

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

215 (11 cases)

CWP-1266-2018
Date of Decision 29.11.2024

Sunder Lal

...Petitioner

Versus

State of Haryana and another

...Respondents

With

Sr. No.	Case No.	Petitioner	Respondent(s)
2.	CWP-6449-2018	Hari Ram	State of Haryana and another
3.	CWP-6415-2018	Ashok Kumar Setia	State of Haryana and another
4.	CWP-6379-2018	Ralwinder Singh	State of Haryana and another
5.	CWP-6742-2018	Satish Kumr Mehta	State of Haryana and another
6.	CWP-6403-2018	Harish Chander	State of Haryana and another
7.	CWP-7207-2018	Om Parkash	State of Haryana and another
8.	CWP-7185-2018	Satish Kumar	State of Haryana and another
9.	CWP-27581-2019	Ram Sarup Monga	State of Haryana and another
10.	CWP-28035-2019	Surinder Kumar	State of Haryana and another
11.	CWP-6569-2018	Rattan Lal	State of Haryana and another

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Surinder Gandhi, Advocate for the petitioner

Ms. Harsh Rekha Kapoor, Assistant Advocate General, Haryana

Mr. Pritam Singh Saini, Advocate for respondent No.2

**JAGMOHAN BANSAL, J. (Oral)**

1. As common issues are involved in the captioned petitions, with the consent of both sides, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from *CWP-1266-2018*.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 15.01.2016 (Annexure P-2) whereby respondent No.2-Haryana State Minor Irrigation and Tubewells Corporation Limited (for short '**HSMITC**') has adjusted amount of gratuity against payment of leave encashment.

3. The petitioner is an ex-employee of HSMITC which came to be closed in July' 2002. It was a State Government owned Corporation. It had adopted Rules and Regulations application to Haryana Government employees with respect to gratuity and leave encashment. On account of closure of the unit, the employees were either retrenched or adjusted in other organizations. The petitioner herein was retrenched. At the time of his retrenchment, he was paid leave encashment equal to salary of 300 days and gratuity as per Rule 6.3 of Service-Bye-Laws, 1980 (for short '**1980 Bye-Laws**'). The amount of gratuity payable under 1980 Bye-Laws was less than gratuity payable under Payment of Gratuity Act, 1972 (for short '**1972 Act**').

4. The petitioner at the time of retrenchment accepted leave encashment of 300 days and gratuity under 1980 Bye-Laws, however, at a later stage, filed an application before authority under 1972 Act which by

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order dated 23.08.2015 directed the respondent to pay differential amount of gratuity i.e. difference between gratuity paid under 1980 Bye-Laws and payable under 1972 Act. There was further direction to pay interest @ 12% per annum. The respondent vide order dated 15.01.2016 held that if petitioner claims and gets gratuity under 1972 Act then he is entitled to leave encashment of 30 days instead of 300 days because as per applicable Rules, 300 days leave encashment was paid to those employees who were paid gratuity under 1980 Bye-Laws. An employee who claims gratuity under 1972 Act is entitled to leave encashment of 30 days. The relevant extracts of order dated 15.01.2016 passed by respondent are reproduced as below:-

“As stated above, after availing one bundle of rights i.e. DCRG and leave encashment of more than 30 days, Sh. Sundar Lal filed an application under the Payment of Gratuity Act claiming therein the gratuity as per the Act, in order to hood-wink the Corporation. As such, he cannot be allowed to have the best of both world. It is clear from the face of the above stated facts that he is seeking an advantage deceitfully. In the first instance, he was granted one bundle of rights as per the terms and conditions of his appointment & as per the Service-bye-laws applicable at the time of termination of his services and the same were accepted by him without any reservation and objection and after availing the same, he then on technical plea demanded one of the bundle of rights from the other option, so as to make further financial gains. From the conduct of Sh. Sundar Lal, it is well established that he has exercised his option in favour of bundle of rights i.e. gratuity as per the Act & leave encashment of 30 days.

Keeping in view the above stated whole facts, the matter was again examined in detail and in the light of aforesaid judgments & law laid down by the Hon'ble High Court and the Resolution of the

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BOD, the amount of gratuity under the Payment of Gratuity Act comes as under:

<i>Date of Joining</i>	<i>30.6.1978</i>
<i>Date of termination</i>	<i>30.06.2002</i>
<i>Total length of service</i>	<i>24 years 00 months 00 days</i>
<i>Last wages drawn</i>	<i>Rs.1600+2368+2072=6,040/-</i>
<i>Gratuity as per Act claimed</i>	<i>32,894/-</i>
<i>Interest from 1.08.2002 to 30.04.2015 @ 12%</i>	<i>Rs. 83,306/-</i>
<i>Total</i>	<i>1,16,200/-</i>

As submitted above he was paid leave encashment of 300 days amounting to Rs. 60,400/- vide sanction order No. 116-119/Admn dated 2.1.2008 whereas he was only entitled to 30 days leave encashment amounting to Rs.6,040/- as such, he is legally (sic) bound to refund an amount of Rs.54,360/- of 270 days excess leave encashment alongwith interest @ 12% Rs.47,793/- w.e.f. 3.1.2008 till 30.04.2015 which comes to Rs.1,02,153/- Thus, the balance amount i.e. Rs.116200-102153=14,047/- as gratuity under the act has already been released and deposited with the Controlling Authority under the Payment of Gratuity Act, Chandigarh vide DD No.020527 dated 03.10.2015.”

5. Learned counsel for the petitioner submits that as per judgment of Supreme Court in ***State of Punjab and others v. Rafiq Masih (White Washer) etc., 2015 (4) SCC 334***, no recovery of excess payment can be made from Class ‘C’ and ‘D’ employees after their retirement. In view of said judgment, respondent No.2 could not make recovery from the dues of the petitioner.



The petitioner was declared entitled to gratuity under 1972 Act by controlling authority. The said order is a quasi-judicial authority's order and it cannot be recalled, modified or set aside by any authority other than appellate or revisionary authority. The Managing Director of respondent No.2 was not holding position of appellate or revisionary authority, thus, he was not competent to modify order of authority constituted under 1972 Act.

6. Learned counsel for respondent No.2 submits that petitioner was governed by 1980 Bye-Laws. In the said Bye-Laws, it was made clear that an employee who opts for gratuity under 1972 Act is entitled to leave encashment of 30 days and if he opts for death-cum-retiral gratuity in terms of Rule 6.3 of 1980 Bye-Laws, he would be entitled to leave encashment of 300 days.

7. I have heard the arguments of learned counsel for both sides and perused the record with their able assistance.

8. The conceded position emerging from the record is that the petitioner worked with respondent No.2 for 24 years. He was retrenched in July' 2002 and at the time of retrenchment, was paid gratuity and leave encashment as per 1980 Bye-Laws. The amount of gratuity payable under 1980 Bye-Laws was less than gratuity payable under 1972 Act. He was paid leave encashment of 300 days as per Rule 5.5 of 1980 Bye-Laws. The petitioner is not disputing that he has received gratuity under 1980 Bye-Laws as well as leave encashment under said Bye-Laws.

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9. The petitioner was having option either to avail gratuity under 1972 Act plus leave encashment of 30 days or to claim gratuity under 1980 Bye-Laws plus leave encashment of 300 days. There was no cross option. The petitioner, after his retrenchment, approached authority under 1972 Act which held the petitioner entitled to gratuity under 1972 Act. The 1972 Act clearly provides that provisions of 1972 Act shall override provisions of other Acts, Rules and Regulations framed by competent authority as well as contracts executed between the parties. As the petitioner was entitled to lesser amount of gratuity under 1980 Bye-Laws than payable under 1972 Act, thus, he was entitled to gratuity under 1972 Act, however, he could not at the same moment claim 300 days leave encashment which was extra-ordinary benefit available to those employees who had opted death-cum-retiral gratuity under 1980 Bye-Laws. The petitioner could not choose both benefits at one point of time. Both the benefits were mutually exclusive. The petitioner could only opt one set of benefits. By approaching the controlling authority under 1972 Act, the petitioner opted for gratuity under 1972 Act, thus he was entitled to leave encashment of 30 days instead of 300 days. The respondent by passing impugned order has not modified, set aside or revised order of controlling authority whereas it has passed order with respect to excess payment of leave encashment. The question of excess payment of leave encashment stemmed from order passed by controlling authority under 1972 Act. The respondent has adjusted excess payment of leave encashment against short payment of gratuity. The rate of interest calculated on differential amount of gratuity as well as leave encashment is 12%, thus, there is no discrimination on the part

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of respondent. The reliance placed upon judgment of Supreme Court in ***Rafiq Masih (supra)*** is misplaced because in the case in hand question of excess payment has arisen on account of different stand taken by the petitioner at a later stage and orders passed by statutory authority. The petitioner cannot take benefit of higher amount under 1972 Act and refuse to refund payment which has become excess on account of change of option.

10. In the wake of above discussion and findings, this Court does not find any infirmity in the impugned order, thus, all the petitions being bereft of merit deserve to be dismissed and accordingly dismissed. The petitioner is at liberty to approach the respondent to seek correction of calculation, if any, with respect to amount of gratuity.

(JAGMOHAN BANSAL)
JUDGE

29.11.2024
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No