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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-5407-2018
Date of Decision: 05.01.2024

Punjab Agricultural University, Ludhiana and others

..... Petitioners

Versus

Sukhjeet Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Deepak Agnihotri, Advocate
for the petitioners.

Mr. Ashish Grover, Advocate
for respondent No.1.

HARSH BUNGER J.

1. Petitioners-Punjab Agricultural University, Ludhiana and others have filed the instant writ petition under Articles 226/227 of the Constitution of India seeking writ in the nature of Certiorari for quashing an order dated 13.12.2016 (Annexure P-5) passed by the Controlling Authority under the Payment of Gratuity Act,1972 as well as order dated 12.12.2017 (Annexure P-6) passed by the Appellate Authority under the Payment of Gratuity Act, 1972.
2. Briefly, respondent No.1 (Sukhjeet Kaur) filed an application (Annexure P-3) before the Controlling Authority under the Payment of Gratuity Act, 1972 seeking a direction to the petitioners-University to pay gratuity to her. As per respondent No.1 (Sukhjeet Kaur), she was an

employee of the Punjab Agricultural University, Ludhiana and she retired from service on 31.07.2014 after completion of 35 years, 6 months and 13 days of continuous service. She claimed that she joined the University as daily paid worker on 19.01.1979 up to 06.05.1980 and thereafter, she worked as Sports Attendant up to 31.07.2014. Respondent No.1 claimed that she was not paid full gratuity as per her due entitlement and she was paid gratuity amount of Rs.4,70,207/- by counting her service as 25 years, 6 months and 7 days. Respondent No.1 claimed that the petitioners-University had wrongly ignored her service of more than 10 years and had withheld the balance gratuity amount without assigning any reason, accordingly, claim for gratuity was made.

3. On the other hand, the claim for the gratuity amount by respondent No.1 (Sukhjeet Kaur) was contested by the petitioners-University by submitting that respondent No.1 has rendered service only for 25 years, 6 months and 7 days and for the said period, the gratuity amount already stands paid. It was submitted that as per the rules and regulations of the Punjab Agricultural University, there was no provision to count the service of stop gap basis on which respondent No.1 was kept. It was also submitted that the service of respondent No.1 was covered under Punjab Civil Services Rules which are applicable to the Punjab Agricultural University, accordingly, respondent No.1 was entitled to gratuity as per the Funds and Pension Rules of the Punjab Agricultural University and her case was not covered under the Payment of Gratuity Act, 1972. It was stated that prior to 24.01.1989, respondent No.1 was appointed in the department on stop gap basis and her services were regularized on 25.01.1989. It was further stated that respondent No.1 was not entitled to any gratuity, for the period she

worked on daily wage basis w.e.f. 19.01.1979 to 06.05.1980. Accordingly, prayer for dismissal of the claim of respondent No.1 was made.

4. The Controlling Authority under the Payment of Gratuity Act, 1972 vide the order dated 13.12.2016 (Annexure P-5) allowed the claim of respondent No.1 and she was held entitled to gratuity amount of Rs.8,34,486/-. It was clarified that the gratuity amount of Rs.4,70,207/- has already been received by respondent No.1, accordingly, balance gratuity amount of Rs. 3,64,279/- was liable to be paid to her.

5. Being dissatisfied with the aforesaid award, the petitioners herein, filed a Statutory Appeal under Section 7 (7) of the Payment of Gratuity Act, 1972, however, the same was dismissed by the Appellate Authority vide order dated 12.12.2017 (Annexure P-6) by holding as under:-

“8. From the perusal of above Clause of the ibid Act, I am of the considered view that for calculating gratuity, entire service rendered by an employee is required to be counted irrespective of the effect whether it is on adhoc basis, stop gap arrangement or otherwise, if it is uninterrupted the entire service to be counted for determining gratuity under the ibid Act. Therefore, the respondent employee is entitled to gratuity for the period from 19/01/1989 to 31/07/2014.

9. In view of the above discussion the order of the Controlling Authority dated 13.12.2016 is perfectly in order and justified. There is no need to interfere with it. The appeal is accordingly disposed of the parties are left to bear their own costs. The file be consigned to record.”

6. In the aforementioned circumstances, the petitioners have filed the instant Writ Petition before this Court.

7. Learned counsel for the petitioners has submitted that the

authorities below have erred in law and fact in allowing the claim of respondent No.1 for gratuity under the Payment of Gratuity Act, 1972. It is submitted that the authorities below have wrongly applied the provisions of the Payment of Gratuity Act, 1972 to the case of respondent No.1 as her conditions of service are governed by the statutes of the Punjab Agricultural University and the Payment of Gratuity Act, 1972 is not applicable. It is further submitted that the authorities below have wrongly considered the entire service of respondent No.1 while determining the amount of gratuity despite the fact that before regularization of service of respondent No.1, she was engaged on stop gap basis. It is also contended that the authorities below have further erred in awarding interest on the additional amount of gratuity. Accordingly, it is submitted that the impugned orders be set aside.

8. Per contra, learned counsel for respondent No.1 has opposed the prayer made by learned counsel for the petitioners by submitting that the impugned orders are well reasoned and justified and do not call for any interference by this Court. Learned counsel has submitted that the University is an establishment within the meaning of the provisions of Payment of Gratuity Act, 1972 and therefore, respondent No.1 is entitled to the benefit of gratuity under the Payment of Gratuity Act, 1972, more so, when the University had failed to show that any exemption has been granted to it from the provisions of the Payment of Gratuity Act, 1972. Learned counsel submits that in terms of Section 2 (a) of the Payment of Gratuity Act, 1972, the entire continuous service is to be calculated for granting gratuity and there is no distinction provided between work charge service/temporary service or regular service. It is stated that respondent No.1 retired as Sports Attendant on 31.07.2014 and she had continuously worked with the

University since 19.01.1979 till the date of her retirement and there was no break in service. Accordingly, prayer for dismissal of the instant Writ Petition has been made.

9. I have heard learned counsel for the parties and perused the paper book with their able assistance.

10. Before dealing with the case in hand, it would be appropriate to refer to the judgment rendered by the Hon'ble Supreme Court in the case of **Allahabad Bank v. All India Allahabad Bank Retired Emps. Assn., 2010(1) SCT 531**, wherein Hon'ble Supreme Court had considered the provisions of the Payment of Gratuity Act, 1972 and the findings rendered therein can be summarized as under:-

“ (a) There is no escape from payment of gratuity under the provisions of the Act unless the establishment is granted exemption from the operation of the provisions of the Act by the appropriate Government.

*(b) Gratuity payable to an employee on the termination of his employment after rendering continuous service for not less than 5 years and on superannuation or retirement or resignation etc. **being a statutory right cannot be taken away except in accordance with the provisions of the Act** whereunder an exemption from such payment may be granted only by the appropriate Government under Section 5 of the Act which itself is a conditional power. No exemption could be granted by any Government unless it is established that the employees are in receipt of gratuity or pension benefits which are more favourable than the benefits conferred under the Act.*

(c) In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect.

Possibly for this reason, Section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act, if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. [Municipal Corporation Delhi v. Dharam Prakash Sharma &Ors., 1999(2) SCT 297]

(d) An establishment is under the statutory obligation to pay gratuity as provided for under Section 4 of the Act which is required to be read along with Section 14 of the Act which says that the provisions of the Act shall have effect notwithstanding anything inconsistent therein contained in any enactment or in any instrument or contract having effect by virtue of any enactment other than this Act.

(e) The provisions of the Act prevail over all other enactment or instrument or contract so far as the payment of gratuity is concerned. The right to receive gratuity under the provisions of the Act cannot be defeated by any instrument or contract.

(f) In Hindustan Lever and Anr. v. State of Maharashtra &Anr., (2004)9 SCC 438 relying upon the decision in Purshottam H. Judye v. V.B. Poddar, (1966)2 SCR 353 it was held that the word 'instrument' would include award made by the Industrial Tribunal.

(g) Section 2(d) of the Act defines Controlling Authority as an authority appointed by the appropriate Government under Section 3 of the Act. Under Section 3 the Controlling Authority is made responsible for the administration of the Act and it further provides for appointment of different authorities for different areas. Section 7 deals with for determination of the amount of gratuity. Every person who is eligible for payment of

gratuity under the Act is required to send a written application to the employer in the prescribed form for payment of such gratuity. Sub-section (2) of Section 7 provides once the gratuity becomes payable, the employer shall, whether an application has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority specifying the amount of gratuity so determined and arrange to pay the amount of gratuity to the person to whom the gratuity is payable. The Scheme envisaged under Section 7 of the Act, is that in case of any dispute to the amount of gratuity payable to an employee under the Act or as to the admissibility of any claim of, or in relation to, an employee payable to gratuity etc. the employer is required to deposit with the Controlling Authority the admitted amount payable as gratuity. In case of any dispute parties may make an application to the Controlling Authority for deciding the dispute who after due inquiry and after giving the parties to the dispute, a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as result of such inquiry any amount is found to be payable to the employee, the Controlling Authority shall direct the employer to pay such amount to the employee. Sub-section (7) of Section 7, provides for an appeal against the order of the Controlling Authority. The Act, nowhere confers any jurisdiction upon the Controlling Authority to deal with any issue under sub-section (5) of Section 4 as to whether the terms of gratuity payable under any Award or agreement or contract is more beneficial to employees than the one provided for payment of gratuity under the Act. This Court's order could not have conferred any such jurisdiction upon the Controlling Authority to decide any matter under sub-section (5) of Section 4,

since the Parliament in its wisdom had chosen to confer such jurisdiction only upon the appropriate Government and that too for the purposes of considering to grant exemption from the operation of the provisions of the Act.

11. In view of the above, there is no dispute that the provisions of Payment of Gratuity Act, 1972 have an overriding effect. The petitioners-University have not placed on record anything to suggest that the University has been granted exemption in terms of Section 5 of the Payment of Gratuity Act, 1972. Therefore, the provisions of Payment of Gratuity Act, 1972 are applicable to the case of respondent No.1.

12. As regards the contention of the petitioner that authorities below had wrongly considered the entire service of respondent No.1 for calculating gratuity amount although respondent No.1 was earlier engaged on stop gap basis, it would be gainful to refer to the judgment rendered by the Hon'ble Supreme Court in the case of ***Netram Sahu vs. State of Chhattisgarh and another (Civil Appeal No.1254 of 2018, decided on 23.03.2018)***, wherein the authorities under the Act, 1972 has held Netram entitled to gratuity amount by considering his service of 25 years and 03 months, out of which, 22 years and 01 month of service was as daily wager and 03 years and 02 months' service was as a Regular Work Charge Employee. Accordingly, the question before the Hon'ble Apex Court was as to whether the appellant therein (Netram) can be held to have rendered qualified service i.e. continuous service as specified in Section 2(e) read with Section 2A of the Act, so as to make him eligible to claim gratuity as provided under the Act.

The case put up by the State before the Hon'ble Apex Court was that Netram Sahu could not be held eligible to claim the gratuity amount

because out of the total period of 25 years of his service, he worked for 22 years as Daily Wager and only 03 years as a regular employee. Accordingly, it was contended that Netram Sahu could not be said to have worked continuously for a period of five years, as provided under the Act, so as to make him eligible to claim gratuity. However, the said argument of the State was not accepted by the Hon'ble Apex Court, by holding as under:-

“14. We do not agree with this submission of learned counsel for the respondent-State for more than one reason. First, the appellant has actually rendered the service for a period of 25 years; Second, the State actually regularized his services by passing the order dated 06.05.2008; Third, having regularized the services, the appellant became entitled to claim its benefit for counting the period of 22 years regardless of the post and the capacity on which he worked for 22 years; Fourth, no provision under the Act was brought to our notice which disentitled the appellant from claiming the gratuity and nor any provision was brought to our notice which prohibits the appellant from taking benefit of his long and continuous period of 22 years of service, which he rendered prior to his regularization for calculating his continuous service of five years.

15. xxx xxx xxx

16. In our considered opinion, once the State regularized the services of the appellant while he was in State services, the appellant became entitled to count his total period of service for claiming the gratuity amount subject to his proving continuous service of 5 years as specified under Section 2A of the Act which, in this case, the appellant has duly proved.

17. In the circumstances appearing in the case, it would be the travesty of justice, if the appellant is denied

his legitimate claim of gratuity despite rendering “continuous service” for a period of 25 years which even, according to the State, were regularized. The question as to from which date such services were regularized was of no significance for calculating the total length of service for claiming gratuity amount once the services were regularized by the State.

18. It was indeed the State who took 22 years to regularize the service of the appellant and went on taking work from the appellant on payment of a meager salary of Rs.2776/- per month for 22 long years uninterruptedly and only in the last three years, the State started paying a salary of Rs.11,107/- per month to the appellant. Having regularized the services of the appellant, the State had no justifiable reason to deny the benefit of gratuity to the appellant which was his statutory right under the Act. It being a welfare legislation meant for the benefit of the employees, who serve their employer for a long time, it is the duty of the State to voluntarily pay the gratuity amount to the appellant rather than to force the employee to approach the Court to get his genuine claim.

19. In view of the foregoing discussion, we cannot agree with the reasoning and the conclusion arrived at by the High Court which is legally unsustainable. It is really unfortunate that the genuine claim of the appellant was being denied by the State at every stage of the proceedings up to this Court and dragged him in fruitless litigation for all these years.

20. xxx xxx xxx

21. These observations apply in full force against the State in this case because just case of the appellant was being opposed by the State on technical grounds. As a consequence, the appeal succeeds and is allowed. Impugned judgment/order passed by the High court

(Single Judge and Division Bench) are set aside and the orders of the Controlling Authority and Appellate Authority are restored with cost of Rs.25,000/- payable by the State to the appellant. Cost to be paid by the State along with the payment of gratuity amount.”

13. Considering the case in hand, in view of aforesaid legal position it would be evident that respondent No.1 would be entitled to gratuity amount by counting her entire service, especially when there is nothing on record to show that there was any break in service of respondent No.1.

14. As regards the contention of the petitioner that the Authorities below have wrongly granted interest on the additional amount of gratuity, I do not find any force in the same as the Hon’ble Supreme Court in the case of **“H. Gangahanume Gowda vs. Karnataka Agro Industries Corpn. Ltd.”**, **2003(1) S.C.T. 937**, held that the interest payable is statutory in nature; and there is no discretion available with the Court or the authority, except in case the employee was himself responsible for delay. The Hon’ble Supreme Court has observed as under:

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7. It is evident from Section 7 (2) that as soon as gratuity becomes payable, the employer, whether any application has been made or not, is obliged to determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity. Under Section 7 (3), the employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable. Under sub-section 3(A) of Section 7, if the amount of gratuity is not paid by the employer within the period specified in sub-section (3), he shall pay, from the date on which the

gratuity becomes payable to the date on which it is paid, simple interest at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits; provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on that ground. From the provisions made in Section 7, a clear command can be seen mandating the employer to pay the gratuity within the specified time and to pay interest on the delayed payment of gratuity. No discretion is available to exempt or relieve the employer from payment of gratuity with or without interest as the case may be. However, under the proviso to Section 7 (3A), no interest shall be payable if delay in payment of gratuity is due to the fault of the employee and further condition that the employer has obtained permission in writing from the controlling authority for the delayed payment on that ground. Under Section 8, provision is made for recovery of gratuity payable under the Act, if not paid by the employer within the prescribed time. The Collector shall recover the amount of gratuity with compound interest thereon as arrears of land revenue and pay the same to the person entitled. A penal provision is also made in Section 9 for non-payment of gratuity. Payment of gratuity with or without interest as the case may be does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with the penalty of payment of interest was the view taken in State of Kerala & Ors. vs.

M.Padmanabhan Nayyar [1985 (50) FLR 145]. Earlier there was no provision for payment of interest on the delayed payment of gratuity. Sub-section (3A) was added to Section 7 by an amendment, which came into force with effect from 1st October, 1987. In the case of Charan Singh vs. M/s. Birla Textiles and Another [1988 (57) FLR 543 SC], this aspect was noticed in the following words:

"There was no provision in the Act for payment of interest when the same was quantified by the Controlling Authority and before the Collector was approached for its realization. In fact, it is on the acceptance of the position that there was a lacuna in the law that Act 22 of 1987 brought about the incorporation of sub-section (3A) in Section 7. That provision has prospective application."

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9. It is clear from what is extracted above from the order of learned Single Judge that interest on delayed payment of gratuity was denied only on the ground that there was doubt whether the appellant was entitled to gratuity, cash equivalent to leave etc., in view of divergent opinion of the courts during the pendency of enquiry. The learned Single Judge having held that the appellant was entitled for payment of gratuity was not right in denying the interest on the delayed payment of gratuity having due regard to Section 7 (3A) of the Act. It was not the case of the respondent that the delay in the payment of gratuity was due to the fault of the employee and that it had obtained permission in writing from the controlling authority for the delayed payment on that ground. As noticed above, there is a clear mandate in the provisions of Section 7 to the employer for payment of gratuity within time and to pay interest on the delayed

payment of gratuity. There is also provision to recover the amount of gratuity with compound interest in case amount of gratuity payable was not paid by the employer in terms of Section 8 of the Act. Since the employer did not satisfy the mandatory requirements of the proviso to Section 7 (3A), no discretion was left to deny the interest to the appellant on belated payment of gratuity. Unfortunately, the Division Bench of the High Court, having found that the appellant was entitled for interest, declined to interfere with the order of the learned Single Judge as regards the claim of interest on delayed payment of gratuity only on the ground that the discretion exercised by the learned Single Judge could not be said to be arbitrary. In the first place in the light of what is stated above, the learned Single Judge could not refuse the grant of interest exercising discretion as against the mandatory provisions contained in Section 7 of the Act. The Division Bench, in our opinion, committed an error in assuming that the learned Single Judge could exercise the discretion in the matter of awarding interest and that such a discretion exercised was not arbitrary.”

15. In view of the above discussion, I do not find any illegality or perversity in the impugned orders, accordingly, **the instant petition fails and the same is dismissed.**

16. All pending application(s), if any, shall stand closed.

05.01.2024
Himani

(HARSH BUNGER)
JUDGE

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|------------------------------|---|--------|
| 1. Whether speaking/reasoned | : | Yes/No |
| 2. Whether reportable | : | Yes/No |