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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 13.03.2024

(I) CWP-28076-2019

JAMIL AHMED

...Petitioner

VERSUS

HARYANA WAKF BOARD AND ANOTHER

...Respondents

(II) CWP-34606-2019

FATEH MOHD AND OTHERS

...Petitioners

VERSUS

HARYANA WAKF BOARD AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Dinesh Kumar, Advocate
for the petitioner(s).

Mr. Sandeep Punchhi, Advocate
for the respondents.

JASGURPREET SINGH PURI, J. (Oral)

- Both the cases are taken up together for final disposal with the consent of learned counsel for the parties since the subject matter involved in both the cases is similar in nature.
- For the sake of convenience, the facts are being taken from Civil Writ Petition No.28076 of 2019.

3. Both the present writ petitions have been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the impugned Resolution No.17(v) dated 13.09.2017 (Annexure P-8 colly) passed by the Board sanctioning and approving the implementation and extension limit of Death-cum-Retirement Gratuity to the employees of the Board from Rs.3.50 lakhs to Rs.10 lakhs w.e.f. 01.04.2017 at par with Haryana Government employees instead of 01.01.2006 without there being any proper agenda and also for quashing the impugned order dated 01.11.2015 issued on 02.11.2015 (Annexure P-7) in CWP-28076-2019 and order dated 06.12.2016 (Annexure P-4) in CWP-34606-2019 rejecting the just and legitimate claim of the petitioners for releaing the balance payment of gratuity along with interest and further to direct the respondents to re-calculate the gratuity of the petitioners on revised rates and pay the difference between the amount due and amount already paid along with interest @ 18% per annum.

4. Learned counsel for the petitioners submitted that it is a case where the petitioners are employees of the respondent-Wakf Board and the Board of Haryana Wakf Board in its meeting held on 13.09.2017 have resolved that the Death-cum-Retirement Gratuity will be paid to the employees of the Haryana Wakf Board with effect from 01.04.2017 at par with the Haryana Government. He further submitted that the aforesaid decision of the Board by taking up the issue without any agenda and on the same date was not in accordance with law. He further submitted that the employees of the respondent-Wakf Board are governed by the provisions of the Payment of Gratuity Act, 1972 and so far as the cut off date for fixing of the ceiling of gratuity is concerned, the same

ceiling under the Payment of Gratuity Act, 1972 is governed by a different Notification, which is of the year 2010 and since the employees of the respondent-Wakf Board are governed by the provisions of the Payment of Gratuity Act, 1972, the Board had no occasion to have fixed any cut off date, which was different from that of the effective date fixed in the Notification issued under the Payment of Gratuity Act, 1972.

5. On the other hand, learned counsel for the respondents submitted that so far as the first grievance of the petitioners is concerned, the Board is well within its powers to put before the Chair and with the permission of the Chair any agenda item and the same can be considered in accordance with law and therefore, no fault can be found in the same. He further submitted that so far as the second issue is concerned, the Board was also within its powers to fix any cut off date for the purpose of fixing of ceiling of the employees.

6. I have heard the learned counsel for the parties.

7. Most of the petitioners are stated to have retired before 01.04.2017, which was the cut off date fixed by the Board. So far as the first grievance of the petitioners that the Board could not have passed a Resolution without any agenda is concerned, the same is not sustainable in view of the fact that as per Annexure P-8 (Colly), the item was put on agenda with the permission of the Chair. The cut off date was fixed i.e. 01.04.2017 for the purpose of fixing of ceiling for grant of Death-cum-Retirement Gratuity. So far as the second grievance of the petitioners that the petitioners and the employees of the respondent-Wakf Board are governed by the provisions of the Payment of Gratuity Act, 1972 and therefore, no other date other than that fixed under the

Notification issued under the Payment of Gratuity Act, 1972 can be fixed by the Board is concerned, the same needs to be dealt with.

8. Learned counsel for the petitioners had argued that so far as the question as to whether the petitioners being employees of the respondent-Wakf Board are governed under the provisions of the Payment of Gratuity Act, 1972 or not is concerned, the same stands answered in a judgment passed by a Coordinate Bench of this Court vide Annexure P-10 on 13.02.2014, wherein it was held that the employees of the Haryana Wakf Board are governed by the provisions of the Payment of Gratuity Act, 1972 since the aforesaid Act is fully applicable to the employees of the Haryana Wakf Board. He also referred to a Notification dated 17.05.2010 issued by the Government of India under the Payment of Gratuity Act, 1972, which is at page No.83 of the paper-book, wherein the ceiling of gratuity was enhanced from Rs.3.50 lakhs to Rs.10 lakhs and the same has come into effect from 24.05.2010.

9. After hearing learned counsel for the parties, this Court is therefore of the considered view that once the petitioners and the employees of the Haryana Wakf Board are governed by the provisions of the Payment of Gratuity Act, 1972, then the Notification which was issued by the Central Government under the Payment of Gratuity Act, 1972 will directly apply to the petitioners, wherein the effective date when the aforesaid Notification came into force was 24.05.2010 and therefore, any employee who retired after the aforesaid date was to be granted the benefit of ceiling of Rs.10 lakhs of gratuity and any date fixed by the Board vide Annexure P-8 (Colly), which comes in contradiction with the aforesaid Notification issued by the Central Government cannot

sustain. In the impugned Resolution (Annexure P-8), the cut off date has been fixed to be 01.04.2017, whereas the cut off date which has been fixed by way of Notification issued by the Central Government is 24.05.2010 from where it became effective and therefore, the Notification which has been issued by the Central Government will prevail upon the aforesaid Resolution.

10. At this stage, learned counsel for the petitioners submitted that the petitioners are entitled for interest as per Section 7 Clause (3A) of the Payment of Gratuity Act, 1972. Section 7 Clause (3A) of the Payment of Gratuity Act, 1972 is reproduced as under:-

“(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer 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, as that Government may, by notification specify.

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 this ground.”

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11. In view of the above, both the writ petitions are allowed. The impugned Resolution No.17(v) dated 13.09.2017 (Annexure P-8 Colly) is hereby set aside. The respondents are directed to calculate the remaining Death-cum-Retirement Gratuity of the petitioners in accordance with the Notification

of the Central Government under the provisions of the Payment of Gratuity Act, 1972 dated 17.05.2010, which came into force with effect from 24.05.2010 and pay the same to the petitioners in accordance with law, within a period of three months from today, along with interest @ 6% per annum (simple) from the date the gratuity became due till it is actually paid to the petitioners.

13.03.2024
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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