
(1994) 08 P&H CK 0036
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 805 of 1987

Satyawati Malhotra

APPELLANT

Vs

The State Warehousing Corporation and Another

RESPONDENT

Date of Decision : 09-08-1994

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2

Citation : (1995) 1 LLJ 642

Hon'ble Judges : Amarjeet Chaudhary, J

Bench : Single Bench

Advocate : Subhash Ahuja, for the Appellant; D.V. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Amarjeet Chaudhary, J.—In this writ petition, Smt. Satyawati Malhotra wife of late Shri R.L. Malhotra. Ex-Manager, State Warehousing Corporation, Rohtak, has prayed for quashing the order dated December 27, 1985, copy of which is Annexure P-2 to the writ petition, whereby the respondent-Corporation had declined the prayer of the petitioner for the release of gratuity in respect of her late husband.

2. Brief facts of the case are that the husband of the petitioner, Shri R.L. Malhotra, while working as Manager in the respondent-Corporation died on December 16, 1982 after rendering near about eighteen years" service. The petitioner after the death of her husband made representation dated November 4, 1985, copy of which is Annexure P-1 to the writ petition, to the respondent authorities for the release of gratuity payable to her husband under the Payment of Gratuity Act, 1972. The said representation was declined vide order dated December 27, 1985 copy of which is Annexure P.2 to the writ petition.

3. Aggrieved against the aforesaid order, the petitioner has filed the present writ petition. It was contended on behalf of the petitioner that in accordance with the provisions contained in Section 2(e) of the Payment of Gratuity Act (hereinafter

referred to as "the Act"), all those employees who are employed to do any skilled, semi-skilled or un-skilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied and whether or not such person is employed in a managerial or administrative capacity, are entitled to gratuity. According to the learned counsel, the duties performed by the husband of the petitioner while working as Manager were supervisory in nature. As such the petitioner is entitled to the payment of gratuity.

4. The respondents in their written statement have taken a categorical stand that petitioner was not entitled to the benefit of gratuity as per provisions of Section 2(e) of the Act in existence at the time of death of the petitioner's husband.

5. I have considered the submissions of the learned counsel for the parties and perused the file.

6. In order to settle the controversy, it is essential to examine the provisions of Section 2(e) of the Act which were in existence at the time of death of the petitioner's husband i.e. December 16, 1982. Section 2(e) of the Act is reproduced as under :-

"employee" means any person (other than an apprentice) employed on wages, not exceeding one thousand rupees per mensem, in any establishment, factory, mine, oil field, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, but does not include any such person who is employed in a managerial or administrative capacity, or who holds a civil post under the Central Govt. or a State Government or who is subject to the Air Force Act, 1950 (45 of 1950), the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957)."

7. It is clear from the aforesaid revisions of Section 2(e) of the Act that the same cannot be attracted in the case of an employee performing the functions of a Manager and whose emoluments exceed Rs.1,000/- per mensem. The respondents have taken a categorical stand that the husband of the petitioner while working as Manager was drawing more than Rs. 1,000/- per mensem as salary. As such the claim of the petitioner was rightly turned down by the respondent-Corporation. The petitioner has not been able to show that the duties performed by the husband of the petitioner while working as Manager were supervisory in nature. On the other hand, it is the categorical stand of the respondents that the petitioner's husband was performing the duties of the Manager. The amendment in the aforesaid Section 2(e) of the Act came into force in the year 1984 i.e. after the death of the petitioner's husband and the same cannot be applied retrospectively.

8. Under the Payment of Gratuity Rules, a person employed in a managerial capacity or holding the civil post under the Central Government is not entitled to the payment of Gratuity as he is not covered under the purview of the definition of employee. As stated earlier, the petitioner's husband was discharging the

functions of Manager. As such the petitioner is not entitled to the release of Gratuity.

9. For the foregoing reasons, the writ petition is dismissed being devoid of any merit.