

(2013) 04 P&H CK 0194
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 539 of 2012 (O and M)

Rakesh Kumar Aggarwal

APPELLANT

Vs

Haryana Dairy Development Co-operative Federation Limited
and Another

RESPONDENT

Date of Decision : 30-04-2013

Acts Referred:

Citation : (2014) 1 SCT 159

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Umesh Narang, for the Appellant; Satyawar Ahlawat, for the Respondent

Judgement

Rajesh Bindal, J.—The petitioner has approached this Court seeking quashing of the order dated 19.07.2010 (Annexure P-10), whereby on retirement, the petitioner was paid gratuity while counting his service of 12 years, 3 months and 4 days as against the total service rendered by the petitioner from 24.09.1976 till 31.07.2010. Learned counsel for the petitioner submitted that the petitioner was appointed as Laboratory Assistant in Milk Plant, Ambala on 21.09.1976. His services were illegally terminated on 06.08.1977. The petitioner raised an industrial dispute. The matter was referred to Labour Court which rejected the claim of the petitioner vide award dated 26.09.1981. The same was challenged by the petitioner by filing CWP No. 1979 of 1982 before this Court. The writ petition was allowed on January 20, 1992. While setting aside the award of the Labour Court, the petitioner was directed to be reinstated back in service along with continuity and full back wages. LPA No. 1230 of 1992 filed by the Management was disposed of on July 23, 1998 with a modification that a lump sum of Rs. 10,000/- was directed to be paid to the petitioner as compensation. The petitioner filed Civil Appeal No. 1324 of 1999 before Hon'ble the Supreme Court and the same was disposed of on March 08, 1999. Hon'ble the Supreme Court directed that the petitioner shall be treated to have continued in service and reinstated as Laboratory Attendant on regular basis. He was directed to be

granted regular pay scales computing all the increments in the pay scale as per continuity of service granted to him. In addition, Rs. 10,000/- as were awarded by this Court as compensation in lieu of back wages was confirmed.

The submission of learned counsel for the petitioner is that once after setting aside of termination of the petitioner he was granted continuity in service, the entire period of service of the petitioner from 24.09.1976 till his date of superannuation on 31.07.2010 was required to be counted for the purpose of calculation of gratuity. The action of the respondents in paying gratuity only for a period of 12 years 3 months and 4 days by considering the actual period of service of the petitioner is in violation of the judgement of Hon''ble the Supreme Court where while setting aside the award of the Labour Court, the petitioner was granted continuity of service.

2. Learned counsel for the respondents submitted that once the petitioner has not been paid any salary for the period he did not work and as against back wages he was granted a lump sum amount, he was not entitled to any other amount and the period was not required to be counted for the purpose of calculation of gratuity etc.

3. After hearing learned counsel for the parties, in my opinion, the action of the respondents in not counting the period during which the petitioner remained out of service on account of illegal termination is bad in law once his termination was held to be illegal and he was reinstated back in service with continuity. Hon''ble the Supreme Court while allowing the appeal filed by the petitioner directed that the petitioner shall be treated to have continued in service. He will be reinstated as Laboratory Attendant on regular basis and put in regular time scale of Laboratory Attendant computing all the increments in the pay scales as per the continuity of service granted to him. The amount of Rs. 10,000/- granted to the petitioner as compensation by the Division Bench of this Court was directed to be considered as compensation in lieu of back wages till March 14, 1999.

4. Once Hon''ble the Supreme Court had granted the petitioner continuity of service and even directed for computing all the increments by treating the petitioner to have been appointed in regular time scale, he cannot be denied the benefit of this period for the purpose of calculation of gratuity payable to him on the retirement. Merely because Hon''ble the Supreme Court did not direct for payment of entire back wages, it will not wipe off the period for which continuity of service was granted for the purpose of all other benefits. That service has to be counted for the purpose of calculation of gratuity payable to the petitioner. In view of my aforesaid discussions, the impugned order dated 19.07.2010 (Annexure P-10) denying relief of gratuity to the petitioner for the entire length of service, is set aside. It is directed that the petitioner shall be paid gratuity by counting his entire period of service including the period for which he was not paid any wages in view of the judgement of Hon''ble the Supreme Court as he was granted continuity. The balance amount be calculated and paid to the petitioner within a period of three months from the date of receipt of copy of this

order.

The petition stands disposed of.