

(2016) 06 SHI CK 0182
In the High Court Of Himachal Pradesh
Case No : CWP No. 1606 of 2010

Union of India

APPELLANT

Vs

Shri Om Parkash

RESPONDENT

Date of Decision : 24-06-2016

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4

Citation : (2016) 4 HimLR 2065

Hon'ble Judges : Mr. Ajay Mohan Goel, J.

Bench : Single Bench

Advocate : Mr. Ashok Sharma, ASGI, for the Petitioner; Mr. Dalip Sharma, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Ajay Mohan Goel, J. - By way of present writ petition, the petitioner has challenged order dated 09.02.2010 passed by the Regional Labour Commissioner (Central) in Application No. 48(08)/2009-RLC/JMU. The case as put forth by the petitioner is that respondent Om Parkash was appointed in the Department of Post Offices as Gramin Dak Sewak BPM on 11.04.1979 and he superannuated from service on attaining the age of 65 years on 08.04.2003. As such, he rendered in all 23 years, 10 months and 27 days" service. In lieu of the said services rendered by him, he was granted and paid all due benefits admissible to him as per Department of Posts GDS (Conduct & Employment) Rules, 2001. This included severance amount of Rs. 30,000/- and ex-gratia gratuity of Rs. 18,000/- as per the claim of the respondent in view of the fact that the last pay drawn by him at the time of his retirement was Rs. 2713/-. Respondent Om Parkash moved an application before the Controlling Authority under the Payment of Gratuity Act, 1972 claiming therein that he was entitled to be paid an amount of Rs. 19565/- as balance amount of gratuity on account of retirement after completion of more than twenty five years of service as on 10.03.2003 under the provisions of Section 4 of the Payment of Gratuity (Central) Rules, 1972.

According to him, he was entitled to an amount of Rs. 37565/- as gratuity, out of which, he had been paid an amount of Rs. 18,000/- and the balance amount of gratuity claimed was Rs. 19565/-.

2. The said claim of the respondent was refuted by the petitioner-department and the stand of the department was that the petitioner was not entitled for any balance amount as was being claimed by him. However, Regional Labour Commissioner (Central), Jammu vide decision/order dated 09.02.2010 directed the department to make payment of Rs. 25817/- along with simple interest @10% to the respondent from one month after the date of his retirement, i.e. 08.04.2003 till the date actual payment is made within 30 days from the receipt of the order dated 09.02.2010. It is the said order passed by the Controlling Authority under the Payment of Gratuity (Central) Rules, 1972 against which the present petition has been filed.

3. Mr. Ashok Sharma, learned Assistant Solicitor General of India has argued that the impugned order is not sustainable in law because the authority while passing the impugned order had erred in not appreciating that the respondent was not entitled for payment of gratuity under the provisions the Payment of Gratuity Act, 1972. According to Mr. Sharma, the respondent being Gramin Dak Sewak was only entitled to ex-gratia gratuity as admissible under the Department of Posts GDS (Conduct & Employment) Rules, 2001 and he was not entitled for payment of gratuity under the provisions of Payment of Gratuity Act, 1972. Mr. Sharma has further argued that the authority below has also failed to appreciate that the proceedings were initiated by the respondent only in the year 2009, though he superannuated in the year, 2003 and in fact the application filed for condonation of delay by the respondent before the competent authority did not spell out any cogent reason for condoning the said delay. On these grounds, it was submitted by the learned Additional Solicitor General that the impugned order passed by the authority was liable to be quashed and set aside. Mr. Sharma also argued that Authority also erred in granting interest from one month after retirement rather than from the date of filing the application.

4. No reply has been filed to the petition by the respondent.

According to Mr. Dalip Sharma, learned counsel for the respondent, no reply in fact was required to be filed keeping in view the fact that the issue as to whether Gramin Dak Sewaks were entitled to be paid gratuity under the Payment of Gratuity Act, 1972 or not was no more res integra. He submitted that a perusal of the impugned order itself will demonstrate that the competent authority has relied upon a judgment passed by the High Court of Punjab & Haryana, in which it was held that Extra Departmental Agent now known as Gramin Dak Sewak were employees within the meaning of Section 2(e) of the Payment of Gratuity Act, 1972. He also submitted that the competent authority had condoned the delay in filing the application by passing a reasoned order because the competent authority had taken note of the fact that the respondent in fact was pursuing his matter before the postal authorities, but the postal authorities

denied the payment on the ground that they are not liable to make payment of difference of gratuity since the Act was not applicable to them. Even otherwise, according to Mr. Sharma, the respondent was a retired employee and he had approached the competent authority for payment of retrial benefits and the said benefits could not have been denied to him at such a ripe age on mere technicalities.

5. I have heard the learned counsel for the parties and also gone through the case file.

6. Section 4 of the Payment of Gratuity Act, 1972 provides that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease

7. Section 4(2) of the Act provides that for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned. It is further contemplated in Section 4 that the amount of gratuity payable to an employee shall not exceed ten lakh rupees. Thus, the case of the respondent before the competent authority was that his gratuity has to be calculated in accordance with the provisions of Section 4 of the Payment of Gratuity Act, 1972.

8. The Division Bench of Punjab and Haryana High Court in CWP No. 7576/2006 titled *Sr. Supdt. of Post Offices v. Smt. Sham Dulari and Ors.* has held that Gramin Dak Sewak is an employee within the purview of Section 2 (e) of the Payment of Gratuity Act, 1972.

Paragraphs 7 and 8 of the said judgment are quoted herein below.

"7. The aforementioned observation in fact squarely apply to the facts of the present case. There is no declaration under Section 5 exempting the application of the Gratuity Act to Extra Departmental Agents. Moreover, the EDA Rules, are not more beneficial than the benefits which are available to the respondent-workman under the Gratuity Act.

Such a declaration could not have been given by the Competent Authority exempting the Extra Departmental Agents from the operation of the provisions of the Gratuity Act. Therefore, on principle as well as on precedents, we have reached the conclusion that the view taken by the Controlling Authority as well as Appellate Authority are not open to any attack in law and it does not furnish any opportunity to interfere with the same. Therefore, we are inclined to uphold the order dated August 21, 2003 (P-3) passed by the Controlling Authority and the order dated January 5, 2006 (P-6) passed by the Appellate Authority.

8. The argument of the learned Counsel that the respondent-workman is not covered by the definition of expression "employee" as used in Section 2(e) of the Gratuity Act does not require any detailed consideration because of the view expressed by the Hon''ble Supreme court in Dharam Parkash Sharma's case (supra). In that case also Central Civil Service (Pension) Rules, 1972 were adopted by the Municipal Corporation, yet the Hon''ble Supreme. Court held that the Gratuity Act would apply in view of Section 5 read with Section 14 of the Gratuity Act, Therefore, we have no hesitation in rejecting the argument raised on behalf of the petitioner-department."

9. My attention has also been drawn to a judgment passed by the High Court of Judicature at Madras in G. Ramaiah Nambiar v. Senior Superintendent of Post Office, Kovilpatti Division & Another (2010) 2 MLJ 118. This was also a case pertaining to payment of gratuity to Extra Departmental Agent as per the provisions of the Payment of Gratuity Act, 1972. In the said judgment, the High Court of Judicature at Madras by relying upon the Division Bench judgment of Punjab and Haryana High Court in Sr. Supdt. of Post Offices v. Smt. Sham Dulari (supra) directed the petitioner therein an Extra Departmental Agent to be paid the balance amount of gratuity by calculating the same on the basis of the Payment of Gratuity Act, 1972. Paragraph-8 of the said judgment is quoted herein below, from which it is apparent that the judgment passed by the High Court of Punjab and Haryana was challenged by way of Special Leave Petition before the Hon''ble Supreme Court by the department, which Special Leave Petition of the department was dismissed by the Hon''ble Supreme Court.

"8. Placing reliance on a Division Bench decision of the Punjab and Haryana High Court in Sr. Supdt. of Post Offices v. Smt. Sham Dulari 2007 (2) SLJ 274 (P&H) and the orders dated 12, 1997 passed by the Supreme Court, dismissing the SLP filed by the department, against the above judgment, learned counsel for the petitioner submitted that it is no longer open to the first respondent to contend that payment of Gratuity Act is not applicable to ED Staff."

10. The Hon''ble Supreme Court in Union of India v. Kameshwar Parshad (1997)11 SCC 650 in paragraphs No. 3 and 4 of the said judgment has held as follows:

"3. The Extra Departmental Agents are Government servants holding a civil post and are entitled to the protection of Article 311(2) of the Constitution (See: Supdt. of Post Offices v. P.K. Rajamma). They are governed by separate set of rules, viz, the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 (hereinafter referred to as the "the Rules"). The Central Civil Services (Classification, Control and Appeal) Rules are not applicable to this category of employees in view of the notification dated 21, 1957 issued by the Government of India under Rules 3(3) of the said Rules.

4. In Rules 4 of the Rules it is provided that the employees shall not be entitled to any persisting.

Rule 5 relates to leave. Rule 6 deals with the termination of Services. Rule 17 prescribes nature of penalties that can be imposed. Rule 8 prescribes the procedure for imposing a penalty. Rule 8-A specifies the cases in which the provisions of Rule 8 would not be applicable."

11. In this view of the matter, in my considered view, there is no infirmity with the order which has been passed by the competent authority, in which it has been held that the respondent is entitled to gratuity under the provisions of Payment of Gratuity Act, 1972.

12. Further in my considered view, the competent authority has rightly condoned the delay in filing of the application by the respondent and it cannot be said that the condonation of delay is without any due application of mind. Respondent herein has served the department from 1979 till 2003. He superannuated at the age of 65 years. He approached the competent authority in the year, 2009, when he was more than 70 years of age. Denial of payment of gratuity to him under the provisions of Payment of Gratuity Act was totally unjustified as his case was squarely covered by the judgments given in this regard qua similarly situated persons by various High Courts.

13. However, keeping in view the fact that the application in fact was actually filed before the competent authority in the year 2009, the said authority, in my considered view, erred in granting interest from an earlier date and not from the date of filing of the application. Therefore, while upholding the order passed by the competent authority vide which it has directed the petitioners herein to pay to the respondent balance amount of gratuity to the tune of Rs. 25817/- along with simple interest @ 10%, in my considered view, interest of justice will be served in case the said order is modified to the extent that the petitioners are directed to pay to the respondent simple interest on the balance amount of gratuity from the date of filing of the application before the competent authority, i.e., 17.04.2002 instead of one month after the date of retirement till the actual payment. Ordered accordingly.

14. With the said modification, order dated 09.02.2010 passed by the competent authority is upheld and the writ petition is disposed of.