

(2023) 07 SHI CK 0018
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 4247 Of 2023

Gian Singh

APPELLANT

Vs

State Of HP And Ors

RESPONDENT

Date of Decision : 05-07-2023

Acts Referred:

Payment Of Gratuity Act, 1972 — Section 8

Citation : (2023) 07 SHI CK 0018

Hon'ble Judges : Tarlok Singh Chauhan, J; Satyen Vaidya, J

Bench : Single Bench

Advocate : C.N. Singh, Devender Sharma, . Anup Rattan, Ramakant Sharma

Final Decision : Disposed Of

Judgement

Tarlok Singh Chauhan, J

The instant petition has been filed for grant of the following substantive reliefs :-

"i) Issue a writ of mandamus or other appropriate writ order or direction, directing respondent No.3, to start the criminal prosecution against the erring officials in terms of the provisions of the Payment of Gratuity Act, 1972;

ii) Issue a writ of mandamus or other appropriate writ order or direction, directing respondent No.1 & 4 to pay the entire awarded amount i.e. Rs. 60,230/- along with 9% interest per annum from the date of the gratuity amount fell due to the applicant/petitioner and compound interest @ 15% in terms of the recovery certificate dated 22.2.2021 (Annexure P-3) within time bound manner;

iii) In alternatively issue a writ of mandamus or other appropriate writ or direction by directing the respondent No.2 to recover the amount as mentioned in the recovery certificate issued by the respondent No.3 (i.e. Annexure P-3) along with compound interest and pay the same to petitioner within a time bound manner."

1 Whether reporters of the local papers may be allowed to see the judgment?

Yes.

2. While considering the similar issue in CWP No. 6454 of 2022, titled as Tulla Ram Vs. State of HP and others, this Court has passed the following order:

"On 27.12.2022, this Court passed the following order:-

"On 06.12.2022, this Court passed the following order: "Heard. Admittedly as of now, the award passed by the Controlling Authority-cum-Labour Officer Mandi Zone, District Mandi, on 29.6.2019, has attained finality and even recovery certificate Annexure P-2, has been issued. The petitioner currently is aged about 73 years and we see no reason as to why the respondents are depriving him of taking fruits of the award, when the same has been passed three years back and as regards the respondents herein, the same has attained finality for the time being. In the given facts and circumstances of the case, we direct the respondents to implement the award within a period of fifteen days from today. For compliance, to come up on 27th December, 2022."

The aforesaid order has not been complied with and on the contrary prayer for extension of time of two weeks is being made. We are not inclined to grant such extension. However, in the peculiar facts and circumstances, two days time is granted to the respondents to comply with the order.

Noticeably, it is not even the case of the respondents that the petitioner is not entitled to any amount in this case, their defence is only that as against the amount of Rs.1,18,977/-, the petitioner is entitled to only Rs.1,04,439/-. The total difference of amount is barely Rs. 14,000/- . Even this ground is not open to the respondent as it is by virtue of quasi judicial authorities that the amount in favour of the petitioner has been awarded in lawful proceedings carried out under the Payment of Gratuity Act. Moreover, the respondents have not even assailed the order. Petitioner is currently 73 years old and waiting for justice. In the given facts and circumstances, in case, the entire benefits are not released to the petitioner on or before the next date of hearing, then the salary of the Principal Chief Conservator of Forest (HoFF) shall not be released without the leave of the Court and would rather be attached towards the payments of the dues of the petitioner.

List on 30.12.2022."

3. Today, learned Deputy Advocate General has placed on record instructions, dated 29.12.2022, relevant portion whereof reads as under:-

" In this regard it is submitted that the Controlling Authority under the Payment of Gratuity Act-cum-Labour Office, Mandi, Zone, Mandi, H.P. in Case No. 06/18, decided on 29.06.2019 has ordered to release service gratuity of Rs. 1,18,977/- in favour of Sh. Tulla Ram, Forest Worker (Retd.). Further the applicant was to be paid interest of delay payment gratuity @ 9% simple interest per annum from the date of the filing the application till the payment is actually made to him. The matter was taken up with Principal Secretary (Forests) to the Govt. of H.P. for

obtaining necessary financial approval of the Government. The financial approval of the Government to release Gratuity Amount alongwith interest were received vide Principal Secretary (Forests) to the Govt. of Himachal Pradesh letter No. FFE-A (E) 4-20/2016 dated 27.12.2022 & letter No. FFE-A (E) 4-20/2016 dated 27.12.2022 dated 28.12.2022 (Copy Enclosed) for Rs. 1,04,439/- & Rs. 67,579/- (Total = Rs. 1,72,018/-).

Keeping in view the directions issued by the Hon'ble High Court as well as concurrence conveyed by the Finance Department, Government of Himachal Pradesh, the gratuity amount for Rs. 1,18,977/- alongwith interest Rs. 53,041/- @9%, has been released in favour of Sh. Tulla Ram vide Bill No. 100516 & 100517 dated 29.12.2022 (Copy Enclosed)."

4. In view of the aforesaid instructions, nothing survives for adjudication in the instant petition and the same is accordingly disposed of. It is made clear that in case the amount, as stated in the instructions, is not remitted to the bank account of the petitioner or paid to him directly, then he is at liberty to get this petition revived by making an oral request to this effect.

5. However, before parting, we may send a word of caution to the respondents that the learned Single Judge of this Court, while dealing with a similar issue of retiree, like in the instant case, in CWP No. 403/2019, titled as Neem Chand vs. The Principal Secretary (Forests) to the Govt. of H.P. & ors., decided on 8.10.2020, had observed as under:-

"2. However, having taken note of the fact that recovery certificate under Section (8) of the Payment of Gratuity Act, 1972, in the case at hand was issued on 4.10.2016, but payment was made in the year 2020, that too after issuance of direction by this Court, this Court deems it fit to direct the Secretary (Revenue), Government of Himachal Pradesh to issue necessary instructions to all the Collectors to ensure that payment of gratuity after issuance of recovery certificate is made forthwith, so that no undue hardship is caused to the retired employee.

3. Learned Additional Advocate General to apprise Secretary (Revenue) Government of Himachal Pradesh with regard to passing of instant order, enabling him to do the needful. Necessary affidavit of compliance be also filed within four weeks with the Registry of this Court."

6. We notice that despite the aforesaid order, the respondents have not been very kind, rather have been harsh and cruel insofar as the cases of the retired officer(s)/official(s) are concerned, by deliberately dragging the petitioner to uncalled-for and unwarranted litigation and probably, it is for this reason itself that even the Law Department, while lending advice to the administrative department, had asked to take action against the erring official(s)/officer(s).

7. As we notice that this is not a solitary case where the petitioner, who is more than 70 years of age, has been dragged to unwarranted and uncalled-for

litigation, given the fact that the respondents had not even chosen to assail the aforesaid order, which could have conveniently been avoided by implementing the order rather than unnecessarily dragging the petitioner for years together, even when in the instant case principal amount of gratuity works out to be only Rs.1,18,977/-. But, because of the adamant attitude of the respondents and its official(s)/officer(s), the respondent-Department has now to bear the interest liability being half of the principal amount i.e. Rs.53,041/-. Obviously, such interest has to be recovered from the erring official(s)/officer(s).

8. Let an inquiry in the entire episode be conducted by the respondents by fixing responsibility and report compliance on 3.4.2023."

3. Today, Mr. Ramakant Sharma, learned Additional Advocate General has placed on record instructions dated 5.7.2023, relevant portion of which is as under:

"The case is under process in the finance department and approval is awaited. As and when approval of the Finance Department is accorded and required funds is made available to this office, payment to the applicants shall be released within two weeks time positively."

4. In view of above, we deem it appropriate to dispose of the instant writ petition by directing the respondents to release the gratuity amount, in terms of recovery notice (Annexure P-3), in favour of the petitioner within two weeks. Ordered accordingly.

5. Pending application(s), if any, also stands disposed of.

6. For compliance, to come up on 26.7.2023.