
(2010) 06 SHI CK 0048
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 6591 of 2008

B.B. Aggarwal

APPELLANT

Vs

HPTDC

RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Himachal Pradesh Tourism Development Corporation Staff Regulations, 1972 —
Regulation 20
Payment of Gratuity Act, 1972 — Section 4, 4(2), 4(3)

Citation : (2010) 06 SHI CK 0048

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Deepak Gupta, J.—By means of this writ petition the Petitioner has prayed for the grant of the following relief:

In view of the submissions made above in para-6, the applicant humbly prays that the Respondent may kindly be directed to calculate the gratuity payable to the applicant in terms of Section 4 of the Payment of Gratuity Act, 1972 keeping in view the amendment introduced w.e.f. 24.9.1997 as the applicant retired from service on 30.9.1997 (A.N.) when the limit of gratuity stood enhanced and after deducting rupees one lakh already paid as gratuity, the balance amount of gratuity may kindly be directed to be paid to the applicant alongwith interest at the rate of 18% p.a. in the interests of justice.

2. Briefly stated the facts of the case are that the Petitioner was serving the Respondent-corporation and retired from service on 30.9.1997 (a.n.). The applicant was paid only Rs. 1 lakh as gratuity, taking this to be the maximum amount of gratuity payable under the rules of the Corporation. The claim of the Petitioner is that since the applicant was being paid gross salary of Rs. 11,507/- per month he was entitled to gratuity amounting to Rs. 1,52,689/- if calculated in terms of Section 4(2) read with explanation appended to this provision and

Sub-section (3) of Section 4 of the Payment of Gratuity Act, 1972 (here-in-after referred to as the Act).

3. The stand of the Respondent is that as per Regulation 20 of the HPTDC Staff Regulations, 1972 the maximum amount of gratuity which could be paid at that time was only Rs. 1 lakh and this amount was increased to Rs. 3,50,000/- w.e.f. 1.4.1999. According to the Corporation since the Petitioner retired on 30.9.1997 he was only entitled to Rs. 1 lakh and has been paid this amount.

4. This matter is squarely covered by a Division Bench judgment of this Court delivered in CWP No. 1332 of 2002 titled as H.P.T.D.C. v. P.C. Saklani and Anr. In the said case the Division Bench held as follows:

There can be no manner of doubt that the provisions of the Payment of Gratuity Act apply in the present case. In fact this is the stand taken by the Corporation itself. The only ground raised is that as per the Regulations of the Corporation the maximum amount payable at the relevant time was Rs. one lakh only and therefore this amount was paid.

Section 4(2) & (3) of the Payment of Gratuity Act reads as follows:

4. Payment of gratuity:

(1) xxx

(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.

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

It is also not disputed that w.e.f. 24.9.1997 the upper limit of Rs. one lakh was enhanced to Rs. 3,50,000/-. Therefore, as on 30.9.1997 when the Respondent employee retired, in terms of the Payment of Gratuity Act the maximum gratuity payable to an employee was Rs. 3,50,000/-. It is also well settled law that there can be no agreement between the employer and the employee providing for lesser gratuity than that payable under the payment of Gratuity Act.

5. In view of the law laid down in P.C. Saklani's case supra, it is obvious that the HPTDC was not entitled to withhold the amount over and above Rs. 1 lakh payable to the Petitioner. The Respondent has not challenged the scale of pay

which the Petitioner claims to be getting and if that pay scale is taken into account the Petitioner was entitled to total gratuity of Rs. 1,52,689/- whereas only Rs. 1 lakh has been paid to him.

6. The writ petition is, therefore, allowed with a direction that the HPTDC shall pay the balance amount of Rs. 52,689/- alongwith interest @ 12% per annum as awarded in P.C. Saklani's case supra w.e.f. 1.1.1998 by giving a period of three months to the employer to settle all the retiral dues of the Petitioner. This amount be paid positively within three months from today failing which the Respondent-corporation shall be liable to pay penal interest @ 15% per annum from the aforesaid date. The writ petition is disposed of accordingly.