
(1996) 02 P&H CK 0143
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3464 of 1995

Ajmer Singh

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 07-02-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 4

Citation : (1996) 113 PLR 113

Hon'ble Judges : R.P. Sethi, J; R.L. Anand, J

Bench : Division Bench

Advocate : Puneet Jindal, for the Appellant; S.S. Shergill, DAG, H.S. Mattewal and Rajesh Bhandari, for the Respondent

Final Decision : Allowed

Judgement

R.P. Sethi, J.—Release of gratuity in favour of the petitioners who are admitted to have been retired from the service of the private respondents, is the main prayer in Civil Writ Petition Nos. 3464, 3465, 10677, 12681 to 12684, 15121, 16055 and 17725 to 17726 of 1995. Some of the petitioners have also prayed for the release of leave encashment and house rent allowance as well. A prayer has also been made for the payment of the amount rent allowance alongwith interest at the rate of 18 percent per annum. As identical question of law on admitted facts are involved in all these writ petitions, the same are being disposed of by a common judgment.

2. The petitioners were the employees of the private educational institutions and as they were not granted the terminal benefits such as gratuity, leave encashment and house rent allowance have preferred writ petitions for the grant of appropriate relief. It is submitted that the respondent-employers were liable to pay the amount of gratuity under the Payment of Gratuity Act, 1972, Rules of the Punjab Government and of the Punjab University. The petitioners have further submitted that they have been regularly contributing towards the provident fund

and that the respondents were not justified in refusing to grant the relief as prayed for in these writ petitions. It is further contended that despite the law being very specific and requests made from time to time the respondents have illegally withheld the payment of the aforesaid amount which left the petitioners with no option but to approach this Court for the grant of appropriate relief.

3. In the reply filed on behalf of the official respondents, it is submitted that the liability to pay the terminal benefits is upon the employer and the Government was not liable to contribute for the same. The respondent - employer have submitted that the liability to pay for the claims of the petitioners was that of the State of Punjab as their institutions were getting 95 percent of the grant-in-aid towards the salaries of the sanctioned strength of the College. It is contended that as the State Government has not provided grant-in-aid for payment of gratuity for pension, the respondent-employers could not be burdened with the obligation of making payment to the petitioners. It is, however, conceded that the petitioners which was being run by the Trust registered under the Indian Trust Act. It is also conceded that the Colleges in which the petitioners were employed were affiliated with the Punjab University. Regarding the payment of house rent allowance, it is submitted that there was a dispute regarding the municipal limits of Ludhiana town which was finally settled by the Court after the resignation of the petitioner in C.W.P. No. 3464 of 1995. In that case, the petitioner is stated to have been paid rural area allowance. It is submitted that the College used to get arrears from the Government which were stopped w.e.f. 1.9.1988.

4. We have heard the learned counsel for the parties at length and perused the relevant provisions of law.

5. As the claim of gratuity in all the cases is common, we propose to deal with the said claim in the first instance. Under the Payment of Gratuity Act, 1972, a duty is cast upon the employer to pay to its employees gratuity on the termination of his employment after he has rendered continuous service of not less than five years. Employee within the meaning of the aforesaid Act means any person employed on wages in any establishment, factory, mine, oil field plantation, port, railway company or shop to do any skilled, semi-skilled, or unskilled, manual supervisory, technical or Clerical work, whether the terms of such employment are express or implied. The entitlement of the petitioners to the payment of gratuity has not been disputed before us. Regulation 13.1 of the Punjab University Callendar Volume I, Chapter VIII B dealing with the affiliated Colleges specifically provides :-

"13.1(i) In addition to the benefits of the Provident Fund a teacher at the time of retirement shall be granted by the Government Body, a gratuity of a sum equivalent to one fourth of his pay last drawn for each completed six monthly period of .qualifying service subject to 16-1/2 times the pay provided that in no case gratuity shall exceed the amount as fixed by the Punjab Government from time to time for its employees.

In the event of death of a teacher while in service the gratuity shall be subject to a minimum of 12 times the pay of the teacher drawn at the time of his death provided that in no case shall it exceed the amount as fixed by the Punjab Government from time to time for its employees."

The dispute is only regarding the identification of the respondents who are liable to pay the gratuity. The employees have submitted that as they were getting grant-in-aid, the State Government was liable to pay the gratuity whereas the State has specifically submitted that the liability to pay the gratuity is that of the employers and not of the State Government.

6. A Division Bench of this Court in "Hindu College Governing Council and Anr. v. N.D. Malhotra and Anr. 1993(1) S.L.R. 757 dealt with a case where the teachers of a privately managed government aided college had been denied gratuity and held on facts that the liability for payment of gratuity of privately managed government aided colleges was that of the management and not of the State. It was held:-

"The only point canvassed by the counsel for the appellants was with regard to directions to Government as sought in the writ petition that 95% aid be provided to privately managed government aided colleges also towards meeting their liability for payment of gratuity to their employees. In support counsel sought to contend that the words "salary" in this context deserve to be construed as inclusive of rights flowing from salary like gratuity, dearness allowance and interim relief. No such construction is indeed warranted. The expression "salary" and "gratuity" have a well established different and distinct meaning and they cannot, therefore, be treated as being part of the same, i.e. within the expression "salary" alone."

7. The Supreme Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, had earlier dealt with the case and pronounced that under the relationship of master and servant, the management was primarily responsible to pay the salary and other benefits to the employees. The management could not say unless and until the State compensates, it would not make full payment to the staff.

8. The payment of Gratuity Act makes a provision for the payment of gratuity to the employees and does not conceive of any other authority to be liable or the intervening circumstances dis-entitling its payment to the employees. As the primary liability to make the payment is of the employer, the petitioners are within their rights to prefer the claim for the payment of the gratuity by their respective employers. The claim of the petitioners regarding payment of gratuity have not been disputed, the respondent employers were under a statutory obligation to make the payment which they have been avoiding on false pretext and technical pleas. After the judgment of this Court in *Hindu College Governing's case* (supra) delivered on 30.7.1992, no doubt should have been left with the employers regarding their liability to make the payment on account

of gratuity.

9. The prayer of the management for a direction to the State to compensate them for payment of gratuity was rightly negatived by this Court in the said case. All the petitioners are, therefore, entitled to the payment of gratuity after their retirement and in accordance with the provisions of Section 4 of the Payment of Gratuity Act, the Rules issued by the Government and the University Calendar Rules applicable in the Case.

10. The writ petitioners in Civil Writ Petition Nos. 3464, 3465, 15121 and 17726 of 1995 have also prayed for the payment of leave encashment benefits. So civil Writ Petition No. 3464 of 1995 a further prayer has been made for the grant of the benefit of house rent allowance. The claim of the petitioners for the grant of the benefit of leave encashment has been resisted on the same grounds as were put forth regarding the entitlement of the petitioners for payment of gratuity. For the reasons stated earlier, it is reiterated that the liability to make the payment for leave encashment is primarily that of the employer which cannot be shifted to the State or denied on any other ground. However, the claim of the petitioner in C.W.P. No. 3464 of 1995 regarding house rent allowance is belated, disputed and stale. No such relief can be granted by this Court in the exercise of its writ jurisdiction. The petitioner if feeling aggrieved regarding wrongful withholding of house rent allowance is at liberty to have resort to a civil liability if permissible under the law.

11. The petitioners have also claimed the payment of the amount on account of gratuity and leave encashment alongwith interest at the rate of 18 percent per annum. It has been submitted on behalf of the respondents that the interest cannot be directed to be paid by the employers as they have been bona-fidely believing that the liability to make the payment of the amount of gratuity and leave encashment was that of the State. The plea is without any substance. Any doubt regarding the liability of the employer to make the payment of gratuity stood settled after the judgment of this Court in Hindu College Governing's case (supra) delivered on 30.7.1992. The employers were, therefore, not justified in retaining the amount payable to the employees on account of the gratuity and leave encashment. Some of the petitioners are shown to have retired, resigned or died before the aforesaid judgment of the Court and others have superannuated after the said judgment. The petitioners who have become entitled to the payment of the gratuity on the termination of their employment or employment of their successors-in-interest within the meaning of Section 4 of the Act have become entitled to the payment of gratuity and could not be denied the same by the employers. As the respondent- employers are proved to have wrongfully withheld the amount on account of gratuity and leave encashment, they are liable to pay the aforesaid amount alongwith interest or compensation for wrongful withholding the same at a reasonable rate. The ends of justice would be met if the amount of gratuity and leave encashment is directed to be paid alongwith interest at the rate of 12 percent per annum with effect from the

date of termination of their employment or with effect from 30.7.1992 (the day on which judgment in Hindu College Governing's case (supra) was pronounced) whichever is later. Under the circumstances all the writ petitions are allowed with a direction to the respondent-employers to pay to the petitioners the gratuity and leave encashment to be calculated in accordance with the provisions of law applicable in the case and alongwith interest at the rate of 1.2 percent per annum w.e.f. the date of the retirement/resignation/death or with effect from 30.7.1992 whichever is later. The parties are left to bear their own costs.