



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

262

CWP-22009-2022

Date of decision: April 02, 2025

SOM NATH

....Petitioner

Versus

PUNJAB STATE WATER RESOURCES MANAGEMENT AND
DEVELOPMENT CORPORATION LIMITED THROUGH ITS MANAGING
DIRECTOR

.....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPINDER SINGH NALWA

**Present:- Mr. A.S Walia, Advocate
for the petitioner.**

Ms. Monika Sharma, Advocate for the respondent.

DEEPINDER SINGH NALWA, J.

In the present writ petition, the petitioner has challenged the order dated 2.8.2022 (Annexure P-4), whereby, the case of the petitioner for grant of balance amount of gratuity amounting to Rs.8,96,434/- due to the petitioner on attaining the age of superannuation, has not been considered on the ground that the matter is pending for clarification in the office of the Directorate of Public Enterprise and Disinvestment, Punjab.

Briefly stated, the facts of the case are that the petitioner retired from the post of Personal Assistant from Punjab State Water Resources Management and Development Corporation Limited (hereinafter referred to as



`the Corporation') on attaining the age of superannuation on 30.9.2019. As per the petitioner, the petitioner was entitled for payment of gratuity amounting to Rs.18,96,434/- as per Bye Law No. 18 of the Employees Service Bye Laws of the Corporation. However, on retirement of the petitioner, an amount of gratuity amounting to Rs.10,00,000/- was paid to the petitioner on 2.3.2020. As the petitioner was entitled for grant of gratuity amounting to Rs.18,96,434/-, the petitioner submitted a representation dated 20.01.2022 to the respondent-Corporation for grant of balance amount of gratuity. No decision was taken by the respondent on the above said representation. As a consequence of this, the petitioner filed a writ petition in this Court bearing CWP-9061-2022. The above said writ petition was disposed of by this Court vide order dated 11.5.2022, whereby, direction was given to the respondent to pass an appropriate speaking order on the representation dated 20.01.2022 filed by the petitioner within a period of eight weeks. It was further directed that in case the petitioner was found entitled for any benefit, the same would be released in his favour within a period of four weeks thereafter.

In pursuance to the order passed by this Court on 11.5.2022 in CWP-9061-2022, the respondent passed an order dated 2.8.2022 (Annexure P-4). A perusal of the above said order shows that the stand taken by the respondent-Corporation was that as the clarification in this regard is still pending before the Finance Department, as such, no action can be taken in the matter. It has further been stated in the impugned order that as and when the clarification is received by the concerned office, the decision will be taken accordingly.



Aggrieved against the above said order dated 2.8.2022 (Annexure P-4) passed by the respondent, the petitioner has filed the present writ petition.

Learned counsel appearing on behalf of the petitioner submits that in view of the relevant bye-laws and amendment made in the Payment of Gratuity Act, 1972, vide notification No. S.O-1420(E) dated 29.3.2018 (Annexure P-5), the petitioner is entitled for grant of gratuity of an amount of Rs.18,96,434/-.

Learned counsel appearing on behalf of the respondent submits that in the light of the letter dated 13.9.2019 issued by Government of Punjab, Department of Finance, the Government of Punjab is yet to revise the gratuity rates and no such revision can be carried out without the approval of the Finance Department. It is the case of the respondent-Corporation that the Board of Directors in its 53rd meeting held on 27.9.2022, have taken a decision to limit the amount of gratuity to the employees of the Corporation to a maximum of Rs.20 lacs. As per the respondent-Corporation, letter has been issued to the Finance Department for clarification regarding implementation of recommendation of 6th Pay Commission regarding pension and other retiral benefits to employees who have retired on or after 1.1.2016. But till date, the matter is pending in the office of Directorate of Public Enterprises and Disinvestment. As and when, clarification will be received from the concerned office, necessary action will be taken in regard to grant of balance amount of gratuity.

I have heard learned counsel for the parties at length and thoroughly perused the records of the case.



The issue involved in the present writ petition is as to whether the petitioner is entitled for grant of gratuity as per the amendment made in the Payment of Gratuity Act, 1972 notified on 29.3.2018 (Annexure P-5) enhancing the limit of gratuity from Rs.10,00,000/- to Rs.20,00,000/- w.e.f 29.3.2018. Similar issue came up for consideration before a Co-ordinate Bench of this Court in CWP No. 1691 of 2019 (Yadbinder Pal Singh vs. Punjab Water Resource Management and Development Corporation Ltd.) decided on 29.08.2023. In the above said case, the petitioner retired from the post of Law Officer from the respondent-Corporation. One of the claim in the above said writ petition was that the petitioner was entitled for grant of payment of gratuity as per the amendment made in the Payment of Gratuity Act, 1972 notified on 29.3.2018 and the bye-laws of the Corporation. It was held that the letter dated 13.9.2019 had nowhere denied the claim of the enhanced payment of gratuity from Rs.10,00,000/- to Rs.20,00,000/- and only suggested the concurrence of Finance Department. The letter dated 13.9.2019 cannot contravene the statutory provisions of the of the Payment of Gratuity Act, 1972. It was also held that the amendment in the Payment of Gratuity Act 1972 would automatically become applicable to the respondent-Corporation and it would be the statutory obligation for the respondent-Corporation to comply with the Provisions of Payment of Gratuity Act, 1972

The relevant extract of the judgement is reproduced as under:

“12. The objection for non-payment of gratuity by referring the instructions dated 13.09.2019 annexed with written statement as Annexure R-1 and also on the plea that petitioner has not sought quashing of the same, such a plea by the respondent denying the claim of petitioner is not acceptable. The bare perusal of the said



notification shows that since the Central Government in exercise of the powers conferred by Sub-Section (3) of Section 4 of the Payment of Gratuity Act, 1972 has specified the amount of gratuity payable to an employee under the said Act and same was issued prior to the date of retirement of the petitioner i.e. before 30.06.2018. The amendment in the Gratuity Act, 1972 automatically became applicable to the respondent-Corporation and it is the statutory obligation to comply with the provisions of this Act. The petitioner has already received an amount of Rs.10 lacs qua gratuity, therefore, his claim for the balance amount is maintainable under the Act as well as in view of the Notification dated 29.03.2018. Further, the plea of the respondent-Corporation by referring the notification issued by Finance Department is also not tenable as the provisions of the Gratuity Act, 1972 shall prevail over all other instruments or contracts so far as the gratuity is concerned and the right to receive under the Gratuity Act cannot be defeated by any instrument or contract. The Hon'ble Supreme Court in "Allahabad Bank Vs. All India Allahabad Bank Retired Employees Association", 2010 (1) SCT 531 has already dealt with the similar issue and while considering the provisions of the Payment of Gratuity Act, 1972; has held as under:-

"(a) There is no escape from payment of gratuity under the provisions of the Act unless the establishment is granted exemption from the operation of the provisions of the Act by the appropriate Government.

(b) Gratuity payable to an employee on the termination of his employment after rendering continuous service for not less than 5 years and on superannuation or retirement or resignation etc. being a statutory right cannot be taken away except in accordance with the provisions of the Act where under an exemption from such payment may be granted only by the appropriate Government under Section 5 of the Act which itself is a conditional power. No



exemption could be granted by any Government unless it is established that the employees are in receipt of gratuity or pension benefits which are more favourable than the benefits conferred under the Act.

(c) In view of the overriding provisions contained in section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect. Possibly for this reason, section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act. if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. [Municipal Corporation Delhi v. Dharam Prakash Sharma & Ors., 1999(2) SCT 297]

(d) An establishment is under the statutory obligation to pay gratuity as provided for under Section 4 of the Act which is required to be read along with Section 14 of the Act which says that the provisions of the Act shall have effect notwithstanding anything inconsistent therein contained in any enactment or in any instrument or contract having effect by virtue of any enactment other than this Act.

(e) The provisions of the Act prevail over all other enactment or instrument or contract so far as the payment of gratuity is concerned. The right to receive gratuity under the provisions of the Act cannot be defeated by any instrument or contract.

(f) In Hindustan Lever and Anr. v. State of Maharashtra & Anr., (2004) 9 SCC 438 relying upon the decision in Purshottam H. Judge v. V.B. Poddar, (1966) 2 SCR 353, it was held that the word 'instrument' would include award made by the Industrial Tribunal.



(g) Section 2(d) of the Act defines Controlling Authority as an authority appointed by the appropriate Government under Section 3 of the Act. Under Section 3 the Controlling Authority is made responsible for the administration of the Act and it further provides for appointment of different authorities for different areas. Section 7 deals with for determination of the amount of gratuity. Every person who is eligible for payment of gratuity under the Act is required to send a written application to the employer in the prescribed form for payment of such gratuity. Sub-section (2) of Section 7 provides once the gratuity becomes payable, the employer shall, whether an application has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority specifying the amount of gratuity so determined and arrange to pay the amount of gratuity to the person to whom the gratuity is payable. The Scheme envisaged under Section 7 of the Act, is that in case of any dispute to the amount of gratuity payable to an employee under the Act or as to the admissibility of any claim of, or in relation to, an employee payable to gratuity etc. The employer is required to deposit with the Controlling Authority the admitted amount payable as gratuity. In case of any dispute parties may make an application to the Controlling Authority for deciding the dispute who after due inquiry and after giving the parties to the dispute, a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as result of such inquiry any amount is found to be payable to the employee, the Controlling Authority shall direct the employer to pay such amount to the employee. Subsection (7) of Section 7, provides for an appeal against the order of the Controlling



Authority. The Act, nowhere confers any jurisdiction upon the Controlling Authority to deal with any issue under sub-section (5) of Section 4 as to whether the terms of gratuity payable under any Award or agreement or contract is more beneficial to employees than the one provided for payment of gratuity under the Act. This Court's order could not have conferred any such jurisdiction upon the Controlling Authority to decide any matter under sub-section (5) of Section 4, since the Parliament in its wisdom had chosen to confer such jurisdiction only upon the appropriate Government and that too for the purposes of considering to grant exemption from the operation of the provisions of the Act."

13. It is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of statutory rules and instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions, whereas the notification dated 30.09.2019 has nowhere denied the claim of enhanced payment of gratuity from Rs.10 lacs to Rs.20 lacs as per Gratuity Act, 1972 (Amended Act 2018), and only suggested for concurrence of Finance Department. The respondent/Corporation was advised to have prior approval of Finance Department which is not binding upon the petitioner being merely the instructions and same cannot contravene the statutory provisions of Gratuity Act. The Hon'ble Apex Court in the case of "Employees' State Insurance Corporation Vs. Union of India" (2022) 11 SCC 392 has held under:-

"15. A Constitution Bench in Sant Ram Sharma v. State of Rajasthan [Sant Ram Sharma v. State of Rajasthan, AIR 1967 SC 1910: (1968) 1 SCR 111] considered the applicability of the letters issued by the Government of India detailing the administrative practice for promotions,



against the Indian Police Service (Regulation of Seniority) Rules, 1954. The Constitution Bench held that: (AIR p. 1914, para 7)

"7. We proceed to consider the next contention of Mr N.C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed."

16. In Union of India v. Ashok Kumar Aggarwal [Union of India v. Ashok Kumar Aggarwal, (2013) 16 SCC 147: (2014) 3 SCC (L&S) 405] a two- Judge Bench of this Court speaking in the context of service regulations governing a departmental enquiry reiterated that an office order or office memorandum cannot contravene statutory rules. B.S. Chauhan, J. noted the position in law in the following terms: (SCC p. 172, para 59)

"59. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the

2025:PHHC:045700

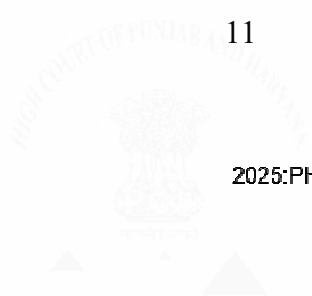


statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. (Vide Union of India v. Majji Jangamayya [Union of India v. Majji Jangamayya, (1977) 1 SCC 606 1977 SCC (L&S) 191], P.D. Aggarwal v. State of U.P. (P.D. Aggarwal v. State of U.P., (1987) 3 SCC 622 1987 SCC (L&S) 310], Paluru Ramkrishnaiah v. Union of India (Paluru Ramkrishnaiah v. Union of India, (1989) 2 SCC 541: 1989 SCC (L&S) 375], C. Rangaswamaiah v. Karnataka Lokayukta [C. Rangaswamaiah v. Karnataka Lokayukta, (1998) 6 SCC 66: 1998 SCC (L&S) 1448] and Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation [Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation, (2011) 5 SCC 435])"

14. In view of the above, the impugned chargesheet dated 25.7.2018 (Annexure P-3), order dated 4.12.2018 (Annexure P-7) and all proceedings emanating and having taken place thereupon stand quashed. The respondents are directed to recalculate the amount due to the petitioner, qua his retiral benefits including balance amount of leave encashment and gratuity in accordance with law, which shall be paid within 3 months from the date of receipt of copy of certified copy of this order; the petitioner is entitled to interest @ 6% per annum simple from the date of his retirement till the period of 3 months from today and if the retirement dues are not paid within this period then for future, period petitioner will be entitled to interest at the rate of 9% per annum simple till its realisation.

A perusal of the facts of the present case would show that the petitioner retired on 30.9.2019 after the amendment made in the Payment of Gratuity Act, 1972. The petitioner has already received an amount of Rs.10,00,000/- qua gratuity. The petitioner is held entitled for balance amount of gratuity as per the amendment in the Payment of Gratuity Act, 1972.

For Subsequent orders see COCP-3440-2025 Decided by HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN



2025:PHHC:045700



In view of the above, the present writ petition is allowed. The order dated 2.8.2022 (Annexure P-4) is quashed. The respondent is directed to recalculate the gratuity in terms of the amendment made in the Payment of Gratuity Act, 1972. The amount due to the petitioner towards gratuity should be paid within a period two months from the date of receipt of a certified copy of this order. The petitioner is also entitled to interest @ 6% per annum on the arrears of balance amount of gratuity from the date it was due till actual realisation of the amount.

(DEEPINDER SINGH NALWA)
JUDGE

April 02, 2025
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Whether speaking/reasoned
 Whether reportable:

Yes/No
 Yes/No