(2017) 12 SHI CK 0022

In the High Court Of Himachal Pradesh

Case No : 2307 of 2016

Principal Secretary (Forests) and another — APPELLANT

Vs

Sh. Amar Chand and another — RESPONDENT

Date of Decision : 13-12-2017

Acts Referred:

Payment of Gratuity Act, 1972, Section 8, Section 9, Section 7 - Recovery of gratuity - Penalties - Determination of the amount of gratuity

Citation : (2017) 12 SHI CK 0022

Hon'ble Judges : Ajay Mohan Goel

Bench : Single Bench

Advocate : Vikram Thakur, Devender Kumar, C. N. Singh

Judgement

1. By way of this petition, petitioner-State has prayed for the following reliefs. "It is, therefore, most respectfully prayed that keeping in view the facts and circumstances explained hereinabove, this petition may very kindly be issued, appropriate writ order or direction to the following effect may kindly be passed in favour of the petitioner and against the respondent:-

(i) That the writ in the nature of certiorari may kindly be issued, whereby quashing and setting aside the impugned order dated 28.05.2012, Annexure P-1 and impugned order dated 19.07.2014, Annexure P-2.

(ii) that the respondents may very kindly be directed to produce the entire record pertaining to the case of the petitioner for the kind perusal of this Hon''ble Court.

(iii) That the respondents may be burdened with exemplary costs.

(iv) That any other order which this Hon''ble Court deems just and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner and against the respondents."

2. Brief facts necessary for the adjudication of the present petition are that respondent No. 1 herein (hereinafter referred to as ''applicant'') filed an application under Sub Rule 1 of Rule 10 of The Payment of Gratuity Act, 1972 for the payment of gratuity before the learned Controlling Authority-cum-Labour Officer, Mandi praying for issuance of directions that due and admissible gratuity be paid to him by his employer, which according to him, had not been paid to him at the time of his superannuation. The case of the applicant before the Controlling Authority-cum-Labour Officer was that be had worked as daily waged Beldar from the year 1995 and completed 240 days in each calendar year from the year 1995 till his services were regularized on 12.09.2007. It was further his case that after he superannuated in the year 2011 and when he made inquiry as to why gratuity was not paid to him, he was informed that the Payment of Gratuity Act was not applicable to the establishment of the employer and thus, he was not entitled for the gratuity and the matter was referred to higher authorities for seeking necessary clarifications in this regard. The application so filed by the applicant i.e. the present respondent No. 1 was allowed by the Controlling Authority-cum-Labour Officer, Mandi, vide order dated 28.05.2012. The said application stood allowed in the following terms. "I have heard the argument of the both parties and after perusal of the records placed before me, I have come to the conclusion that the applicant/claimant is entitled for the payment of gratuity as he had continuously worked more than 240 days in each calendar years for 13 years as daily wage beldar since 1-1-1995 to 9/2007. the last wages drawn by the applicant was Rs. 75/- per day and Rs. 2325/- per month. The service of the applicant was got regularised since 12-9-2007 and governed under CCS (Pension) Rules and after attaining the age of superannuation he was retired in 4/2011 and the payment of gratuity if any not paid by the employer for the regular period may be claimed under CCS (Pension) Rules from the employer. But the claim for gratuity of the daily wages period is accepted and also admissible as per provisions as per provisions of the aforesaid act.

The workman had worked more than five years completing 240 days in each calendar with the employer continuously and as per section 4(1) of the ibid act and the payment of gratuity is payable to an employee on the termination of his employment after he has rendered continuous services for not less than five hears:- on his superannuation, or on his retirement or resignation, or on his death or disablement.

The workman is daily wager and covered under the devision of section 2(e) of the said act and the establishment of the employer is also covered under section 1(3)(c) of the ibid act.

The formula for the calculation of payment of gratuity has been given under section 4(2) of the aforesaid act is as under.

Ate of joining in the department as daily wages beldar 1/1995 to 9/2007 and entitlement to gratuity for 13 year. Last wages drawn Rs. 75/- per month.

Eligibility for the payment of gratuity for 13 years. = 2325 X 13 X15/26 =17437.50 or to say Rs. 17438/- (Rupees Seventeen Thousand, Four Hundred and Thirty Eight Only). Therefore the due amount of gratuity of Rs. 17438/- is determined and payable to the applicant. Further the applicant should be paid interest on the delayed payment of gratuity @ 9% simple interest per annum from the date of filing the application till the payment is actually made to the claimant.

Keeping in view the aforesaid discussion and findings, I order that due admissible amount of gratuity be paid to the applicant by the respondent employer for the daily wages services rendered within one month in accordance with the provisions of the payment of the gratuity act, 1972 and aforesaid rate of interest be also paid as per section 7(3) of the ibid act on the due amount of gratuity as in the instant case no exemption as required under section 5 has been obtained. Accordingly, I order the gratuity claim in favour of the applicant and against the respondent employer."

3. Order so passed by the said Authority was not assailed by the present petitioners though it was challenged by the present respondent No. 1, on the grounds that he was entitled for grant of gratuity which was to be calculated as per last wage drawn at the time of his superannuation and further he was also entitled for compound interest at the rate of 9 % per annum from the date of issuance of recovery certificate in his favour. Appeal so filed by the present respondent was allowed by the learned Appellate Authority by holding that the petitioner was entitled for grant of gratuity as per his last wage which was Rs.10321/- and further that he was also entitled for simple interest at the rate of 9 % per annum w.e.f. 31.05.2011 i.e. from the date when gratuity became due and compound interest at the rate of 9 % from the date of issuance of recovery certificate till payment was actually made.

4. Feeling aggrieved, the State has filed the present writ petition praying for the reliefs already enumerated above.

5. Before proceeding further, it is clarified that though the State has prayed for quashing of initial order which was passed by the Controlling Authority-cum-Labour Officer, Mandi, dated 28.05.2012, however, as no appeal was preferred by the State before the learned Appellate Authority against the said order, the State, at this stage, cannot be allowed to challenge the same.

6. Therefore, the limited issue which is before this Court for the purpose of adjudication is as to whether learned Appellate Authority has rightly ordered grant of gratuity in favour of the applicant on the basis of last wage drawn by the him and further as to whether Appellate Authority has rightly granted compound interest at the rate of 9 % per annum from the date of issuance of recovery certificate.

7. Having heard learned Deputy Advocate General as also learned Counsel for respondent No. 1 and having minutely perused the records of the case as also

the judgments passed by the Hon''ble Division Bench of this Court in Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalaya, Palampur vs. NAG, 2011 (3) Shim. LC 365 and Hon''ble Coordinate Bench of this Court in H.P.S.E.B. and another vs. Balak Ram and another, 2007 (3) Shim. LC 202, in my considered view, there is no infirmity with the order passed by the learned Appellate Authority.

8. The direction which has been issued by the Appellate Authority for grant of compound interest from the date of issuance of recovery certificate cannot be said to be an illegal direction so issued by the said authority. Nor it can be said that the Appellate Authority was having no jurisdiction to order that applicant shall be entitled for compound interest at the rate of 9 % per annum from the date of issuance of recovery certificate. In fact, a perusal of Section 8 of the Payment of Gratuity Act demonstrates that an employee is entitled for compound interest from the date of issuance of recovery certificate for the amount which is made due to him by the Collector at such rate as the Central Government by notification specifies. Learned Deputy Advocate General could neither dispute that interest at the rate of 9 % per annum which stood granted in favour of the applicant was as per notification issued by the appropriate government, nor could he dispute that from the date of issuance of recovery certificate i.e. 04.10.2016, the applicant was entitled for compound interest as per the statutory provisions of Section 8 of The Payment of Gratuity Act.

9. Similarly, Section 7 when read harmoniously with Section 9 definition clause of the Act supra further makes it amply clear that the last wage drawn by applicant has to be taken into consideration for determination of the amount of gratuity which an employee is entitled to. This is exactly what learned Appellate Authority has done and during the course of arguments, it could not be disputed on behalf of the respondents-State that the last wage drawn by the employee was not Rs.10321/-. In view of above, as apparently there is no infirmity or perversity with the order which stand so passed by the learned Appellate Authority, there is no merit in the present petition and the same is accordingly dismissed. Pending miscellaneous application(s), if any, also stand disposed of. No orders as to costs.