



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.2697 of 2024

Decided on: 22.09.2026

Sh. Anil Kumar Mahajan & others	... Petitioners
Versus	
Himachal Pradesh State Co-operative Marketing and Consumers Federation Limited and another	... Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Hon'ble Mr. Justice Yogesh Jaswal, Judge.

Whether approved for reporting?¹Yes

For the petitioners:	Ms. Kamakshi Tarlokta, Advocate.
For the respondents:	Mr. Umesh Kanwar, Advocate, for respondent No.1. Mr. Pushpinder Jaswal, Additional Advocate General, for respondent No.2.

Ajay Mohan Goel, Judge (Oral)

By way of this petition, the petitioners have, *inter alia*,
prayed for the following reliefs:-

- "i. That a writ of certiorari may kindly be issued quashing and setting aside notification dated 14.10.2022, Annexure P-3 and the corrigendum dated 05.10.2023, Annexure P-4, issued by the respondent no. 1, whereby the benefit of enhanced gratuity has been confined only to those employees of the respondent no. 1, who have retired after 29.03.2018 and have been denied to the petitioners who have retired on or after 01.01.2016.
- ii. That a writ of certiorari may kindly be issued quashing and setting aside office order No. HF/ES-I(47)2013-VIII-7084-91, dated 03.01.2024, Annexure P-8, passed by the respondent no. 1, whereby the representation of the petitioners has been rejected and the benefit of enhanced

¹ Whether reporters of the local papers may be allowed to see the judgment?

gratuity has been confined only to those employees of the respondent no. 1 who have retired after 29.03.2018 and have been denied to the petitioners who have retired on or after 01.01.2016.

iii. That a writ of mandamus may kindly be issued directing the respondents to grant enhanced gratuity with ceiling of 20 lakhs to the petitioners as per the provisions of Service Rules of the respondent no.1 Annexure P-1, and notification issued by the government of Himachal Pradesh Annexure P-2, along with interest @ 12% per annum from the date of said dues.

iv. That a writ of mandamus may kindly be issued directing the respondents to release arrears of revised pay scale as well as leave encashment with effect from 01.01.2016 to the petitioners along with interest @ 12% per annum from the date of said dues."

2. The petitioners are the erstwhile employees of respondent No.1-Federation, who have retired in between 01.01.2016 and 29.03.2018. Their grievance is that the benefit of enhancement of the gratuity in terms of Office Memorandum dated 25.02.2022 (Annexure P-2), has been denied to them.

3. Learned Counsel for the petitioners submitted that in terms of Office Memorandum dated 25.02.2022, revision of provisions regulating pensions, gratuities, commutation of pension, and family pension was undertaken by the Finance Pension Department of the Government of Himachal. She submitted that in terms of this Office Memorandum, inter alia, the gratuity payable to an employee on retirement was enhanced from Rs.10,00,000/- to

Rs.20,00,000/-. She further submitted that the revised rate of retirement and death gratuity were made admissible in terms of this Office Memorandum w.e.f. 01.01.2016 and it was also ordered that the first proviso under Rule 50(1)(b) of Central Civil Services (Pension) Rules, 1972, shall stand modified. She submitted that despite the fact that the respondent-Federation is wholly owned and controlled by the State of Himachal Pradesh, the benefit of this Office Memorandum w.e.f. 01.01.2016 has not been granted to the petitioners, which act of the respondents as per the learned Counsel is both arbitrary and discriminatory.

4. Learned Counsel argued that in terms of Annexure P-3, a Notification has been issued by the respondent-Federation and as per this Notification, consequent upon revision of gratuity under Payment of Gratuity Act, 1972, revised by Union Ministry of Labour and Employment, Government of India, vide notification dated 29.03.2018, enhancing the maximum limit of retirement gratuity under the Payment of Gratuity Act, 1972, same stands enhanced from Rs.10,00,000/- to Rs.20,00,000/- in respondent-Federation also, but w.e.f. 29.03.2018. She submitted that this Notification is both arbitrary and discriminatory as an artificial distinction has been created between employees of the respondent-Federation who retire on or after 29.03.2018 and the employees who have retired in between 01.01.2016 and 28.03.2018. Learned Counsel submitted that as in terms of Office Memorandum Annexure P-2, the

Government had made the benefit of revision of pay gratuity admissible to all employees who had retired after 01.01.2016, denial of this benefit to the petitioners is not sustainable in law. ◇

5. Learned Counsel also referred to Annexure P-4 and submitted that in terms of this Annexure, the Board of Directors of the respondent-Federation took a decision that the release of the arrears of gratuity shall be in such mode and manner as may be decided by the Government, which is indicative of the fact that the respondent-Federation is bound by the decision of the Government with regard to enhancement of gratuity and therefore also, the act of the respondent-Federation of not conferring the benefit of the enhancement of gratuity to the petitioners who superannuated in between 01.01.2016 and 29.03.2018 is illegal.

6. Accordingly, she prayed that the petition be allowed as prayed for and respondent- Federation be directed to revise the gratuity of the present petitioners also from Rs.10,00,000/- to Rs.20,00,000/- and arrears be paid to them after holding the act of denial thereof to the petitioners to be bad. She also submitted that the respondents be directed to release the arrears of the revised pay scale as well as leave encashment w.e.f. 01.01.2016 to the petitioners along with interest, as prayed for. Learned Counsel referred to Annexure P-1, which is the copy of the amended Service Rules of the respondent-Federation dated 09.09.2010. By referring to Clause 3.10 thereof, as it stood amended vide Annexure P-1, she

submitted that every employee of the Federation, in terms thereof, was entitled to gratuity and leave encashment benefit on attaining the age of superannuation or premature retirement as per the provisions of the Gratuity Act and Leave Rules applicable to the Government employees as amended from time to time and as the Government employees who have retired after 01.01.2016 have been held entitled for the benefit of the revised gratuity, the denial of this benefit to the petitioners, in light of the said Rule also was bad in law.

7. On the other hand, learned Counsel for the respondent-Federation submitted that the writ petition was completely misconceived. He drew the attention of the Court to the reply filed by the Federation and submitted that the petitioners herein were governed by the Service Rules of the Federation and in terms of the said Rules, the employees of the respondent-Federation are governed by the provisions of Payment of Gratuity Act, 1972 as far as payment of gratuity is concerned.

8. By referring to Annexure P-3 appended with the writ petition, learned Counsel submitted that the maximum amount of gratuity payable fixed under the Payment of Gratuity Act, 1972, was earlier Rs.10,00,000/-. He submitted that the Union Ministry of Labour and Employment, Government of India, issued a Notification dated 29.03.2018, in terms whereof, the maximum limit of retirement gratuity under the Payment of Gratuity Act, 1972 was

enhanced from Rs.10,00,000/- to Rs.20,00,000/-, but w.e.f. 29.03.2018. He submitted that as the amendment was incorporated in the Payment of Gratuity Act w.e.f. 29.03.2018, accordingly, it is as from the said date that the benefit of enhancement of the gratuity has been conferred by the respondent-Federation to its employees. Learned Counsel submitted that though Notification Annexure P-3 is dated 14.10.2022, however, operation thereof has not been made prospective and benefit has been given to employees as from the date when the amount of gratuity stood enhanced in the Payment of Gratuity Act, 1972, i.e. 29.03.2018.

9. Learned Counsel further submitted that the respondent-Federation is an independent body, which is governed by its own bylaws, etc., and the service conditions of its employees are not governed by the service conditions which are applicable to Government employees *per se*. He submitted that the State Government has also not in its wisdom issued any direction that the benefit of the enhanced gratuity by the State from Rs.10,00,000/- to Rs.20,00,000/-, which as far as the employees of the Government of Himachal Pradesh is concerned, has been made effective w.e.f. 01.01.2016, be implemented in Federations and Corporations such as respondent No.1. Learned Counsel further argued that there is a complete misreading of Annexure A-1, i.e. amended Service Rules dated 09.09.2010 by the petitioners. By referring to Clause 3.10 thereof, learned Counsel submitted that as per the amended

provision, it was amply clear that for the entitlement of gratuity of employees of the Federation is concerned, the same is to be governed by the Gratuity Act and as far as the entitlement of leave entitlement benefits are concerned, the same are to be governed by Leave Rules applicable to the Government employees as amended from time to time. He submitted that the Rule is amply clear that that there is a clear-cut distinction between the considerations applicable for entitlement of gratuity and entitlement of leave encashment benefit. Learned Counsel further argued that there was no arbitrariness or discrimination in the decision of the Federation, enhancing the amount of gratuity w.e.f. 29.03.2018, nor the petitioners have been discriminated against for the reason that it is not as if this date has been chosen by the Federation out of thin air. He submitted that the date from which benefit has been given by the Federation to its employees is the date when the necessary amendment was incorporated in the Payment of Gratuity Act, 1972. Accordingly, he submitted that as there is no merit in the present petition, the same was liable to be dismissed. With regard to the other issues raised by the petitioners qua release of the arrears of revised pay scale as well as leave encashment, he submitted that these issues cannot be clubbed with the main issue raised by the petitioners and the petitioners may separately agitate the same by way of appropriate petitions.

10. Learned Additional Advocate General endorsed the

arguments of the learned Counsel for the Federation and submitted that the Office Memorandum issued by the State in terms of Annexure P-2 is only for the employees of the Government of Himachal Pradesh. He submitted that petitioners were not employees of the State government. He submitted that they are the employees of the respondent-Federation and their terms and conditions of service are governed by the Service Rules framed by the Federation in this regard. He endorsed the arguments of the learned Counsel for the Federation that the enhancement given to the employees of the respondent-Federation qua the gratuity from 29.03.2018 is strictly in consonance with the Notification of the Central Government dated 29.03.2018, in terms whereof, the maximum limit of retirement gratuity under the above-mentioned Act was enhanced from Rs.10,00,000/- to Rs.20,00,000/- and that too, w.e.f 29.03.2018. He submitted that the State does not exercise deep and pervasive control over the respondent-Federation and therefore also, the petitioners are not entitled to any reliefs, as prayed for.

11. We have heard learned Counsel for the parties and have also carefully gone through the pleadings as well as documents on record.

12. The issue for consideration before this Court is whether the act of the respondent-Federation of granting the benefit of the enhanced gratuity to its employees w.e.f. 29.03.2018 is arbitrary or

not.

13. All the petitioners before this Court are retired employees of the respondent-Federation who superannuated between 01.01.2016 and 29.03.2018. At the time of their superannuation, the maximum limit of retirement gratuity which was payable under the Payment of Gratuity Act was Rs.10,00,000/- and it is not their grievance that the said amount has not been paid to them.

14. Notification (Annexure P-3), issued by the respondent-Federation, demonstrates that the decision which was taken by the respondent- Federation to enhance the maximum limit of retirement gratuity from Rs.10,00,000/- to Rs.20,00,000/- was not an independent decision taken by the Federation. It was adoption of the decision of the Central Government, which was taken in terms of notification dated 29.03.2018, in terms whereof, the maximum gratuity under the Payment of Gratuity Act stood increased from Rs.10,00,000/- to Rs.20,00,000/- w.e.f. 29.03.2018. The rationale behind issuance of this Notification is understandable, and more so in light of Rule 3.10 as it stood amended vide Annexure P-1. In terms of Rule 3.10, every employee of the respondent-Federation is entitled to gratuity as per the provisions of the Gratuity Act. Obviously, as w.e.f. 29.03.2018 the amount of gratuity payable under the Payment of Gratuity Act stood enhanced from Rs.10,00,000/- to Rs.20,00,000/- w.e.f. 29.03.2018, the same necessitated the issuance of Notification Annexure P-3, in terms

whereof, the maximum limit of retirement gratuity stood enhanced by the respondent-Federation also with regard to its employees w.e.f 29.03.2018.

15. Therefore, neither do we find any arbitrariness in the issuance of this Notification and making it effective from 29.03.2018, nor do we find any discrimination against the petitioners, because obviously, as the Payment of Gratuity Act, 1972 stood amended w.e.f. 29.03.2018, any incumbent who stood superannuated before 29.03.2018, is not entitled for the benefit of the said amendment. Incidentally, there is no challenge by the petitioners to the Notification issued by the Central Government dated 29.03.2018.

16. Further, we find merit in the contention of the learned Counsel for respondent No. 1 as also learned Additional Advocate General that Office Memorandum Annexure P-2 is restrictive in nature so as to say that it is applicable only to the employees of the State Government. Why the State Government has given the benefit of the revision of gratuity to its employees from 01.01.2016 is best for the Government to explain. However, simply because the Government has taken this decision, this *ipso facto* does not confer any right upon the petitioners to ask this Court to issue a mandamus to the respondent-Federation to implement the same for its employees. In other words, the petitioners cannot ask this Court to issue a direction to the respondent-Federation also to grant the benefit of revised gratuity to its employees w.e.f. 01.01.2016. When

the amendment in the Payment of Gratuity Act, which is the foundation on the basis of which the gratuity payable to the employees of the respondent-Federation is to be determined, stood amended w.e.f. 29.03.2018, in terms whereof, the amount of gratuity payable stood enhanced from Rs.10,00,000/- to Rs.20,00,000/-, no order can be passed by this Court directing the respondent-Federation to grant the benefit of enhanced gratuity to any employee who stood retired before 29.03.2018.

17. As far as the contention of the learned Counsel for the petitioners that the respondents are misreading Rule 3.10 as it stood amended in terms of Annexure P-1, i.e. amended HIMFED Service Rules dated 09.09.2010 is concerned, the same is also without any merit.

18. Rule 3.10 of the Service Rules of the Federation is being reproduced for ready reference. Both the unamended and amended provision read as under:-

Unamended	Amended
“Gratuity and Leave Encashment	Gratuity and Leave Encashment
3.10. Every employee of the Federation shall be entitled to gratuity as per provision of the Gratuity Act, 1972 as amended from time to time.	3.10. Every employee of the Federation shall be entitled to gratuity and leave encashment benefits on attaining the age of superannuation of Pre mature retirement as per provisions of the gratuity act, and Leave rules applicable to the Govt. employees as amended from time to time.”

19. According to us, this particular Rule has two components: one is gratuity and the other is leave encashment benefits. A comparison of the unamended Rule 3.10 with amended

Rule 3.10 demonstrates that under the unamended rule, the employee of the Federation was entitled to gratuity as per the provisions of the Gratuity Act, 1972, as amended from time to time, however, there was no reference therein of the benefit of leave encashment to the employees of the Federation. What the respondent-Federation did by amending Rule 3.10 was that it did not tinker with the provision as it was earlier also qua the entitlement of the employee of the Federation vis-a-vis gratuity which was to be as per the provisions of Gratuity Act, 1972, as amended from time to time, but it simply incorporated an amendment by introducing the benefit of leave encashment also in the said rule by making it further clear that as far as the benefit of leave rules is concerned, the entitlement thereof to the employees of the Federation shall be in the same manner as per the leave rules applicable to the Government employees as amended from time to time.

20. Therefore, in our consideration, there is no confusion between the entitlement of an employee qua the gratuity and entitlement of an employee qua leave encashment benefit.

21. Accordingly, in light of the above observations, as we do not find any infirmity in the impugned Notification, nor do we find any merit in the present petition, the same is dismissed. As far as the issue raised by the petitioners qua the release of arrears of revised pay scale as well as leave encashment is concerned, we are not adjudicating on these issues and give liberty to the petitioners to

approach the Court afresh by way of independent proceedings in case they are so advised. We have also not expressed any opinion on the issue whether State has deep and pervasive control of the respondent-Federation or not. Pending miscellaneous application(s), if any, also stand disposed of accordingly.

We place on record our appreciation for the assistance which was rendered to the Court by the learned Counsel appearing for the petitioners.

(Ajay Mohan Goel)
Judge

(Yogesh Jaswal)
Judge

September 22, 2026
(Rishi)