
(2010) 09 P&H CK 0077
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 11609 of 1995

Bhim Sen Jindal

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 5, 5(1), 5(2), 5(3)

Citation : (2011) 4 LLJ 489

Hon'ble Judges : M.M. Kumar, J;Gurdev Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The short issue raised in the instant petition filed under Article 226 of the Constitution is "whether the notification dated

March 19, 2001 (Annexure P-8) exempting all the Municipalities in the State of Haryana from the operation of the provision of Payment of

Gratuity Act, 1972 (for brevity "the Act") is sustainable in the eyes of law. Another ancillary question emerges for determination is "whether the

employees working in the Municipalities in the State of Haryana are in receipt of gratuity and pensionary benefits not less favourable than the

benefit conferred under the provisions of the Act.

2. The matter was placed before the Full Bench and it has been held vide order dated April 21, 2010 that conflict between two Division Bench

judgments of this Court rendered in the case of Kundan Lal Narang v. State of Haryana, 1950 88 (1) RSJ 337 and the contrary view taken by

another Division Bench judgment rendered in the case of Municipal Committee, District Hisar v. Appellate Authority, 1994 (4) RSJ 274, has been

settled by judgment of Hon"ble the Supreme Court rendered in the case of Municipal Corporation of Delhi Vs. Dharam Prakash Sharma and

Another, . Accordingly, it has been held that all retired employees of the Municipal Committees were entitled to payment of gratuity after

enforcement of the Gratuity Act, 1972 and in accordance with its provisions until and unless the power of exemption u/s 5 of the Act was

exercised. While answering reference, Hon"ble the Full Bench has left open the aforesaid question by making reference to notification dated March

19, 2001 (Annexure, P-8). Accordingly, the matter has been placed before us.

3. Brief facts of the case may first be noticed. The petitioner retired as Secretary from the Municipal Committee. Nilokheri on" attaining the age of

superannuation on February 28, 1995. When his retiral benefit were not paid, he served a legal notice on the respondents asserting that the

directions have been issued by this Court to the respondents in the case of Jagdev Singh v. State of Haryana (C.W.P. No. 17364/1994 decided

on April 25, 1995) to the effect that arrears of salary of employees of Municipal Committees in Haryana be paid. On May 5, 1995. Director Local

Bodies-respondent No. 2 issued directions to all the Municipal Committees to pay retiral benefit to its employees within a period of one month. He

also issued directions to the respondent Nos. 3 and 4 to pay arrears to the petitioner without any delay. It is appropriate to mention that the

respondent-State has already framed Rules known as Haryana Municipal Employees Pension & General Provident Funds Rules, 1993. The Rules

have come in operation from April 16, 1992. According to the written statement filed by respondent Nos. 1 and 2, the petitioner has been paid

leave encashment, provident fund and gratuity and that he has been drawing his pension regularly. It has also been asserted that the pension

scheme for all the Municipal employees in the State of Haryana was implemented w.e.f. April 16, 1992 after making necessary amendments in the

Haryana Municipal Act, 1973. The Government has also expressed the view that the employees in all the Municipalities in the State of Haryana

were in receipt of gratuity and pensionary benefits not less favourable than the benefits conferred under Act of 1972. The Notification dated March

19, 2001 issued u/s 5 has been, given retrospective effect from April 16, 1992.

4. Mr. Bikram Chaudhary, learned counsel for the petitioner has argued that

under the 1993 Rules, the amount of gratuity payable to the petitioner is only Rs. 34,956/- whereas under the Act, the aforesaid amount comes to Rs. 92,698/-. Therefore, the amount being far less under the Rules, is hit by Section 5(1) and the exemption given vide Notification dated March 19, 2001 (Annexure P-8) is liable to be set aside. In support of his submission, learned counsel for the petitioner has placed reliance on the judgment of Hon'ble the Supreme Court rendered in the case of Allahabad Bank and Another v. All India Allahabad Bank Retired Employees Association. (2010) 1 MLJ 1472 and argued that the pension cannot be included in the amount of gratuity for the purposes of reckoning whether the payment of gratuity is less favourable to a retiree and therefore, once excluded the payment of gratuity under the Act, would be more beneficial to the petitioner. Mr. Chaudhary, learned counsel has also argued that the vested rights have been acquired by the petitioner, therefore, those rights cannot be taken away by enacting the notification dated March 19, 2001 w.e.f. April 16, 1992. In support of his submission, learned counsel has placed reliance on a judgment of a Constitution Bench rendered in the case of Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others, .

5. Mr. Arun Nehra, learned counsel and"" Mr. Rameshwar Malik, Addl. A.G. Haryana appearing for the respondents have argued that for the purposes of reckoning gratuity, the element of pension cannot be excluded for the purposes of exempting an organization u/s 5(1). According to Section 5(1) of the Act, the Government is entitled to exempt any establishment, factory mine etc. from the operation of the provisions of the Act, if, employees in such establishment, factory, mine etc. are in receipt of gratuity or pensionary benefits, which are not less favourable than the benefits conferred under this Act. In support of their submissions, learned counsels have placed reliance on the judgment of Hon'ble the Supreme Court rendered in the case of Municipal Corporation of Delhi v. Dharam Parkash Sharma (supra). They have also cited a Division Bench judgment of this Court rendered in the case of Balwant Singh v. State of Punjab (2008) 2 MLJ (Cri) 188. The argument in fact is that the matter is squarely covered against the petitioner by the Division Bench judgment. Learned counsels have also pointed out that there is express power given to the

State Government by Section 5(3) of the Act to issue a Notification from a retrospective date and therefore, it cannot be said that the Notification has been issued without any authority of law.

6. Having heard learned counsel for the parties and after perusing the record, it is first necessary to read Section, 5 of the Act, which deals with the power of the State Government to exempt any establishment, factory, mine etc. The aforesaid Section 5 reads thus:

Power to exempt. (1) The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification,

exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the

provisions of this Act if in the opinion of the appropriate Government, the employees in such establishment, factory, mine, oilfield, plantation, port,

railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

((2) The appropriate Government may, by notification and subject to such conditions as may be specified in the notification, exempt any employee

or class of employees employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies

from the operation of the provisions of this Act, if in the opinion of the appropriate Government, such employee or class of employees are in

receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.)

(3) A notification issued under sub-section (1) or sub-section (2) may be issued retrospectively a date not earlier than the date of commencement

of this Act, but no such notification shall be issued so as to prejudicially, affect the interests of any person.

A perusal of sub-sections (1) and (2) of Section 5 put it beyond any doubt that while considering the question of exemption of any establishment,

factory, mine etc. or their employees, the appropriate Government has to take into account whether their employees are in receipt of gratuity or

pensionary benefits not less favourable than the benefits conferred under the Act. Therefore on the plain reading of the statutory provision, it is

evident that both the gratuity or pensionary benefits can be taken into consideration to find out whether such benefits are not less favourable than

the benefits conferred under the Act.

7. The question of issuance of a notification from a retrospective date has also been put beyond any doubt by the provisions of sub-section (3) of

Section 5 of the Act, which has given express power to the Government, to issue such a notification retrospectively. The only rider is that such

notification shall not be issued so as to prejudicially affect the interest of any person.

8. A Division Bench of this Court in *Balwant Singh v. State of Punjab* (supra) has applied the provisions of Section 5 when a notification was

issued on January 8, 2004 and, it was applied with retrospective effect i.e. from the date of commencement of the Act. The Division Bench upheld

the retrospective operation of the notification and also recorded finding that the element of pension and gratuity being paid to the employees under

the Rules of Punjab State Electricity Board had to be taken into account to work out whether the provisions of the Rules were less favourable than

the benefits conferred under the Act. In that regard reference may be made to paras 17 to 21 of the Division Bench judgment. It is appropriate to

notice that the learned Division Bench has distinguished, the judgment of Hon"ble the Supreme Court in *Municipal Corporation of Delhi v. Dharam*

Parkash Sharma (supra) for the reasons that there appropriate Government had not exempt establishment from operation of the Act.

9. In view of the facts and circumstances, we are of the opinion that the exemption from operation of this Act could be given to a body,

establishment or shop etc. from a retrospective date and the element of pension and/or gratuity can also be taken into account for the purposes of

Section 5(1) and 5(2) of the Act to work out whether the provision of the Rules are less favourable than the benefits conferred under the Act.

10. The argument of the learned counsel based on the judgment of Hon"ble the Supreme Court in the case of *Allahabad Bank* has failed to impress

us because there was no scheme for payment of gratuity under which the employees could be entitled to such payment. Therefore, the judgment

has no application to the facts of the present case.

11. The other argument based on the judgment of the Constitution Bench in *Chairman, Railway Board v. C.R. Rangadhamaiah* (supra) does not

advance the case of the petitioner because no vested rights had ever accrued to

him, the argument is based on some misconception about the concept of vested rights. It has come on record that the petitioner was never granted, and paid the amount of gratuity under the Act but he has been paid pension and gratuity under the Rules. Therefore, no vested right ever accrued to him and the argument is hereby rejected.

12. As a sequel to the above discussions, this petition fails and the same is dismissed.