Section 2(e) of the Payment of Gratuity Act, 1972, and is entitled to the payment of gratuity under the said Act ?*”.

Without examining the question, the statutory authorities i.e. the concerned Controlling Authority and the Appellate Authority under the Payment of Gratuity Act, 1972 (for brevity, ‘Act of 1972’), have decided the



claim for gratuity in favour of the employee(s) i.e. respondent No.1 (workmen in all the aforementioned writ petitions). Thus, in all the writ petitions, filed by the Senior Superintendent of Post Offices, the order passed by the respective Controlling Authority and the Appellate Authority have been challenged before this Court.

For doing the said exercise, the facts and circumstances enumerated in CWP-13542-2019 (O&M), titled as, “The Senior Superintendent of Post Offices, Kapurthala Division, Kapurthala (Punjab) vs. Gian Chand and others”, are being discussed. The decision passed therein would be applicable in all other writ petitions (detailed herein-above).

2. Present Civil Writ petition has been preferred by the petitioner- The Senior Superintendent of Post Offices, Kapurthala Division, Kapurthala (Punjab), for issuance of the writ in the nature of *Certiorari*, for quashing the order dated 22.02.2018 (Annexure P-5), passed by the Controlling Authority under the Payment of Gratuity Act (for brevity, ‘the Act of 1972’), whereby, the application filed by respondent No.1 – workman, for payment of gratuity under the Act of 1972, has been accepted and the petitioner – Department has been directed to pay the amount of gratuity along with interest @ 10% per annum from 17.04.2017.

Besides, petitioner - Department has sought quashing of order dated 02.02.2019 (Annexure P-7), wherein, the appeal preferred by the petitioner – Department, has been dismissed by the Appellate Authority.

3. Brief factual matrix of the case are that Respondent No. 1 – Gian Chand (employee) filed an application under Section 4(1) of the Act of 1972, for claiming the gratuity amount from the Department (petitioner



herein). He pleaded that he was appointed EDDA on 15.09.1979 and was superannuated on 17.04.2017. Thus, after serving the Department for about 37 years 07 months, he claimed the total gratuity amount of Rs.2,11,846/-.

4. In the reply filed by the Department, a preliminary objection was raised that the application is neither maintainable in law nor on fact, because, during the period for which gratuity is claimed, the employee was not serving the Department in a full-time capacity, as he was engaged as Part Time Worker under the designation of Extra Department Agent. This designation was later changed to Gramin Dak Sevak and governed by different set of rules i.e. Gramin Dak Sevak (Conduct & Engagement) Rules, 2011. Therefore, the employee was not entitled to claim gratuity under the Act of 1972. The specific plea taken in preliminary objections in paragraphs No.3 & 4 of the reply filed by the Department, is reproduced as under:-

“3. That the application is neither maintainable in law nor on facts. The applicant is not entitled to any amount under the rules of Payment of Gratuity Act, 1972. The period of which the applicant is claiming payment of gratuity is period for his services as GDSBPM. At that time the applicant was engaged as part time worker under the designation of Extra Departmental Agent, the nomenclature which was changed to Gramin Dak Sewak and was governed by different set of rules i.e. Gramin Dak Sewak (Conduct & Engagement) Rules, 2011 as such the applicant is not entitled to any payment under the Payment of Gratuity Act, 1972 as such the same is liable to be dismissed on this ground.

4. That the Gramin Dak Sewaks are not regular Govt. Employees. They are part time workers and are governed by a separate set of Conduct and Engagement Rules. They do not form part of the regular civil service. They are engaged for only 3-5 hours daily work. It is



mandatory for them to have an independent source of livelihood before being engaged as Gramin Dak Sevak. Hon'ble Supreme Court in the case of Union of India and Others vs. Kameshwar Prasad 1998 SCC (L&S) page 447 held that P&T Extra Department Agent (C&S) Rules, 1964 are a complete code governing service, conduct and disciplinary proceedings against Extra Departmental Agents [now called Gramin Dak Sewaks]. On discharge from service on attaining the age of 65 years or on death, Gramin Dak Sewaks (GDS) are paid Ex-Gratia Gratuity and Severance Amount as approved for them by the Cabinet.”

Other objections were also taken, however, the same are not being discussed herein, for the sake of brevity.

5. After examining the facts & circumstances, and the prayer of the employee, his request for grant of gratuity amount of Rs.2,11,846/- was accepted by the Controlling Authority. Accordingly, vide order dated 22.02.2018 (P-5), direction was issued to the Department (petitioner herein) to pay a sum of Rs.2,11,846/- (Rs. Two Lakhs Eleven Thousand Eight Hundred and Forty Six only) to the employee (respondent No.1 herein), with a simple interest @ 10% per annum from the date gratuity amount became payable, i.e. from 17.04.2017.

6. Further, after depositing of the statutory amount, the petitioner – Department filed an appeal before the Appellate Authority under the Act of 1972 i.e. Deputy Chief Labour Commissioner (Central), Kendriya Sadan, Sector 9, Chandigarh. However, the Appellate Authority vide order dated 02.02.2019 (P-7), maintained the order for payment of gratuity amount, passed by the Controlling Authority. It is thereafter, the



concerned/respective-Department i.e. The Senior Superintendent of Post Offices, filed different writ petitions before this Court.

7. On the very outset, counsel for the petitioner-Department, rely upon the judgment dated **01.03.2024**, passed by this Court (Punjab and Haryana High Court) in **CWP-10698-2019 and other connected cases**, titled as, ***“The Senior Superintendent of Post Offices vs. Yash Pal and others”***, whereby, the question(s) involved in the present writ petitions, have already been decided and issue is no longer res-integra.

8. The judgment passed by this Court in **CWP-10698-2019 & other connected cases**, is based upon the law laid down by the Hon’ble Apex Court in **Sr. Superintendent of Post Offices vs. Gursevak Singh, 2019(2) SCT 294 : Law Finder Doc Id #1398091**, wherein, the question that *‘whether the Gramin Dak Sevak (GDS) falls in the definition of “employee” for the purpose of the Act of 1972, has been answered’*. In fact, the Hon’ble Apex Court in ***Gursevak Singh’s case (supra)***, concluded that the Gram Dak Sevaks (GDS) are governed by GDS (Conduct & Engagement) Rules, 2011, and they are entitled to claim the gratuity under Rule 6(1) of the Rules, 2011 and not under the Payment of Gratuity Act, 1972.

9. On the other hand, counsel appearing for respondent No.1 – workmen (employees), argues that the judgment relied upon by the petitioner(s) – Department, would not be directly applicable, because, in those cases, there was resignation by the employees. Further submits that there is no illegality in the impugned orders, passed by the Statutory Controlling Authority, and thereafter, same being confirmed by the Appellate Authority.

He also submits that the GDS were duly taken in service, so



they cannot be treated as having been engaged for the purpose, which has been discussed in *Gursevak Singh's case (supra)*.

10. In *Gursevak Singh's case (supra)*, in the Civil Appeal filed before the Hon'ble Apex Court, following two specific issues were framed:-

- “(a) Whether a Gramin Dak Sevak (GDS) is an ‘employee’ as per Section 2(3) of the Act 1972 and is entitled to payment of Gratuity under this Act?
- (b) Whether a Gramin Dak Sevak (GDS) is eligible for payment of gratuity under the 2011 Rules upon voluntary resignation?”

11. The Court while deciding the issue, explicitly held that the Indian Post Office Act, 1898 falls under the expression ‘law’ in Section 1(3) (b). Consequently, the Post & Telegraphs Department would be an establishment under the 1972 Act.

12. It was further held that a Gramin Dak Sevak (GDS) is not an “employee” under the 1972 Act.

13. However, the next question before Hon'ble the Apex Court was that even if the workman did not fall within the ambit of term “employee” under the Act 1972, will he still be eligible for the payment of gratuity as provided under the Gramin Dak Sevaks (Conduct and Engagement) Rules, 2011 (herein after referred to as “2011 Rules”). While deciding the said issue, Hon'ble the Apex Court held that as the workman had voluntarily resigned, thus, in consonance with the Rule 6(13) of 2011 Rules, he is not eligible for payment of gratuity under the said rules.

14. Further Court held that for the purpose of claiming gratuity under the 1972 Act, the employee should be working for an ‘Establishment’ and Post Office falls within the ambit of term ‘establishment’ under the Act.

15. Hon'ble the Apex Court also observed that GDSs are extra



departmental agents and are outside the civil service of the Union and thus, cannot claim to be at par with the Central Government Employees. They are engaged (not appointed) to catch up the postal requirements in the rural and remote areas. Services are availed from the school masters, shopkeepers, landlords and such other villagers to provide them adequate means of livelihood on a part time basis. Finding recorded to that effect in paragraph No.10.1 of the said judgment is also reproduced here-below:

“10.1. The 2011 Rules provide that Gramin Dak Sevaks are Extra-Departmental Agents, who are outside the Civil Service of the Union, and shall not claim to be at par with the Central Government Employees. The Extra-Departmental Agents are engaged by the Department of Posts & Telegraphs to cater to the postal requirements in the rural and remote areas. The system avails the services of schoolmasters, shopkeepers, landlords, and such other persons in a village who have a reasonable standard of literacy, and adequate means of livelihood, and can therefore assist the Department on a part-time basis by way of gainful avocation, to provide service to the rural communities for their postal requirements.

Rule 3-A(i) of the 2011 Rules provides that the Gramin Dak Seaks shall not be required to perform duties beyond a maximum period of 5 hours a day. This shows the avocational nature of the service.

Rule 6(1) of the 2011 Rules provides for payment of gratuity to Gramin Dak Sevaks. However, Rule 6(13) states that no Gratuity is payable if an Extra-Departmental Agent quits the agency on his own.”

16. For the sake of convenience, the terms and conditions of engagement of Gramin Dak Sevak (GDS) are reproduced here-below:

"3-A Terms and Conditions of Engagement

- (I)** A Sevak shall not be required to perform duty beyond a maximum Period of 5 hours in a day;
- (ii)** A Sevak shall not be retained beyond 65 years of age;
- (iii)** A Sevak shall have to give an undertaking that he has other sources of income besides the allowances paid or to be paid by



the Government for adequate means of livelihood for himself and his family;

- (iv)** *A Sevak can be transferred from one post/unit to another post/unit in public interest;*
- (v)** *A Sevak shall be outside the Civil Service of the Union;*
- (vi)** *A Sevak shall not claim to be at par with the Central Government employees;*
- (vii)** *Residence in post village/delivery jurisdiction of the Post Office within one month after selection but before engagement shall be mandatory for a Sevak;;*
Failure to reside in place of duty for GDS BPM & within delivery jurisdiction of the Post Office for other categories of Gramin Dak Sevaks after engagement shall be treated as violative of conditions of engagement and liable for disciplinary action under Rule 10 of the Conduct rules, requiring removal/dismissal;
- (viii)** *Post Office shall be located in the accommodation to be provided by Gramin Dak Sevak Branch Postmaster suitable for use as Post Office premises;*
- (ix)** *Combination of duties of a Sevak shall be permissible;"*

Rule 6(1) and (13) of the 2011 rules providing for Payment of *ex-gratia* gratuity are also reproduced here-in-below:

"(1) Payment of ex-gratia gratuity. - The question of grant of some kind of purely ex gratia monetary grant to ED Agents working in the Indian Posts and Telegraphs Department on termination of their services has been under consideration for a long time. It has been decided as follows :-

1. ED Agents as defined in P & T Extra Departmental Agents (Conduct and Service) Rules, 1964, whose services are terminated otherwise than (i) for unsatisfactory work or (ii) as a measure of disciplinary action or (iii) in consequence of their being appointed in a regular post under the P & T Department, may be sanctioned monetary grants termed as 'Gratuity', provided that they have put in not less than ten years of continuous satisfactory service as Ed Agents."

xx xxx xx xxx

"(13) No gratuity to ED Agent who quits the agency on his own. - The question of extending the benefit of grant of ex gratia gratuity to



ED Agents who have to resign on account of circumstances beyond their control was taken up with the Ministry of finance. It has been decided that no ex gratia amount will be paid to ED Agents in such cases. It is, therefore, clarified that according to the present orders, gratuity is payable only if the services of an ED Agent are terminated in consequence of an action of the department, subject to their fulfillment of the other prescribed conditions and that no gratuity is payable if an ED Agent quits the agency on his own. The services of an ED Agent should not be terminated when he himself quits the job. In such cases, an order permitting the ED Agent to quit the services on his own should be issued so that the order may not be construed a.s an order of termination of service."

17. Thus, broadly, as per the dictum of the Hon'ble the Supreme Court, services of Gramin Dak Sevaks (GDSs) are governed by GDS (Conduct and Engagement) Rules, 2011 and they are entitled to claim gratuity under Rule 6 (1) of the Rules, 2011 and not under the Payment of Gratuity Act, 1972.

18. Thus, following the dictum of the Hon'ble the Apex Court in **Gursevak Singh's case (supra)**, this Court is of the view that all the writ petitions filed by the petitioner(s) are worth to be allowed. Accordingly, the writ petitions are allowed and the impugned orders passed by the Controlling Authority and the orders of dismissal of Appeal by the Appellate Authority under the Act of 1972, are hereby **quashed/set aside**.

However, before parting with the judgment, it is clarified that it would be open for the Respondent No.1(in all the writ petitions) to seek their remedy for claiming "so called gratuity" in accordance with Rule 6(1) of the Rules, 2011, to substantiate the right, if any.

It is further clarified that on presentation of any such claim, the authority under the GDS (Conduct & Engagement) Rules, 2011, will decide



the same at the earliest, preferably, within a period of one year of its filing.

19. It is noticed that due to the misconception developed by the employees, across the States of Punjab and Haryana as well as in UT, Chandigarh, a lot of time seems to have been wasted before the Forum, who has no jurisdiction to entertain the application(s) of the Gramin Dak Sevaks (GDS) under the Act of 1972.

To apprise the employee(s) about the appropriate Forum under the GDS (Conduct & Engagement) Rules, 2011, for filing of the claim at the very inception, let a copy of this order/judgment be forwarded to the Union of India through the Secretary, Ministry of Communication, Department of Posts, New Delhi, to issue appropriate informative letters to the concerned Department(s) for compliance.

Misc. application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

May 13, 2024
J.Ram

Whether speaking/reasoned: ✓ Yes/~~No~~
Whether Reportable: ✓ Yes/~~No~~