

(2016) 09 P&H CK 0214

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 26067 of 2014 (O/M)

Paras Ram Sharma

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Sept. 26, 2016

Acts Referred:

- Payment of Gratuity Act, 1972 - Section 4(5)

Citation: (2017) 1 SCT 531

Hon'ble Judges: Kuldeep Singh, J.

Bench: Single Bench

Advocate: S.P. Thukral, Advocate, for the Respondent No. 2; V.K. Shukla, Advocate, for the Appellant; Rajat Bansal, Assistant A.G. Punjab, for the Respondent

Final Decision: Dismissed

Judgement

Kuldeep Singh, J. (Oral)—Petitioner Paras Ram Sharma, who retired from service as Regional Seed Certification Officer on 31.7.2007, had joined the office of respondent No. 2-Punjab State Seed Certification Authority (in short "respondent-Authority) as a Seed Assistant on 14.6.1976. In the present writ petition, the petitioner seeks quashing of letter dated 7.11.2012 (Annexure- P-8) and letter dated 28.3.2013 (Annexure-P-9), declining him the enhanced gratuity of Rs. 10,00,000/-, as per the policy dated 17.8.2009 (Annexure-P- 4) of Punjab Government and another policy dated 13.8.2010 (Annexure- P-6) of Punjab Government. The petitioner seeks the following payments to be released :-

- (i) Release of enhanced amount of gratuity, as per abovenoted Punjab Government policy ;
- (ii) Re-fixation of pay after grating Assured Career Progression Scheme (in short "ACP Scheme") on completion of 24 years of service along with arrears of pay and enhanced gratuity ; and

(iii) The arrears of gratuity of Rs. 1,24,605/-, paid less to the petitioner against the statutory gratuity of Rs. 3,50,000/-.

2. The petitioner claims that he is governed by the Punjab State Seed Certification Authority Service Regulations (hereafter referred to as "the Regulations"). Under Regulation 22 of the said Regulations, the gratuity is to be paid under the Payment of Gratuity Act, 1972 (hereinafter referred to as the "Act of 1972"). The case of the petitioner is that under Section 4(5) of the Act of 1972, it is provided that 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. According to the petitioner, the Punjab Government, vide circular dated 17.8.2009, while implementing the recommendations of 5th Pay Commission, enhanced the gratuity from Rs. 3,50,000 to Rs. 10,00,000/- with effect from 1.1.2006. It is further stated on behalf of the petitioner that he has not been granted the benefit of ACP Scheme on completion of 24 years of service in a cadre. The Punjab Government had extended the benefit of ACP Scheme to its employees on completion of 8/16/24/32 years of service, vide notification dated 25.9.1998. The petitioner completed 24 years of service in the cadre of Regional Seed Certification Officer on 21.1.2006 with unblemished service record. Therefore, the denial of the said ACP is also illegal. It is further claimed that as per stand of respondent, the gratuity of Rs. 3,50,000/- was payable. He has only been paid Rs. 2,24,887/- on 26.8.2008 and the remaining amount of Rs. 1,24,605/- was withheld without issuing any show cause notice.

3. The stand of the respondent-Authority is that the respondent- Authority is a Society, registered under the Societies Act, 1860, by the Registrar of Firms and Societies, Punjab, on 15.3.1976. The certificate of Registration of Firms and Societies, Punjab is Annexure-R-2/1. The Central Seed Certification Board (in short "the Board") has framed the regulations. It is further stated that since the gratuity is to be paid under the Payment of Gratuity Act of 1972, therefore, the respondent followed the said Act. The Central Government, vide notification dated 24.5.2010, enhanced the limit of gratuity from Rs. 3,50,000/- to Rs. 10,00,000/- with effect from 24.5.2010 by making amendment in the Payment of Gratuity Act, 1972. The Punjab Government also enhanced the payment of gratuity from Rs. 3,50,000/- to Rs. 10,00,000/- to its employees with effect from 1.1.2006. The pension rules of Punjab Government are not applicable in the case of respondent-Authority. Since the petitioner retired prior to 24.5.2010, therefore, he is not entitled to enhanced gratuity. It was admitted that respondent-Authority has adopted the pay scales of Punjab Government for its employees. Regarding the ACP Scheme on completion of 24 years of service, it is stated that the petitioner has already been granted the benefit of 8/18 years of service, as per the policy of the respondent- Authority. He is not entitled to get benefit of service of 24 years as he has not completed 24 years of service in a cadre in any capacity. It was stated that the respondent-Authority has adopted the pay scales of the Punjab Government with effect from 1.1.2006. In the year 2012, the pay of the petitioner was again re-fixed and the respondent-Authority

released the difference of payment of gratuity and other benefits to the petitioner immediately thereafter.

4. I have heard the learned counsels for the parties and have also carefully gone through the file.

5. So far as the payment of gratuity is concerned, admittedly, the respondent-Authority is a registered Society in terms of the Registration Certificate (Annexure-R-2/1). It has got its own regulations. Under Regulation 22 of the said Regulations, the gratuity was to be paid under the Payment of Gratuity Act, 1972. Section 4(5) of the Act of 1972 is reproduced as under :-

"4(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."

Therefore, to get enhanced gratuity, the petitioner is to prove that there is any award or agreement or contract with the employer for grant of higher gratuity. The recommendations of the 5th Pay Commission are not binding on respondent-Authority unless these are adopted by them. The amendment in the Act of 1972 was made effective from 24.5.2010. Since the petitioner retired from service on 31.7.2007, therefore, he is not entitled to enhanced amount of gratuity under the Payment of Gratuity Act, 1972.

6. So far as the grant of ACP Scheme on completion of 24 years of service is concerned, it comes out from the ACP Scheme (Annexure-P-4) that to claim the benefit of ACP Scheme, the respondent-Authority was required to give an option of being governed by said scheme. The petitioner was getting the benefit of earlier scheme and granted the enhanced pay on completion of 8/18 years of service. The petitioner neither claim in the petition nor produce any document to show that he had given any option to be governed by the revised ACP Scheme of the Government, which he claims is applicable to his case. Once, the option is not there, he cannot claim the benefit of revised ACP Scheme. He was also granted benefit on completion of 8/18 years of service under the old scheme. Therefore, even if it is assumed that the petitioner completed 24 years of service and is covered under the new scheme, he is not entitled to the benefit of the same.

7. Regarding the non payment of gratuity of Rs. 1,24,605/-, the learned counsel for respondent-Authority has placed on file the documents to show that a sum of Rs. 1,24,605/- were due from the petitioner and that he gave in writing that the same may be deducted from the arrears. Therefore, the same amount is deducted from his arrears. The fact that the petitioner gave such an undertaking before respondent-Authority was well within the knowledge of the petitioner, but he has not made any mention of the same in the pleadings. Accordingly, the deduction of Rs. 1,24,605/- is found to be lawful.

8. As a result of the foregoing discussion, I do not find any merit in the present writ petition and the same is accordingly dismissed.