

(2018) 05 J&K CK 0054

In the Jammu And Kashmir High Court

Case No : SWP NO. 305, 355, 307, 356 OF 2013

SUNIL KUMAR SHARMA & ANR

APPELLANT

Vs

DEPUTY LABOUR COMMISSIONER AND OTHERS

RESPONDENT

Date of Decision : 31-05-2018

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2, 3, 4, 4(3)

Citation : (2018) 05 J&K CK 0054

Hon'ble Judges : SANJEEV KUMAR

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. In these four writ petitions, common questions of law and facts are involved and, therefore, are being disposed of by this common judgment. Since

the facts of all the aforesaid cases are almost identical, as such the facts of SWP No. 305/2013 are alone being noticed.

2. The petitioner was an employee of the Jammu Central Cooperative Bank Limited and retired on superannuation 28.2.2010. The petitioner was, inter

alia, paid gratuity to the tune of Rs. 3.5 lacs by the respondent Nos. 2 and 3. Dissatisfied with the amount of gratuity paid to him, the petitioner first

approached the respondent Nos. 2 and 3 by way of written representation claiming total amount of gratuity of Rs. 5,60,884/-. When representation of

the petitioner failed to evoke any response, the petitioner filed application before the Controlling Authority under the Payment of Gratuity Act, 1972 (

hereinafter referred to as "The Act"). The Controlling Authority dismissed the claim of the petitioner vide its order dated 22.6.2011 on the ground

that Notification No. S.O. 1217(E) dated 24.5.2010 was prospective in operation and would not apply to the petitioner, who had retired from the

service w.e.f. 28.2.2010 . The appeal taken by the appellant before the appellate authority under The Act, also met the same fate. The appellate

Authority took the view that ceiling limit of payment of gratuity was enhanced to Rs.10.00 lacs by the Payment of Gratuity (Amendment) Act 2010

which came into force on 24.5.2010 ; whereas the petitioner had retired before the aforesaid date , as such was not eligible for enhanced payment.

Two forums i.e. the Controlling Authority as well as the Appellate Authority have concurrently held against the petitioner.

3. Feeling aggrieved, the petitioner has called in question both the aforesaid orders passed by the Controlling Authority and the Appellate Authority in this writ petition.

4. Having heard learned counsel for the parties and perused the record, the following questions fall for determination in this writ petition:

i) Whether the petitioner who was an employee of the Cooperative Bank (Society registered under J&K Cooperative Societies Act 1989), is

governed by the J&K Civil Services Regulation in the matter of payment of gratuity ?

ii) Whether the Notification issued by the Central Government with regard to enhancement of gratuity limit of its employees under Central Services(

Pension) Rules, 1972, is ipso facto applicable to the employees of Cooperative Bank registered under the State Cooperative Act?

iii) Whether the payment of gratuity to the petitioner is governed by The Payment of Gratuity Act ,1972 only and the amendment carried thereto by

The Payment of Gratuity(Amendment) Act 2010, would apply to the petitioner who had retired on superannuation prior to coming into force of the

aforesaid amendment.

5. Indubitably, the petitioner was an employee of the Cooperative Bank(Banking Society registered under the J&K Cooperative Societies Act 1989)

and was not an employee of the State or Central Government. J&K Civil Services Regulations (CSR) are applicable to the government employees in

the service of the State and not to the employees of the Cooperative Societies. The provisions in the State CSR dealing with Death-cum

Retirement Gratuity are ipso facto not applicable to the employees of the Cooperative Societies. Like other Cooperative Societies, the employees

of J&K Central Cooperative Bank are also governed by its bye-laws. The Jammu

Central Cooperative Bank Limited has framed its service rules regulating the service conditions of its employees. Rule- 46 of the Service Regulations of the Jammu Central Cooperative Bank Limited makes it abundantly clear that the gratuity of the employees of the bank is governed by the provisions of The Payment of Gratuity Act, 1972. That being so, even it cannot be contended that the Jammu Central Cooperative Bank Limited has adopted the provisions of the J&K Civil Services Regulations particularly those pertaining to the Death-cum Retirement Gratuity. The employees of the Cooperative Society registered in the State cannot be, by any stretch of reasoning, claim to be the employees of the Central Government. Any order issued by the Central Government under the Central Service (Pension Rules), 1972 would apply only to Central Government employees engaged in the affairs of the Government of India.

6. The contention of learned counsel for the petitioner that the petitioner being an employee of the Cooperative bank cannot be denied the benefits that have been given by the State and the Central Government for its employees, is without any substance for the reasons indicated above. The petitioner is governed by the provisions of The Payment of Gratuity Act, 1972 which besides other, would apply to such establishments or class of establishments in which ten or more employees are employed or were employed on any day of the preceding twelve months as the Central Government may by Notification specify in this behalf. Even the Jammu Central Cooperative Bank Limited, employer of the petitioner in terms of the Service Regulations framed under its bye-laws has specifically provided that the gratuity of its employees shall be regulated by the provisions of the Act.

7. Having held so, now the question that remains to be determined is, as to whether under The Act, the petitioner is entitled to the enhanced upper limit of gratuity of Rs. 10.00 lacs and, therefore, should have been paid gratuity by the respondent- bank to the tune of Rs. 5,60,884/-. It may be stated that initially in terms of Section 4 sub section 3 of The Act, the maximum limit of gratuity payable to an employee was only Rs.1.00 lac and the same was enhanced to Rs. 2,50,000/- in the year 1997 and then to Rs. 3.50 lacs by way of Payment of Gratuity (Amendment) Act, 1998 w.e.f. 24.9.1997.

The latest amendment to the Act was affected vide Act No. 15 of 2010 i.e. the

Payment of Gratuity(Amendment) Act 2010 and the maximum limit

of gratuity payable to the employees governed by the provisions of the Act was enhanced to Rs. 10.00 lacs . The aforesaid Act was published in the

Government gazette on 17.5.2010 and was brought into force w.e.f. 24.5.2010 by issuing Notification in the government gazette vide No. S.O

.1217(E) dated 24.5.2010. There is no dispute that the petitioner had retired on superannuation on 28.2.2010 and, therefore, was not entitled to the

benefit of enhanced limit of gratuity.

8. From the aforesaid discussion, it is apparent that on the date of superannuation of the petitioner, maximum gratuity payable under section 4 sub section 3 of the Act was 3.50 lacs and, therefore, the petitioner could not have claimed any amount exceeding Rs. 3.50 lacs. Both the forums i.e. the

Controlling Authority as well as the Appellate Authority under the Act have concurrently found the petitioner not entitled to the enhanced limit of

gratuity under the Act.

9. I do not find any infirmity in the orders Â of the Controlling Authority as well as the Appellate Authority which are perfectly legal and in

consonance with the law. Petitioner being an employee of the Cooperative Society is governed by its bye laws/service regulations. Service Regulation

No. 46 framed by the Bank clearly provides that the gratuity payable to its employees would be regulated by the Act. Independent of the aforesaid

regulation, the Jammu Central Cooperative Bank Limited being an establishment in terms of Section 2 of the Act, is regulated by the provisions of the

Act in relation to gratuity payable to its employees. The petitioner cannot seek the benefit of provisions of J&K CSR meant for government

employees serving in connection with the affairs of the State or seek parity with the Central Government employees. Â

10. In all the four petitions, the petitioners have retired prior to coming into force The Payment of Gratuity (Amendment) Act 2010 and, therefore,

were governed by the un-amended provision of Section 4(3) of the Act which provide the maximum gratuity payable to an employee to be Rs. 3.50

lacs.

11. In view of the aforesaid analysis, I find no substance in these petitions. The same are accordingly, dismissed alongwith all IAs.

Interim orders, if any, issued in the matter, shall stand vacated.