
(2013) 09 P&H CK 0449

In the Punjab And Haryana At Chandigarh

Case No : CWP Nos. 18926 and 18927 of 2013

The Cantonment Board

APPELLANT

Vs

The Regional Labour Commissioner (Central) and Others

RESPONDENT

Date of Decision : 20-09-2013

Acts Referred:

Citation : (2014) 173 PLR 427

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Judgement

Rameshwar Singh Malik, J.—This order proposes to dispose of two identical writ petitions bearing CWP No. 18926 of 2013 (The Cantonment Board, Ambala v. The Regional Labour Commissioner (Central), Kenderia Sadan, Sector 9, Chandigarh and others) and CWP No. 18927 of 2013 (The Cantonment Board, Ambala v. The Regional Labour Commissioner (Central), Kenderia Sadan, Sector 9, Chandigarh and others). As both the writ petitions are filed by the same petitioner against the similar orders, only the claimant-respondent No. 3 in each case are different. However, for the facility of reference, facts are being culled out from CWP No. 18926 of 2013. Feeling aggrieved against the order dated 18.1.2012 (Annexure P-3) passed by the Controlling Authority under the Payment of Gratuity Act, 1972 and the Assistant Labour Commissioner (Central) Karnal, as well as the impugned appellate order dated 21.12.2012 (Annexure P-7) passed by the appellate authority under the Payment of Gratuity Act and the Regional Labour Commissioner (Central) Chandigarh, the petitioner-management has approached this court by way of these two writ petitions, seeking writ in the nature of Certiorari for quashing the impugned orders.

2. Claimant-respondent No. 3 filed an application before the Controlling Authority-respondent No. 2 under the Payment of Gratuity Act, 1972 ("Gratuity Act" for short) claiming the payment of difference of amount of gratuity as per the provisions of the Gratuity Act. Notice was issued to the petitioner-management. Petitioner raised the issue of delay. However, after hearing both the parties and

going through the material available on the record. Controlling Authority-respondent No. 2 accepted the application of claimant respondent No. 3 directing the petitioner-management to pay the remaining amount of gratuity, which was found due in favour of the claimant. Order dated 18.1.2012 (Annexure P-3) passed by respondent No. 2 was challenged by the petitioner-board before the appellate authority-respondent No. 1. However, the appeal of the petitioner was dismissed by respondent No. 1, vide impugned order dated 21.12.2012 (Annexure P-7). Hence, these writ petitions.

3. Learned counsel for the petitioner submits that respondent authorities fell into serious error of law, while passing the impugned orders. They exceeded their jurisdiction, while entertaining an application, which was barred by delay of 51 days. Petitioner-Board was not liable to pay the amount in question, because the provisions of the Gratuity Act were not applicable to it. The claimant was governed under the Central Civil Service (Pension) Rules, 1972 and the respondent authorities have failed to appreciate this aspect of the matter, while passing the impugned orders. Finally, he prays for setting aside the impugned orders by allowing the writ petition.

4. Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this court is of the considered opinion that in view of the peculiar fact situation obtaining in the present case, no interference is called for at the hands of this court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India. To say so, reasons are more than one, which are being recorded hereinafter.

5. It is a matter of record that the Gratuity Act applies to the "local bodies", whosoever has been employing 10 or more persons or employed on any date during the preceding 12 months, as per Notification No. 239 dated 8.1.1982. The petitioner-board having been established u/s 11 of the Cantonment Act, 1924 comes within the purview of "local bodies", thus, covered under the Gratuity Act. The argument of learned counsel for the petitioner that the Gratuity Act does not apply to the petitioner has been found to be misconceived and the same is liable to be rejected.

6. It has also gone undisputed on record that the petitioner-board did not apply for exemption u/s 5 of the Gratuity Act, seeking exemption from the appropriate government. Once it is so, petitioner-board could not have escaped from its liability to pay the amount of gratuity to the claimant as per the provisions of Gratuity Act.

7. It has also not been disputed before this court that the amount of gratuity available under the Gratuity Act was more favourable to the claimant than under the provisions of Central Civil Service (Pension) Rules, 1972. Having said that, this court feels no hesitation to conclude that the claimant was clearly entitled for claiming the benefit under the Gratuity Act, because Section 14 of the Gratuity

Act has overriding effect on other enactments or agreements. Thus, it has been found that the respondent authorities committed no error of law, while passing the impugned orders and the same deserve to be upheld.

8. So far as the alleged delay of 51 days on behalf of the claimant was concerned, the same has rightly been held not to be fatal. If this argument raised on behalf of the petitioner was to be accepted, then its own appeal, which was delayed by more than four months i.e. 128 days could not have been entertained by the appellate authority. Further, it should always be the endeavour of the court and the quasi-judicial as well as statutory authorities to decide the case on merits instead of dismissing the same on account of delay or other technicalities. Let nobody go home with a grouse that he was not granted the due opportunity to put up his case on merits. Thus, the argument raised by learned counsel for the petitioner in this regard has been found to be without any force and does not merit acceptance.

9. The view taken by this court also finds support from the judgment of the Hon"ble Supreme Court in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, . The relevant observations made by the Hon"ble Supreme court, which can be gainfully followed in the present case, read as under:--

Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condone, the highest that can happen is that a case would be decided on merits after hearing the parties.

10. During the course of hearing, learned counsel for the petitioner could not point out any jurisdictional error or patent illegality apparent on the record of the case, so as to persuade this court to take a different view than the one taken by the respondent authorities. Further, no prejudice of any kind, whatsoever, has been shown to have been caused to the petitioner. In this view of the matter, it is unhesitatingly held that the respondent authorities have rightly appreciated the factual as well as legal aspect of the matter, before coming to a just conclusion by passing the impugned orders, which deserve to be upheld.

11. No other argument was raised.

12. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered view that the present writ petition is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Resultantly, the instant writ petition stands dismissed, however, with no order as to costs.