

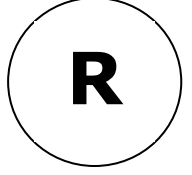
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24th DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

WRIT PETITION NO.19713 OF 2017 (L-KSRTC)



BETWEEN:

KARNATAKA STATE ROAD
TRANSPORT CORPORATION
MANDYA DIVISION, MANDYA,
BY ITS DIVISIONAL CONTROLLER,
REPRESENTED BY ITS CHIEF LAW OFFICER.

...PETITIONER

(BY SMT. H.R. RENUKA, ADVOCATE)

AND:

1. THE DEPUTY LABOUR COMMISSIONER
AND THE APPELLATE AUTHORITY,
UNDER THE PAYMENT OF GRATUITY ACT
REGION 2, KARMEEKA BHAVAN,
BANNERGHATTA ROAD, BANGALORE-560029.
2. THE ASSISTANT LABOUR COMMISSIONER
AND CONTROLLING AUTHORITY,
UNDER THE PAYMENT OF GRATUITY ACT
MYSORE DIVISION, MYSORE-570001.
3. CHANDRASHEKARACHARI S/O. LATE PUTTACHARI,
ADULT, R/O. SRINIVASA TEMPLE ROAD,
8TH CROSS, BHOVI COLONY, MANDYA-571401.

...RESPONDENTS

(BY SRI. V.S. NAIK, ADVOCATE FOR R3;
SRI. B. RAVINDRANATH, AGA FOR R1 AND R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ALLOW THIS WRIT PETITION AND (I) ISSUE A WRIT CERTIORARI OR ANY OTHER APPROPRIATE WRIT, DIRECTION OR ORDER QUASHING THE ORDER MADE IN NO.ALCMY/PGA/CR/152/2013 DATED 06.02.2015 (ANNEXURE-C) PASSED BY THE SECOND RESPONDENT. (II) ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, DIRECTION OR ORDER QUASHING THE ORDER MADE IN NO.DYLCB-2/DLC/CR/27/2015-16 DATED 22.10.2016 (ANNEXURE F) PASSED BY THE FIRST RESPONDENT AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 12TH JUNE, 2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

CAV ORDER

"Under Section 4(6) of the Payment of Gratuity Act, 1972, whether employer can forfeit/adjust the dues of an employee (the interest payable by the employee on the delayed repayment of gratuity, pursuant to the reversal of order of dismissal and consequent reinstatement) from the gratuity payable to the employee", is the precise question that needs consideration in this petition.

2. The employer-Corporation has filed the petition impugning the order dated 06.02.2015 passed by the Controlling Authority and also the order dated 22.10.2016 passed by Appellate Authority under the Payment of Gratuity Act, 1972 (for short 'the Act of 1972').

3. In terms of the impugned order dated 06.02.2015, the Controlling Authority under the Act of 1972 directed the employer-Corporation to pay Rs.1,00,248/- towards arrears of gratuity and directed 10% interest per annum quantified at

Rs.12,881/-. The employer's claim to deduct/adjust/forfeit the part of the gratuity payable towards recovery of the dues from the employee is rejected.

4. The order passed by the Controlling Authority is confirmed by the Appellate Authority in terms of order dated 22.10.2016.

5. Learned counsel appearing for the petitioner-employer would urge that the respondent-employee was dismissed from service for proven misconduct in the year 1997 and Rs.46,910/- payable to the said respondent-employee towards gratuity was paid in the year 1997 itself. Thereafter, the respondent-employee challenged the order of dismissal and the Appellate Authority passed an order in favour of the respondent-employee and penalty of dismissal was set aside and respondent-employee was ordered to be reinstated. Pursuant to the award passed by the Appellate Authority, the respondent-employee was reinstated on 16.11.2000.

6. Learned counsel for the petitioner-employer would urge that in view of the circular dated 01.08.2007 issued by the employer-Corporation, the employee, who is reinstated in view of the order of dismissal being set aside, is required to re-

deposit the gratuity amount paid pursuant to the order of dismissal. The said circular also mandates that the employee is required to pay interest at the rate of 11% per annum on the amount to be deposited.

7. Learned counsel for the petitioner would further urge that the respondent-employee did not deposit the amount and he attained superannuation in the year 2008. The said amount of Rs.46,910/-, remained with the employee since the date of payment after the penalty of dismissal and till his superannuation in 2008. Thus, the employee was required to pay the interest of Rs.43,048/- on the said amount of Rs.46,910/-. Thus, the employer-Corporation was justified in deducting the said amount from the gratuity payable after retirement of the employee.

8. Learned counsel for the petitioner – Corporation urged that the employee could not have raised a dispute demanding the aforementioned amount and the Controlling Authority as well as the Appellate Authority could not have directed the employer-Corporation to pay the amount deducted towards the arrears of interest.

9. Learned counsel for the petitioner would urge that the circular dated 01.08.2007 marked at Annexure-A binds the workman and the impugned orders could not have been passed as they run contrary to the circular dated 01.08.2007.

10. Learned counsel for the petitioner – Corporation in support of the contention would also place reliance on the judgment of the Co-ordinate Bench of this Court in ***Karnataka State Road Transport Corporation vs. The Deputy Labour Commissioner and others***¹.

11. Learned counsel appearing for the respondent-employee would urge that the circular dated 01.08.2007 is contrary to the provisions of the Act of 1972, more particularly to Sections 4 and 14 of the Act of 1972. Thus, it is urged that the circular has no sanctity in the eye of law and cannot be enforced against the respondent-employee.

12. It is the contention of the learned counsel for the respondent that the respondent-employee was a 'C' group employee and in view of the ratio laid down in ***State of Punjab and others vs. Rafiq Masih (White Washer)***² the excess

¹ ***W.P.No.36549/2011 dt. 15.03.2012***

² ***AIR 2015 SC 696***

amount paid to the employee cannot be recovered after retirement, the Authorities were justified in passing the impugned orders.

13. Learned counsel for the respondent-workman would urge that the judgment in ***Karnataka State Road Transport Corporation*** (*supra*) cannot be construed as a precedent as the implication of the provisions of Sections 4 and 14 of the Act of 1972 are not noticed in the said judgment.

14. In the alternative, it is urged that the calculation made by the employer-Corporation is erroneous and even if it is assumed that the respondent-employee is liable to pay 11% interest per annum, the liability would only be Rs.16,626/-.

15. The Court has considered the contentions raised at the Bar and perused the records.

16. It is not in dispute that the respondent-employee was working under the petitioner and was dismissed from service in the year 1997. After dismissal from service, Rs.46,910/-, the gratuity payable to the workman (then), was paid and the order of dismissal was later set aside by the Appellate Authority. Pursuant to that order passed by the

Appellate Authority, the respondent-employee was reinstated on 16.11.2000.

17. The petitioner requested the employee to re-deposit the gratuity amount of Rs.46,910/-. The respondent-employee did not deposit the said amount.

18. The Court has perused the judgment in **Rafiq Masih** (*supra*). The question decided by the Apex Court in **Rafiq Masih** was about excess payment of monetary benefits to the employee. The present case is not about excess payment of gratuity amount by the employer.

19. In the instant case, the payment of gratuity was in accordance with law when the employee was terminated. Later, the employee was reinstated as the order of termination was set aside. Thus, the employer demanded repayment of the gratuity relying on the circular at Annexure-A. That was not repaid. Thus, the employer demanded the said amount with interest. Hence, the judgment in **Rafiq Masih** (*supra*) does not come to the aid of the respondent-employee.

20. Learned counsel for the respondent-employee would refer to Section 14 of Act of 1972 to contend that claim

made by the employer to deduct the gratuity based on the circular issued by the employer-Corporation, is impermissible.

21. Section 14 of Act of 1972 would read as under:

"14. Act to override other enactments, etc.- The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."

22. Section 14 of the Act of 1972 provides that the provisions of the Act of 1972 will override any Act or any instrument or contract if such Act, instrument or contract are inconsistent with the provisions of the Act of 1972.

23. Since the employer-Corporation is claiming right to recover the interest on delayed repayment of gratuity; based on the circular, the Court has to consider whether the circular issued by the employer-Corporation is in conformity with the Act of 1972. Circular is marked at Annexure-A. English translation of the said circular produced by the employer-Corporation reads as under:

"With reference to the above subject, the gratuity paid to the employee at the time of their dismissal

from service, is to be recovered upon their reinstatement into service. As per the order of competent authority, the rate of interest at 14% prevailing at present is modified to 11%.

In this background, hence forth while recovering the gratuity from the dismissed employees upon their reinstatement, it is required to recover the said amount by levying interest at 11% on the said gratuity amount.

There is no other change in respect of the subject mentioned in the aforestated circular.

The circular comes into force with immediate effect."

24. Except the said circular, the employer has not pointed out any provision of law similar to the circular or any provision of law providing for such circular. The source of power for the employer-Corporation to demand interest @ 11% per annum on delayed repayment of gratuity appears to be only the circular dated 01.08.2007.

25. The provisions of the Act of 1972 expressly or impliedly, do not prohibit such levy of interest claimed in terms of the circular on the delayed repayment of gratuity. Thus, the circular dated 01.08.2007 does not appear to be inconsistent with the provisions of the Act of 1972.

26. This being the position, the circular of KSRTC mandating the reinstated employee to reimburse the gratuity and levying interest in case of delay in repayment on reinstatement, is not in conflict with the provisions of the Act of 1972 to attract the wrath of Section 14 of the Act of 1972.

27. However, the matter does not end there. The present dispute is because of the action of the employer to deduct the unpaid *interest from the gratuity payable to the employee.*

28. The question therefore is, "whether the interest payable in terms of the circular, if not paid by the employee, can be recovered from the gratuity payable to the employee?"

29. To answer the question, the Court has to refer to Section 4(6) of the Act of 1972. Same reads as under:

"4. Payment of gratuity.-

(1) 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,-

XXXX

(6) Notwithstanding anything contained in sub-section (1),

(a) the gratuity of an employee, whose services have been terminated for any act, wilful 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;

(b) the gratuity payable to an employee may be wholly or partially forfeited

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

30. On a reading of Section 4(6) of the Act of 1972, it is evident that the gratuity can be forfeited in *certain specified circumstances* enumerated therein.

31. Section 4(6) of the Act of 1972, will apply in a situation where the employee is *terminated* on account of misconduct resulting in loss or damage to the employer. Or when the employee is *terminated* for the misconduct involving moral turpitude provided such act is committed in the course of employment.

32. In addition, the gratuity can be forfeited if the employee is *terminated* for rioting and disorderly behaviour or any act involving violence.

33. In the instant case, the termination order is set aside. And to apply Section 4(6) of the Act of 1972, there has to be a termination of an employee and loss to the employer, or termination for rioting and violence, or termination for the offence involving moral turpitude. No such situation has arisen here.

34. At this juncture reference should be made to the judgement of the Apex Court in ***Jaswant Singh Gill vs. Bharat Coking Coal Limited and others***³. Paragraphs No. 13 and 14 of the said judgment read as under:

"13. *The Act provides for a close-knit scheme providing for payment of gratuity. It is a complete code containing detailed provisions covering the essential provisions of a scheme for a gratuity. It not only creates a right to payment of gratuity but also lays down the principles for quantification thereof as also the conditions on which he may be denied therefrom. As noticed hereinbefore, sub-section (6) of Section 4 of the Act contains a non obstante clause vis-à-vis sub-section (1) thereof. As by reason*

³ (2007) 1 SCC 663

thereof, an accrued or vested right is sought to be taken away, the conditions laid down thereunder must be fulfilled. The provisions contained therein must, therefore, be scrupulously observed. Clause (a) of sub-section (6) of Section 4 of the Act speaks of termination of service of an employee for any act, wilful omission or negligence causing any damage. However, the amount liable to be forfeited would be only to the extent of damage or loss caused. The disciplinary authority has not quantified the loss or damage. It was not found that the damages or loss caused to Respondent 1 was more than the amount of gratuity payable to the appellant. Clause (b) of sub-section (6) of Section 4 of the Act also provides for forfeiture of the whole amount of gratuity or part in the event his services had been terminated for his riotous or disorderly conduct or any other act of violence on his part or if he has been convicted for an offence involving moral turpitude. Conditions laid down therein are also not satisfied.

14. *Termination of services for any of the causes enumerated in sub-section (6) of Section 4 of the Act, therefore, is imperative."*

(Emphasis Supplied)

35. It is also relevant to notice the judgment of the Apex Court in **Mahanadi Coalfields Ltd. v. Rabindranath Choubey**.⁴ In **Mahanadi Coalfields Ltd**, the Apex Court has overruled the law in **Jaswant Singh Gill** (supra), and took a

⁴ (2020) 18 SCC 71

view that in case employee is facing disciplinary action, the gratuity can be withheld till the completion of the domestic enquiry, if the applicable rules provide for such a course of action. Said view is taken in the light of the governing service rule applicable to the party to the proceeding. However, no such similar rule is applicable to the employee in the petition. Thus, the ratio in **Jaswant Singh Gill** (*supra*), is still valid in those cases where the rules applicable to the parties are not similar to the Rules in the said case.

36. The law laid down by the Apex Court in **Union Bank of India and others v. C.G. Ajay Babu and another**⁵ also supports the contention of the respondent employee. The Apex Court in paragraph No.21 of the said judgment has held as under:

"21.To sum up, forfeiture of gratuity is not automatic on dismissal from service; it is subject to sub-sections (5) and (6) of Section 4 of Payment of Gratuity Act,1972."

37. Even otherwise, independent of said judgment in **Jaswant Singh Gill** (*supra*), the employer-Corporation if is to withhold/adjust the gratuity payable to the respondent-

⁵ (2018) 9 SCC 529

employee, has to make out a situation contemplated in Section 4(6) of the Act, 1972.

38. That being the position, the Court cannot accept the petitioner's contention that the gratuity can be forfeited/adjusted towards dues from the employee. Such contention falls foul of Sections 4(6) and 14 of the Act of 1972.

39. In that view of the matter, the circular dated 01.08.2007 issued by the employer-Corporation enabling the Corporation to charge interest @ 11% per annum though legal and does not contravene any of the provisions of the Act of 1972, same cannot be enforced to deduct the gratuity payable to the employee to recover the dues from the employee.

40. Though the learned counsel for the employer-Corporation would place reliance on the judgment of the Co-ordinate Bench of this Court in **Karnataka State Road Transport Corporation** (*supra*), to urge that the employer-Corporation is entitled to deduct the amount due to it from the gratuity payable to the employee, the Court is of the view that in the said judgment the effect of Sections 4(6) and 14 of the Act of 1972 is not considered. Hence, the said judgment cannot be construed as a precedent to answer the question raised.

41. It is also noticed that in the aforementioned judgement, the Co-ordinate Bench of this Court has taken a view that the circular issued by the KSRTC is not under challenge. In the instant case also, the circular is not under challenge. However, it is relevant to notice that the employee need not challenge the circular as order passed by the Controlling Authority as well as the Appellate Authority is in his favour.

42. The employer-Corporation is assailing the impugned order taking shelter under said circular dated 01.08.2007. Thus, KSRTC to succeed in the petition has to establish that the circular is valid. Thus, it is open to the respondent-employee without challenging the circular to urge a contention that the circular is invalid or unenforceable to deduct or recover the dues from the employee, from the gratuity payable to the employee.

43. Even otherwise, the circular would only enable the employer-Corporation to charge interest on the delayed repayment in the event of reinstatement of the employee who had received gratuity on termination of his employment.

44. Moreover, as already noticed above the circular though not challenged, does not provide for deduction of the dues from the gratuity. Assuming that it does provide for adjustment or forfeiture of gratuity towards recovery of dues from the employee, it cannot override the statutory protection found in Section 4(6) r/w Section 14 of the Act of 1972.

45. For the aforementioned reasons, the Court is of the view that though the circular dated 01.08.2007 is valid and the employer-Corporation is justified in levying the interest on the delayed repayment of the gratuity, the arrears of interest on such delayed repayment cannot be deducted from the gratuity payable to the employee, as the payment of gratuity is protected in terms of Section 4(6) read with Section 14 of the Act of 1972.

46. The employer-Corporation though is entitled to charge interest, the arrears of interest if any, has to be recovered from any other monetary benefits payable to the employee other than the statutorily protected monetary benefit like the gratuity.

47. In the instant case, the recovery is sought to be made from the gratuity. Same is impermissible. The Controlling

Authority as well as the Appellate Authority have taken note of the earlier gratuity paid to the employee and the same is deducted from the gratuity payable after attaining superannuation. Thus no ground is made out to interfere with the impugned orders. However, this order does not come in the way of the petitioner-corporation to recover the amount from any other assets of the respondent-employee other than statutorily protected assets, if so advised in law.

48. It is also made clear that the Court has not considered the contentions relating to the quantum of interest as the Court has held that the deduction from gratuity is impermissible. If any action is initiated by the employer to recover the dues in such proceeding there shall be adjudication on the quantum of interest.

49. Hence, the following:

ORDER

- (i) The Writ Petition is ***dismissed***.
- (ii) In case any amount payable to the employee is with the petitioner and same is not statutorily protected from recovery, the

petitioner is at liberty to adjust the said amount towards the amount due.

- (iii) If no such amount is with the petitioner, then the petitioner is also at liberty to initiate such action as advised in law to recover the amount if any due from the employee.

**Sd/-
(ANANT RAMANATH HEGDE)
JUDGE**

GVP