

(2014) 12 SHI CK 0056

In the High Court Of Himachal Pradesh

Case No : CWP Nos. 7764 of 2012 and 7761 of 2013

R.C. Gupta

APPELLANT

Vs

Himachal Pradesh Tourism Development Corporation

Sukh Ram Chandel Vs State of H.P.

RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4, 4(5)

Citation : (2014) 12 SHI CK 0056

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : Jyotsna Rewal Dua and Ranjana Parmar, Advocate for the Appellant; R.S. Thakur, Additional Advocate General, Vivek Singh Attri, Deputy Advocate General, Onkar Jairath and J.L. Bhardwaj, Advocate for the Respondent

Judgement

Sureshwar Thakur, J.—Both these petitions pertain to a common subject matter, hence, they are disposed of by a common order.

2. The petitioners in both the petitions were serving in the Himachal Pradesh Tourism Development Corporation Ltd. in different capacities. They stood superannuated between the years 2006 and 2010. Annexure P-10 (annexed to CWP No. 7761 of 2013 at page 134) unveils the factum of the respondent-corporation having adopted the government pattern with regard to the release of retirement or gratuity to its employees w.e.f. 26.8.2006. The decision as comprised in Annexure P-10 (annexed with CWP No. 7761 of 2013) was in consonance with the decision taken in the meeting of the Board of Directors of the respondent-corporation held on 26.8.2006. The government of Himachal Pradesh issued notification of 14th October, 2009, Annexure P-13, (annexed with CWP No. 7761 of 2013 at page 180), whereby it begot a revision of the rates of gratuity payable to its employees. The petitioners, on the strength of the revision carried out under Annexure P-13 in the rates of gratuity payable to the employees serving under the Himachal Pradesh Government, claim a rate of

gratuity at par with the employees of the State Government. The fulcrum for their claiming parity of rates of gratuity with the employees of the State Government is Annexure P-10 which as adverted to hereinabove discloses the factum of the respondent-corporation having come to adopt the government pattern with regard to release of gratuity to its employees. However, the effect of Annexure P-10, has been canvassed to be eased by the factum of a decision of the Hon'ble Division Bench of this Court rendered on 23rd July, 2008 in CWP No. 1332 of 2002 comprised in Annexure P-9, (annexed to CWP No. 7761 of 2013) wherein it has been held that qua the employees of the respondent corporation the provisions of the Payment of Gratuity Act would be applicable and when in consonance thereto the respondent-corporation came to pass a resolution comprised in Annexure P-10 (annexed to CWP No. 7761 at page 141), it is, hence, amplifyingly canvassed that the respondent-corporation is no longer obliged to carry forward and implement the mandate comprised in Annexure P-10 qua the factum of its defraying to its employees gratuity at par with the rates of gratuity assessed/fixed for its employees by the government of Himachal Pradesh. However, the effect of the verdict of this Court and of the resolution of the Board of Directors in consonance thereto comprised in Annexure R-2/C (annexed to CWP No. 7761 of 2013, at page 274), to the considered mind of this Court comes to be eased as well as relaxed in the face of a pronouncement of the Hon'ble Apex Court reported in Y.K. Singla Vs. Punjab National Bank and Others, whereof stand extracted hereinafter. A reading whereof discloses that even when the provisions of the Gratuity Act are applicable to an employee/class of employees, there is an inherent right vested in an employee/class of employees to make a choice of theirs being governed by some alternative provision/instrument other than the Gratuity Act for drawing the benefit of gratuity. Relevant paragraph No. 23 of the judgment supra reads as under:-

"23. Based on the conclusion drawn hereinabove, we shall endeavour to determine the present controversy. First and foremost, we have concluded on the basis of Section 4 of the Gratuity Act that an employee has the right to make a choice of being governed by some alternative provision/instrument other than the Gratuity Act, for drawing the benefit of gratuity. If an employee makes such a choice, he is provided with a statutory protection, namely, that the employee concerned would be entitled to receive better terms of gratuity under the said provision/instrument, in comparison to his entitlement under the Gratuity Act. This protection has been provided through Section 4(5) of the Gratuity Act."

3. The notification of the Government of Himachal Pradesh, Annexure P-13, (annexed to CWP No. 7761 of 2013 at page 180 of the paper book) has been espoused by the learned counsel appearing for the petitioners to be conferring upon them a benefit higher than the benefit envisaged under Section 4 of the Payment of Gratuity Act. Cumulatively, hence, even if the Gratuity Act has been held by this Court to be applicable to the employees of the respondent Corporation and when in consonance thereto, even if, a resolution of the Board of Directors of the respondent corporation opines that the higher benefit envisaged

by the government of Himachal Pradesh to its employees in its notification is unavailable to be accorded, yet the effect of both in the face of the verdict of the Hon"ble Apex Court (supra) is relaxed and both cannot stand in the way of the petitioners asserting a claim of theirs being treated at par with the employees of the government of Himachal Pradesh, especially when the revised rates of gratuity conferred upon the employees of the State Government contemplate a higher benefit than as envisaged under the Gratuity Act. In sequel when in consonance with the decision of the Hon"ble Apex Court, the employees of the respondent-corporation as the writ petitioners are, have an inherent right to make a choice of theirs being governed/covered by the notification issued by the Government of Himachal Pradesh comprised in Annexure P-13, which contemplates a higher rate of gratuity payable to its employees than the one envisaged in the Gratuity Act, they cannot be either debarred or estopped from doing so. Nonetheless, the resolution passed by the respondent-corporation anvilled upon the verdict of this Court may stand in the way of rendition of efficacious directions to the respondent-corporation to comply with the mandate of the notification issued by the Government of Himachal Pradesh providing a higher rate of gratuity to its employees than one which is payable to the employees of the respondent-corporation. To facilitate the petitioners to obtain a higher rate of gratuity at par with the rates of gratuity made available to the employees of the Government of Himachal Pradesh, it is directed that the respondent-corporation shall convene a meeting of its Board of Directors to consider the case of the petitioners for modifying the rates of the gratuity payable to the petitioners in terms of the notification issued by the Government of Himachal Pradesh, Annexure P-13. The respondent-corporation shall also take into consideration observations made hereinabove while dealing with the case of the petitioners. The respondent-corporation shall take a decision in the matter within three months from today. Both the petitions stand disposed of accordingly. All the pending applications, if any, also stand disposed of.