

CWP-1186-2025 & connected cases 1

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

**(114) CWP-1186-2025
Date of Decision : January 17, 2025**

M/s Captain Service Station .. Petitioner

Versus

**Appellate Authority under the Payment of Gratuity Act, 1972,
Panchkula and others .. Respondents**

(115) CWP-1187-2025

M/s Captain Service Station .. Petitioner

Versus

**Appellate Authority under the Payment of Gratuity Act, 1972,
Panchkula and others .. Respondents**

(116) CWP-1193-2025

M/s Captain Service Station .. Petitioner

Versus

**Appellate Authority under the Payment of Gratuity Act, 1972,
Panchkula and others .. Respondents**

(118) CWP-1222-2025

M/s Captain Service Station .. Petitioner

Versus

**Appellate Authority under the Payment of Gratuity Act, 1972,
Panchkula and others .. Respondents**



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CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sushil Kumar Kamboj, Advocate, for the petitioner(s)
in all petitions.

HARSIMRAN SINGH SETHI J. (ORAL)

1. By this common order, four writ petitions, the details of which have been given in the heading, are being disposed of as all these petitions involve the same question of law on similar facts.

2. In the present writ petitions, the challenge is to the order passed by the authorities concerned under the Payment of Gratuity Act, 1972 with regard to direction that the gratuity should be paid to the respondent-employees keeping in view the service rendered by them.

3. Learned counsel for the petitioner(s) argues that the services of the respondent-employees were terminated on the ground that sale of the petrol station had decreased.

4. Learned counsel for the petitioner(s) submits that once the services of an employee has been terminated, the payment of gratuity is not the liability.

5. I have heard learned counsel for the petitioner(s) and have gone through the record with his able assistance.

6. The payment of gratuity under the Payment of Gratuity Act, 1972 has been dealt in Section 4, which is as under:-

“ Section 4- Payment of gratuity.

(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, -

(a) on his superannuation, or

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(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.]

Explanation. : For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he, was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account.:

Provided further that in the case of [an employee who is employed in a seasonal establishment and who is not so employed throughout the year], the employer shall pay the gratuity at the rate of seven days wages for each season.

Explanation: In the case of a monthly rated employee, the fifteen days wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and



multiplying the quotient by fifteen.

(3) The amount of gratuity payable to an employee shall not exceed three lakhs and fifty thousand] rupees.

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (1), -

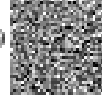
(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

(b) the gratuity payable to an employee may be wholly or partially forfeited]

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.”

7. A bare perusal of Section 4 (6) of the Payment of Gratuity Act, 1972 would show that the gratuity is not payable by an employer to an employee whose services have been terminated for any act willful omission or negligence causing any damage or loss or destruction of the property belonging to the employer and the forfeiture of the amount of gratuity will

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only be to the extent of damage or loss caused.

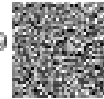
8. Nothing has been brought on record that the services of the respondent-employees were terminated due to any damage or loss caused by any wilful act or omission or negligence on the part of the respondent-employees. In the absence of any such finding placed before the authorities concerned or before this Court, the prayer that the services of the employees were terminated due to any loss caused, cannot be accepted. Decreased sale cannot be termed as misconduct or loss.

9. The further prayer of the petitioner is that the employees were given certain advances which needed to be adjusted towards payment of gratuity.

10. In case, the petitioner is aggrieved of the calculation of the amount of gratuity that there were certain advances which were given to the employees, which needed to be adjusted towards the payment of gratuity, the same should have been brought to the notice of the authorities concerned. Even as of now, in case, any amount, which has already been given to the employees by the petitioner over and above their entitlement, which needs to be adjusted from the amount to be paid as gratuity, the petitioner is free to bring the said fact to the notice of the authorities concerned for recomputing the entitlement of the respondent-employees.

11. No ground is made out for any interference by this Court in the present bunch of petitions.

12. Accordingly, the writ petitions are dismissed.



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13. A photocopy of this order be placed on the file of other connected cases.

January 17, 2025
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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