

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

KAMLA SHARMAPetitioner

VERSUS

STATE OF PUNJAB AND ORSRespondent(s)

HARSIMRAN SINGH SETHI, J. (Oral)

In the present petition, the grievance being raised by the petitioner is that the petitioner has worked with the Punjab Water Supply and Sewerage Board from 1977 to 1999 and thereafter, she was selected in a Government Department where she worked upto the date she attained the age of superannuation on 31.01.2010 and she is entitled for the grant of gratuity for the total period on the basis of the last pay drawn at the time of her retirement, which is being denied to her.

The facts leading to the file of the present petition are that the petitioner initially joined Punjab Water Supply and Sewerage Board as a Clerk on 20.05.1977. She was promoted as a Senior Assistant on 26.07.1987 and she continued working as such upto 18.11.1999 when, the petitioner was

appointed for the post of Section Officer with the Finance Department, Government of Punjab She was selected on the said post after applying through the proper channel. Thereafter, the petitioner attained the age of superannuation on 31.01.2010 and she was given two months extension and ultimately retired on 31.03.2010.

The grievance of the petitioner is that till the date of retirement, the gratuity which the petitioner became entitled for while serving in the Punjab Water Supply and Sewerage Board, was not extended and after her retirement, two separate gratuities have been given to her, which is causing prejudice to her claim.

Learned counsel for the petitioner submits that a separate gratuity for a period starting from 20.05.1977 till 18.11.1999 has been given by the Punjab Water Supply and Sewerage Board after the retirement of the petitioner, but the said gratuity has been calculated keeping in view the last pay drawn by the petitioner with the Punjab Water Supply and Sewerage Board in the year 1999 and for the remaining period, the petitioner has been given gratuity by the State keeping in view the last drawn wages on the date of retirement of the petitioner in the year 2010.

Learned counsel for the petitioner argues that once, the petitioner has joined State, the gratuity was not paid by the respondent-Board, the petitioner was only entitled for the release of the gratuity by the State at the last drawn wages for the total length of service and the Punjab Water Supply and Sewerage Board was to give its share to the State of Punjab whereas, the petitioner has been given two different gratuities for a specific period by taking into consideration two separate last drawn pays, which is causing prejudice.

Learned counsel for the petitioner submits that the claim of the petitioner in the present petition is covered by the judgment of the Coordinate Bench of the is Court in CWP No.19744 of 2010 decided on 16.08.2012 titled “***Vinay Kumar and ors. Vs. State of Punjab and ors.***”, which judgment has already been upheld by the Division Bench in LPA No.1523 of 2012 titled as “***Punjab Water Supply and Sewerage Board Chandigarh Vs. Vinay Kumar and ors.***” decided on 04.10.2012.

Upon notice of motion, the respondents have filed their reply wherein they have submitted that the Punjab Water Supply and Sewerage Board has stated that they have calculated the gratuity upto the date the petitioner has worked with them and keeping in view the last drawn wages in the year 1999, her gratuity has been calculated though the same was not given at the time when the petitioner left the Board but has been given to her along with interest after her retirement from Government Service.

Learned counsel for the respondent-State submits that as per the petitioner has only worked with the Department starting from 19.11.1999, till her retirement, the gratuity has been calculated on the last drawn salary which the petitioner was drawing at the time of her retirement hence, no grievance can be raised by the petitioner.

I have heard learned counsel for the parties and have gone though the records of the present case with their able assistance.

In the present case, the petitioner had worked with the Punjab Water Supply and Sewerage Board from 1977 to 1999. While working with the Punjab Water Supply and Sewerage Board, through proper channel, the petitioner applied for the post of Section Officer with the Government of

Punjab. After being selected, the petitioner gave a technical resignation from the Board and joined the Government of Punjab.

The natural process should have that whatever the benefits which the petitioner became entitled after her retirement from Government of Punjab for qua the period she has worked with the Punjab Water Supply and Sewerage Board, respondent-Board should have forwarded to the State its share of gratuity to be paid to the petitioner on the last drawn wages at the time of her retirement. The Punjab Water Supply and Sewerage Board did not follow the said process. Not only this, the Punjab Water Supply and Sewerage Board did not give the gratuity to the petitioner when she kept the Board in 1997 and did not forwarded the same to the Government for the period the petitioner worked with the Board. This action of the respondent-Board cannot prejudice to the petitioner after the retirement of the petitioner, the respondent-Board only calculated the gratuity keeping in view the last drawn salary with the Board in 1999 whereas, the petitioner claimed that the same should have been on the last drawn salary with the Government on the date of her retirement in 2010.

Had the respondent-Board forwarded the gratuity admissible to the petitioner for the period the petitioner has worked with the Board to the Government, the Government was under obligation to treat whole of the period of service of the petitioner while calculating the gratuity admissible to the petitioner keeping in view the last pay drawn by the petitioner with the Government at the time of her retirement in 2010. The said prejudice has been caused to the petitioner due to the inaction on the part of the Board in not sending the dues of the petitioner to the Government and rather kept the same with itself which was ultimately paid along with the interest after the

retirement of the petitioner but as the wages drawn by her in 1999 when she left the Board.

Further, it has already come on record that for all the other benefits, the service rendered by the petitioner in the Punjab Water Supply and Sewerage Board has been taken to be a valid service for computing the pensionary benefits. Once, the said decision has been taken by the respondent-State which is clear from the reply in Paragraph No.2 that as per the order dated 29.08.2016, the petitioner is entitled to count next service in Board as qualifying service, it becomes a duty of the State to calculate the total length of service for grant of gratuity to the petitioner keeping in view the last drawn salary with the State of Punjab at the time of her retirement in 2010.

Further, the similar relief has already been granted by the Coordinate Bench of this Court in case of ***Vinay Kumar's case (supra)***, which judgment has already been upheld by the Hon'ble Division Bench in LPA No.1523 of 2012 decided on 04.10.2012, wherein it has been held as under:-

“Admittedly, the gratuity is to be calculated on the basis of last drawn salary. On this basis, the respondent claimed gratuity in the sum of 1,75,995/-, calculated on the salary which he was drawing at the time of his retirement. The appellant-Board, however, agreed to give its share of gratuity on the basis of salary which the respondent was drawing in 1996 when he was absorbed with the Municipal Council, Zirakpur

Learned single Judge has rejected this manner of calculation of gratuity by the appellant-Board holding that the respondent would be entitled to the gratuity on the basis of last drawn salary.

It is the contention of learned counsel for the appellant that last drawn salary should mean the salary which the respondent was drawing in 1996 i.e. when he ceased to be the employee of the Board.

We are unable to accept this plea of the learned counsel for the appellant. The expression used in Section 4(2) of The Payment of Gratuity Act, 1972, "gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned" would mean the wages which the incumbent was drawing at the time of his superannuation. This position become further clear when provisions of Section 4(2) of the said Act are read in conjunction with sub-section (1) thereof which makes the, gratuity payable on superannuation.

We, thus, do not find any merit in this appeal, which is accordingly dismissed.

The gratuity payable under the orders of the learned Single Judge shall positively be paid within two weeks from today."

The only objection being taken by learned counsel for the respondent-Board is that in case of ***Vinay Kumar's case (supra)***, he was absorbed with the Government whereas the petitioner has resigned and then joined the Government. The said differentiating fact is not material for the reason that the petitioner applied through the proper channel and got selected with Government of Punjab and further, the resignation given by the petitioner was only a technical resignation in order to join the newly selected post hence, the same is not to be treated as a resignation but is to be termed as a technical resignation to join another post. Therefore, the said differentiating fact will not take away the right to claim the benefit, which the Co-ordinate Bench of this Court has already extended in favour of a similarly situated employee namely ***Vinay Kumar's case (supra)***.

Keeping in view of above, the respondent-State are directed to recalculate the benefits admissible to the petitioner by treating the total length of service which the petitioner has rendered with the respondent-

Board as well as the Government of Punjab as a qualifying service for the payment of gratuity and determine the entitled gratuity keeping in view the last drawn pay of the petitioner with the Government at the time of her retirement in 2010.

The amount already paid by the Board along with interest, will be adjusted from the amount calculated with regard to the claim of the petitioner as admissible under this order.

The respondent-State in case feels, will have the liberty to get the amount reimbursed from the Punjab Water Supply and Sewerage Board in case ,it is permissible under law.

Let the present order be complied with within a period of 8 weeks from the receipt of copy of this order.

Present petition is allowed.

Pending application, if any, also stands disposed of.

16-09-2024
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES/NO
Whether reportable: YES/NO