

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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WP(C) 5329/2004

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Date of decision: 21st April, 2010

M/S SASTA SAHITYA MANDAL

..... PETITIONER

Through: Mr. Rajesh Kumar Gandhi, Advocate

Versus

DEEPAK SEHGAL & ORS.

..... RESPONDENTS

Through: Mr. Parvendra Kumar Sharma, Advocate
for Respondent no.1 with respondent
no.1 in person.
Mr. B.V. Niren, CGSC for Respondent
Nos.2 & 3.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported
in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. This writ petition has been preferred by the petitioner with respect to the order dated 5th September, 2003 of the Appellate Authority under the Payment of Gratuity Act, 1972, allowing the appeal of the respondent no.1 and directing the Controlling Authority under the said Act to determine the gratuity due from the petitioner to the respondent no.1. Pursuant to the said order, the Controlling Authority under the Gratuity Act determined a sum of Rs.70,080/- as payable by the petitioner to the respondent no.1 towards gratuity and directed the petitioner to pay the said amount with interest at 10% per annum from the date when the gratuity became payable and till the date of payment. The said order has also

been impugned by the petitioner in this petition. Though this Court vide order dated 19th April, 2004, while issuing notice of the petition stayed the operation of the orders impugned in the writ petition but it appears that the petitioner was made to deposit a bankers cheque for a sum of Rs.88,894/- with the authorities under the Gratuity Act in compliance of the orders impugned in this petition. This Court vide order dated 6th May, 2004 directed that the bankers cheque be not encashed.

2. The petitioner is a Society publishing Gandhian and allied literature. The petitioner Society was established under the directions of Mahatma Gandhi, Sh. Jamnalal Bajaj & Sh. G.D. Birla for the development of Hindi literature and to make it available to the public at the cheapest possible prices. The respondent no.1 was employed as an Assistant Accountant with the petitioner. It is the case of the petitioner that the respondent no.1 mis-conducted and indulged in misappropriation and embezzlement of funds of the petitioner. Dr. L.M. Singhvi, the then President of the petitioner appointed an Enquiry Committee comprising *inter alia* of Sardar Joginder Singh, IPS to examine and probe into the alleged misappropriation of funds by the respondent no.1. An FIR was also registered against the respondent no.1. It is the case of the petitioner that the respondent no.1, to avoid enquiry and criminal proceedings chose to resign from the services of the petitioner vide his letter dated 19th June, 2001.

3. The respondent no.1 subsequently claimed his gratuity from the petitioner. The petitioner relies on certain correspondences to show that the respondent no.1 had admitted his mistakes. It is the case of the petitioner that the loss caused by

the respondent no.1 to the petitioner was much more than the amount of gratuity due and hence the petitioner forfeited the gratuity of the respondent no.1. The respondent no.1 then made a claim for gratuity before the Controlling Authority under the said Act. Simultaneously, it transpires that the respondent no.1 also raised an industrial dispute regarding termination of his services and the following dispute was referred to the Labour Court:

“Whether Sh. Deepak Sehgal has voluntarily resigned from his service or his services have been terminated illegally and / or unjustifiably by the management, if so, to what relief is he entitled and what directions are necessary in this respect?”

4. The Controlling Authority under the Gratuity Act vide its order dated 3rd February, 2003 held that the reference aforesaid meant that the respondent no.1 had not accepted his resignation voluntarily and has rather challenged the same demanding reinstatement in service and thus the respondent no.1 had not till then become entitled to claim gratuity. The claim of the respondent no.1 was thus dismissed as pre-mature.

5. The respondent no.1 preferred an appeal against the order of Controlling Authority. The Appellate Authority has vide order impugned in this petition held that the issue pertaining to payment of gratuity was not subject matter of the industrial dispute and thus directed the Controlling Authority to determine the gratuity, as aforesaid.

6. This writ petition came up before this Court last on 19th February, 2010. The counsel for the petitioner informed on that date that the industrial dispute

aforesaid had been decided vide award dated 4th October, 2008 in favour of the petitioner. It was further informed that the respondent no.1 had not challenged the said award. It was the case of the petitioner on that date that the respondent no.1 having embezzled the funds of the petitioner, was not entitled to gratuity. The respondent no.1 on that date sought time. The matter was as such adjourned to today and it was made clear that if the respondent no.1 does not challenge the award dated 4th October, 2008 till today, no further adjournment shall be given on that ground.

7. The counsel for the petitioner has today handed over a copy of the award. The finding returned in the award is as under:

“The reference requires this court to determine that the claimant had tendered his resignation voluntarily or his services were terminated illegally or unjustifiably. As has been held under issue no.1, the reference has been answered that services of workman were not terminated illegally or unjustifiably but the workman had himself tendered his resignation voluntarily and had brought about the end of relationship of workman and management. Hence, this issue is also decided in favour of management and against the workman. Accordingly, an award is passed in these terms.”

On enquiry, the counsel for the respondent no.1, under instructions from the respondent no.1 present in person, states that the respondent no.1 has not challenged the award dated 4th October, 2008 of the Labour Court.

8. The question which arises is whether the respondent no.1 can be held entitled to gratuity. The facts are not in dispute. The respondent no.1 does not controvert initiation of enquiry proceedings or lodging of FIR against him. In

view of the award of the Labour Court, it stands established that the respondent no.1, to avoid the enquiry and the FIR, voluntarily resigned from the employment of petitioner. Whether in such circumstances, he should be held entitled to gratuity? Section 4(6) of the Gratuity Act provides that the gratuity of an employee whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused. The same also provides for forfeiture of gratuity wholly if the services are terminated for disorderly conduct or for conduct which constitutes an offence involving moral turpitude in the course of his employment. The entirety of the facts aforesaid make out a case for forfeiture by the petitioner of the gratuity payable to the respondent no.1. The Labour Court in the award dated 4th October, 2008 has also held that the respondent no.1 in his cross examination admitted that there was a misappropriation of funds and same was proved by an enquiry conducted by a senior executive. In my opinion the said admission of the respondent no.1 before the Labour Court is sufficient ground for forfeiture of his gratuity. The counsel for the respondent no.1 has not opposed the said position and only contended that the respondent no.1 may still challenge the award dated 4th October, 2008 (supra). More than one and a half year have passed since the said award was made. No reason is given which prevented the respondent no.1 from, if so desirous, challenging the award till now. The decision of this petition cannot be deferred any further, merely because the respondent no.1 may in future challenge the award.

9. This petition is accordingly allowed. The orders impugned in the petition is set aside / quashed. It is held that the respondent no.1 is not entitled to any gratuity from the petitioner. The bankers cheque for Rs.88,894/- submitted by the petitioner before the authorities under the Gratuity Act and encashment whereof was stayed by this Court is directed to be returned to the petitioner. The petitioner shall be entitled to the refund of money thereof from its banker. However, if the said bankers cheque stands encashed notwithstanding the order of this Court, the petitioner is entitled to the receipt of the amount thereof and the authorities under the Gratuity Act are directed to refund / remit the said monies to the petitioner together with interest, if any, earned thereon. I refrain from imposing any costs on the respondent no.1.

**RAJIV SAHAI ENDLAW
(JUDGE)**

21st April, 2010
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