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

Decided on : 03.08.2015

+ **LPA 270/2014, C.M. NO.5706/2014**
M/S. CEMENT CORPORATION OF INDIA LTD.

.....Appellant
Through: Sh. Rakesh Tikku, Sr. Advocate along
with Sh. Sandeep Kumar and Sh. Jainendra
Maldahiyar, Advocates.

Versus

SHRI V.K. ARORA AND ORS.Respondents
Through : Ms. Jyoti Singh, Sr. Advocate with Ms.
Tinu Bajwa, Sh. Aman Nandrajog and Sh. Arjun
Nanda, Advocates, for Respondent No.1.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE V.K. SHALI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The appellant (hereafter "CCI") impugns the order of a learned Single Judge dated 13.02.2014 affirming the concurrent findings and decisions of the Controlling Authority for Payment of Gratuity (dated 25.03.2011) and the appellate authority (dated 24.05.2013) upholding the entitlement of the respondent (hereafter "the officer") to gratuity amount of ₹10,00,000/- with interest of 10% from 30.09.07 i.e. date of his superannuation.
2. The facts of the appeal are that the officer, along with several other members (Mr. Yashpal, Mr. Prasad, and Mr. Darbari to name a few), were part of a Committee in charge of gathering estimates and finalising tenders with respect to usage of Heavy Earth Moving Vehicles of the CCI. On

08.02.1996, the committee finalised an estimate which is alleged to have been exorbitant and was only accepted for the tender in connivance with and to the pecuniary benefit of one Mr. Laxminarayana. According to the CCI the alleged act was discovered on 27.11.2004 based on information received. The source of such information or the reason for its delay have not been disclosed. Nevertheless, complaint was made to the Central Bureau of Investigation (CBI) for offences under Sections 120B IPC read with Sections. 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988.

3. After the CBI submitted its report, the CCI, on 18.09.2007, framed charges and served them upon only the officer, on ground that the other individuals were already superannuated and the Respondent was still in service, albeit just nearing his date of superannuation on 30.09.2007. On the basis of such charges, a disciplinary proceeding was initiated against the officer. This was the sole basis for withholding gratuity (which he was entitled to upon superannuation) pending final determination of his guilt. Aggrieved, the officer complained on 10.12.2007 to the Controlling Authority, Payment of Gratuity against the CCI for withholding the gratuity amount.

4. The inquiry officer later held – after the superannuation of the officer and after the latter had filed a complaint/application before the Controlling authority, that all charges against were proved in the report dated 07.12.2009. Later, he issued show cause notice asking reasons why major penalty should not be levelled against the officer; the officer filed reply on 19.01.2011. Shortly after, the Controller passed order dated 25.03.2011 directing Appellant/CCI to pay to the officer, the amount of ₹10,00,000/- (Rupees Ten Lakh Only) with 10% interest payable from 30.09.2007.

5. In the interim, a dismissal order was passed against the officer-on 16.11.2011, after (as noted earlier) he superannuated, denying him consequential benefits of retirement such as gratuity. Aggrieved, the Appellant/CCI filed a writ Petition against the order dated 25.03.2011. It later withdrew the Petition on account of availability of an appellate remedy before Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972, which it availed of. The Appellate Authority upheld the order of the Controlling Authority by order dated 24.05.2013. It was also noticed that the CCI/Appellant had not deposited the gratuity amount to the court. The CCI then filed W.P. (C) 5474/2013 seeking to quash order dated 24.05.2013. This Petition was decided by the learned Single Judge on 13.02.2014 where he confirmed the previous orders. Thus, the present Letters Patent Appeal before the Division Bench.

6. Learned Senior Counsel, Mr. Tikku, appearing on behalf the CCI, reiterated the stand taken in earlier forums that withholding of gratuity payments is justified under Rule 30A, CCI Conduct, Discipline and Appeal Rules amended in 2000 which allows for an extension of the employment of a superannuated employee as a legal fiction in case of disciplinary proceedings against him/her. If at the end of such disciplinary proceedings the employee/erstwhile employee is found guilty of offences under Section 4(6) of the Payment of Gratuity Act, then such amounts can be withheld/denied to the extent of damage caused to the Corporation. The relevant rules and sections are reproduced below.

“Rule 30-A

i. Disciplinary proceedings if instituted while the employee was in service whether before his retirement or during his re-

employment, shall, after the final retirement of the employee, be deemed to be proceeding and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service.

ii. During the pendency of the disciplinary proceeding, the disciplinary authority may withhold payment for gratuity, for ordering the recovery from gratuity of the whole or part of any pecuniary loss caused to the Company if the employee is found in a disciplinary proceeding or judicial proceeding to have been guilty of offence/misconduct as mentioned in sub-section (6) of Section 4 of the Payment of Gratuity Act, 1972 or to have caused pecuniary loss to the Company by misconduct or negligence, during his service including service rendered on deputation or on re-employment after retirement.”

Section 4 of the Payment of Gratuity Act, 1972 reads as follows:

“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,—

(a) on his superannuation, or

(b) on his retirement or resignation, or

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

.....

(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.”

7. Learned counsel for CCI relied on **Ramesh Chandra Sharma v. Punjab National Bank**[(2007) 9 SCC 15] as well as the decision reported as **U.P. State Sugar Corporation Ltd. & Anr. v. Kamal Swaroop Tandon**[(2008) 2 SCC 41] to contend that superannuation still allows for continuation of disciplinary hearings. It was submitted that the facts of the present case, like in that judgment, show that rules existed, governing the employer-employee relationship, which enabled an employer to withhold gratuity if disciplinary proceedings are pending. This was disputed by counsel for the officer, Ms. Jyoti Singh, learned senior counsel, appearing on advance notice. It was submitted in that regard that the mandate of the Payment of Gratuity Act is overriding and that mere contractual terms would not enable an employer to overcome its obligation to pay gratuity, if the employee ceases to be in its service. She relied on **Jaswant Singh Gill v. M/s Bharat Coking** [(2007) 1 SCC 663]. Besides, argued the respondent, the rules enabling withholding of gratuity had no statutory force; indeed even the dismissal order was contrary to law, as the conditions of service enabling an employee to dismiss had to be contained in a statutory rule, like Rule 9 of the Central Civil Service Pension Rules, 1972- which were framed under the proviso to Article 309 of the Constitution of India.

8. At the outset, this Court notices that there is a glaring difference between the instant case and **Ramesh Chandra** (supra) namely, where the regulations made by Punjab National Bank were statutory in nature whereas in the present case the rules do not have a statutory import:

“17. We have noticed hereinbefore that the Bank have made Regulations which are statutory in nature. Regulation 20(3)(iii) of the said Regulations reads thus:

"20(3)(iii). The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and /or allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contribution to CPF."

The said Regulation clearly envisages continuation of a disciplinary proceeding despite the officer ceasing to be in service on the date of superannuation. For the said purpose a legal fiction has been created providing that the delinquent officer would be deemed to be in service until the proceedings are concluded and final order is passed thereon. The said Regulation being statutory in nature should be given full effect."

9. Counsel had relied upon **U.P. State Sugar Corporation Ltd.** (supra) which is not relevant to this case as it deals with imposition of minor penalties considering the case involved a sum of ₹1,00,000/- to be recovered. Furthermore, makes no mention of withholding gratuity but merely stating that recovery procedures could be initiated against the

employee. Finally, the Supreme Court, in its wisdom, remitted the case back to the High Court while passing no order.

10. The officer, we note, relied on ***Jaswant Singh Gill*** (supra) where the Supreme Court dealt with a similar issue of rules promulgated to create a legal fiction of continuation of employment in order to continue disciplinary proceedings against a superannuated employee. The Supreme Court held that Rules, which do not have the force of Statute, cannot impair statutory rights. The following extracts make it amply clear.

“7. The short question which arises for consideration in this appeal is as to whether the provisions of the said Act shall prevail over the rules framed by Coal India Limited, holding company of Respondent No. 1, known as Coal India Executives' Conduct Discipline and Appeal Rules, 1978 (for short "the Rules"). Indisputably, the appellant was governed by the Rules. Rule 27 provides for the nature of penalties including 'recovering from pay or gratuity of the whole of or part of any pecuniary loss caused to the company by negligence or breach of orders or trust'. Major penalties prescribed in Rule 27, however, include reduction to a lower grade, compulsory retirement, removal from service; and dismissal. Rule 34 provides for special procedure in certain cases stating:

"34.2 Disciplinary proceeding, if instituted while the employee was in service whether before his retirement or during his re-employment shall, after the final retirement of the employee, be deemed to be proceeding and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service.

34.3 During the pendency of the disciplinary proceedings, the Disciplinary Authority may withhold payment of gratuity, for ordering the recovery from gratuity of the whole or part of any pecuniary loss caused to the company if have been guilty of offences/ misconduct as mentioned in Sub-section (6) of Section 4

of the Payment of Gratuity Act, 1972 or to have caused pecuniary loss to the company by misconduct or negligence, during his service including service rendered on deputation or on re-employment after retirement. However, the provisions of Section 7(3) and 7(3A) of the Payment of Gratuity Act, 1972 should be kept in view in the event of delayed payment, in the case the employee is fully exonerated."

11. The quoted paragraph shows the scheme of the rules is identical to the rules in the instant case. In that respect the Supreme Court's findings are extracted below.

"9. The Rules framed by the Coal India Limited are not statutory rules. They have been made by the holding company of Respondent No. 1.

10. The provisions of the Act, therefore, must prevail over the Rules. Rule 27 of the Rules provides for recovery from gratuity only to the extent of loss caused to the company by negligence or breach of orders or trust. Penalties, however, must be imposed so long an employee remains in service. Even if a disciplinary proceeding was initiated prior to the attaining of the age of superannuation, in the event, the employee retires from service, the question of imposing a major penalty by removal or dismissal from service would not arise. Rule 34.2 no doubt provides for continuation of a disciplinary proceeding despite retirement of employee if the same was initiated before his retirement but the same would not mean that although he was permitted to retire and his services had not been extended for the said purpose, a major penalty in terms of Rule 27 can be imposed.

11. Power to withhold penalty contained in Rule 34.3 of the Rules must be subject to the provisions of the Act. Gratuity becomes payable as soon as the employee retires. The only condition therefor is rendition of five years continuous service.

12. A statutory right accrued, thus, cannot be impaired by reason of a rule which does not have the force of a statute. It will bear repetition to state that the Rules framed by Respondent No. 1 or its holding company are not statutory in nature. The Rules in any event do not provide for withholding of retrieval benefits or gratuity.”

12. The above discussion leaves no room for deviation on the question of whether statutory rights may be abrogated by rules. The purpose of such retirement benefits is to ensure the livelihood of superannuated Government servants and we see no reason why civil servants should be strung out in their old age and held ransom to departmental enquiry. The Supreme Court also relied upon **Balbir Kaur v. Steel Authority of India** [(2000) 6 SCC 493] in its interpretation of Section 4 of the Payment of Gratuity Act, 1972 as something more than mere charity but a statutory right.

"...We shall come back to the deposit of the provident fund but as regards the gratuity amount, be it noted that there is a mandate of the statute that gratuity is to be paid to the employee on his retirement or to his dependants in the event of his early death the introduction of the Family Pension Scheme by which the employee is compelled to deposit the gratuity amount, as a matter of fact runs counter to this beneficial piece of legislation (Act of 1972). The statutory mandate is unequivocal and unambiguous in nature and runs to the effect that the gratuity is payable to the heirs of the nominees of the employees concerned but by the introduction of the Family Pension Scheme, this mandate stands violated and as such the same cannot but be termed to be illegal in nature. We do find some substance in the contention as raised, a mandatory statutory obligation cannot be trifled with by adaptation of a method which runs counter to the statute. It does not take long to appreciate the purpose for which this particular Family Pension Scheme has been introduced by deposit of the provident fund and the gratuity amount and we are not expressing any opinion in regard thereto but the fact remains

that statutory obligation cannot be left high and dry on the whims of the employer irrespective of the factum of the employer being an authority within the meaning of Article 12 or not." "

13. It is also a curious decision on the part of the CCI to only initiate Inquiry Proceedings against the officer when they have admitted that other employees sat on the very same Committee; they were not proceeded with because they superannuated: here again, the officer retired before imposition of the dismissal order. However, we shall not be dealing with the merits of the disciplinary proceedings in this present appeal. This Court, therefore, finds no reason to interfere with the Learned Single Judge's order. The appeal is consequently dismissed as meritless.

S. RAVINDRA BHAT
(JUDGE)

V.K. SHALI
(JUDGE)

AUGUST 03, 2015