(2016) 09 P&H CK 0203

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 15282 of 2013 (O/M)

Uma Rani — APPELLANT

Vs

State of Haryana — RESPONDENT

Date of Decision : 20-09-2016

Acts Referred:

Citation : (2017) 1 SCT 425

Hon'ble Judges : Kuldip Singh, J.

Bench : Single Bench

Advocate : Aseem Rai, Advocate, for the Petitioner; Gaurav Goel, Assistant A.G. Haryana, Deepak Hooda for Naveen Gupta, Advocates, for the Respondent No.4

Final Decision : Partly Allowed

Judgement

Kuldip Singh, J. (Oral)—The petitioner, who retired as Deputy Superintendent from the Haryana State Agricultural Marketing Board, Panchkula, (in short ''the Marketing Board''), has filed the present writ petition, claiming that the payment of gratuity should be released to her after adding dearness pay, in terms of the Punjab State Agricultural Marketing Board and Market Committees Employees Provident Fund and Gratuity Rules, 1965 (in short ''the Rules of 1965'') (Annexure-P-1), which were subsequently amended by notification dated 5.6.1975.

2. The short controversy is that according to the petitioner, she is governed by the said Rules of 1965. It is stated that later on, the pension scheme was introduced and an option was given to opt for the CPF or pension scheme. The petitioner did not opt for pension scheme. Those employees, who opted for the pension scheme are being released gratuity by adding dearness allowance in the basic pay, whereas those employees who opted for CPF are being released gratuity by considering their basic pay only. It is admitted that since the petitioner did not opt for the pension scheme, therefore, the subsequent rules called the Haryana State Agricultural Marketing Board and Market Committees Employees Pension Provident Fund and Gratuity Rules, 1989 (in short ''the Rules

of 1989'') are not attracted in the present case in view of Rule (3) of the said Rules of 1989, nor the Punjab Civil Services Rules are applicable to the case of the petitioner. Section 15 of the Rules of 1965, as applicable to the case of the petitioner, originally laid down, are reproduced as under :-

15. Gratuity to the employees : - (1) The competent authority shall grant gratuity at the scale of 15 days basic pay for every year of completed service to :-

(i) an employee :

(a) whose services are terminated by the competent authority for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action or for offence involving moral turpitude any corruption, provided the employee has put in at least 5 years continuance service; or

(b) who voluntarily resigns from the service of the competent authority, provided he has put in at least 10 years service; or

(ii) A permanent employee :-

(a) who dies while in service of the competent authority, or

(b) who retires from service of the competent authority provided he has put in at least 10 years'' service.

(2) For calculating gratuity, basic pay will mean the average monthly basic pay earned during 12 completed months proceeding the month in which the employee becomes entitled to receive gratuity."

3. Sub-rule (2) made it clear that the gratuity was calculated on the basic pay. However, subsequently an amendment was carried out in the said Rules of 1965 by a notification dated 5.6.1975 (Annexure-P-1), vide which in Sub-rule (1), for the basic pay, the word ''pay'' was substituted and in Sub rule (2), for the basic pay, the word ''pay'' is defined in Rule 2.44 of the Punjab Civil Services Rules, Volume-1, Part-I, which the employee was receiving immediately after retirement, was substituted. That would effectively mean that by way of substitute, the word ''pay'' would mean that pay, dearness allowance and gratuity is to be paid in terms of pay as defined in Rule 2.44 of the Punjab Civil Services Rules, Volume-1, Part-I. In the basic pay, the dearness allowance is also included. Consequently, it is held that the petitioner is entitled to the gratuity on the pay, which would mean the basic pay and the dearness allowance and not the basic pay only. The present writ petition is accordingly allowed. The respondents are directed to release the payment of gratuity to the petitioner within two months from the date of receipt of copy of this order along with interest at the rate of 9% per annum.