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

CWP-19979-2024

Date of Decision: 20.08.2024

**THE PUNJAB STATE COOPERATIVE SUPPLY AND
MARKETING FEDERATION LTD**

..... Petitioner

Versus

SHAM LAL AND ORS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Shubham Thakur, Advocate for the petitioner.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 25.03.2021 (Annexure P-7) whereby Controlling Authority constituted under Payment of Gratuity Act, 1972 (for short '1972 Act') has ordered to pay gratuity for 33 years to respondent No.1-Sham Lal, and order dated 08.08.2022 (Annexure P-9) whereby its appeal has been rejected.

2. The respondent No.1-Sham Lal joined petitioner on 01.05.1985 and was regularized w.e.f. 01.11.1992. He attained the age of superannuation on 31.05.2016. As per notification of State Government, the period of service of respondent No.1 was extended for 2 years, accordingly, he retired on 31.05.2018. He was paid gratuity amounting to Rs.4,33,620/- at the time of his retirement. He claimed gratuity for 33 years service whereas petitioner calculated only for regularized service. The petitioner was initially of the opinion that period of service prior to regularization cannot be counted for gratuity, however, said opinion is no more pressed during the course of hearing.



3. Mr. Shubham Thakur, Advocate submits that Management has not counted 2 years extension period and respondent No.1 was entitled to gratuity only till the date of superannuation, accordingly, he was entitled to gratuity of 31 years of service whereas authorities have granted for 33 years.

In support of his contention, he relies upon Rule 3.17 A (Chapter-III, Volume-II) of Punjab Civil Service Rules and judgment of Bombay High Court in '*Janta Central Wholesale and Retail Co-operative Consumers Stores Ltd. Akola Vs. Bansilal Chand Agrawal and others, 2016 (3) Mh.L.J.*'.

4. From the perusal of judgment of Bombay High Court, it is evident that in the said case the workman after his retirement was appointed on contract basis whereas in the case in hand, workman was granted extension of 2 years and was not appointed on contract basis, thus, said judgment is inapplicable to the present case.

5. The reliance of petitioner on Rule 3.17 A (Chapter-III, Volume-II) of Punjab Civil Service Rules is misplaced because Chapter-III which comprises of Rule 3.17 A provides for 'Service Qualifying for Pension' meaning thereby Chapter-III is applicable for the purpose of pension and has no connection with gratuity. For the ready reference relevant extracts of Rule 3.17 A (Chapter-III, Volume-II) of Punjab Civil Service Rules are reproduced as below:

"CHAPTER III

Service Qualifying for Pension

3.17-A. (1) Subject to the provisions of rule 4.23 and other rules and except in the cases mentioned below, all service rendered on establishment, interrupted or continuous, shall count as qualifying service:—



(i) Omitted.

(ii) Omitted.

(iii) Casual or daily rated service.

(iv) Suspension adjudged as a specific penalty.

Note.—In cases where an officer dies or is permitted to retire while under suspension will not be treated as an interruption.

(v) Service preceding resignation except where such resignation is allowed to be withdrawn in public interest by the appointing authority as provided in the relevant rules or where such resignation has been submitted to take up, with proper permission, another appointment whether temporary or permanent under the Government where service qualifies for pension.

(vi) Joining time for which no allowances are admissible under rules 9.1 and 9.15 of C.S.R., Volume I, Part I.

(vii) If any unauthorised leave of absence occurs in continuation of authorised leave of absence and if the post of the absentee has been substantively filled up, the past service of the absentee is forfeited.

(viii) Transfer to a non-qualifying service in an establishment not under Government control or if such transfer is not made by the competent authority and transfer to service in a grant-in-aid school. (A Government employee, who voluntarily resigns qualifying service, cannot claim the benefit under this clause.)

(ix) Removal from public service for misconduct, insolvency, inefficiency not due to age, or failure to pass an examination will entail forfeiture of the past service.

(x) Service rendered beyond the date of retirement on superannuation in terms of rule 3.26 of Punjab Civil Services Rules, Volume I, Part I.”

6. Calculation of gratuity is governed by 1972 Act. The

petitioner neither in the pleadings nor during arguments has pointed out



any provision of 1972 Act which provides that period of service beyond date of superannuation shall not be counted for the purpose of gratuity. The relevant extracts of order dated 08.08.2022 passed by Appellate Authority are reproduced as below:

“8. In the present case the appellant himself admitted that the respondent employee was entitled to gratuity but he was paid gratuity in accordance with Civil Services Rules. The services of the respondent were governed by the provisions of Payment of Gratuity Act, 1972 qua the determination of amount of gratuity. The Controlling Authority has rightly passed the order dated 25-03-2021 directing that a balance payment of gratuity of Rs. 1,62,602/- with 10% interest from the date of his retirement i.e. w.e.f. 31-05-2018.

9. In view of the above I am of the considered view that the appellant Markfed has not followed the mandatory procedures to withhold the gratuity and rather it is against the mandatory provisions of Payment of Gratuity Act, 1972 reproduced above. Therefore, the appeal of the appellant management has no merit and is dismissed. The parties are left to bear their own costs. The file be consigned to record.”

7. In the wake of above discussion, this Court does not find any jurisdictional error or factual infirmity in the findings recorded by Controlling Authority as well as Appellate Authority. The petition being devoid of merit deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

20.08.2024
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No