

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

Reserved on: 26th May, 2015

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Date of Decision: 03rd August, 2015

+ W.P.(C) 7350/2009

FOOD CORPORATION OF INDIA

..... Petitioner

Through: Ms. Anupama Sharma and Mr.
Kushal Singh, Advocates.

versus

U.O.I & ORS.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. By way of present petition, the petitioner has assailed order dated 07.05.2008 passed in Appeal No. ND 36(1)2007-P.A. by the Appellate Authority under Payment of Gratuity Act, 1972 (hereinafter referred to as the 'Act') and Regional Labour Commissioner (Central) (hereinafter referred to as the 'Appellate Authority'), whereby it was held that as per Section 13 of the Act, the gratuity amount cannot be attached in execution of any decree or order of any civil, revenue or criminal court and the petitioners were directed to pay a sum of Rs.1,90,000/- (Rupees One lakh ninety thousand) as balance amount of gratuity.

2. Briefly stating facts as emerging from the present petition are that respondent No.3 was employed with the petitioner and he was compulsorily retired on 10/12.01.2005. The respondent No.3 moved an

application before the Controlling Authority for payment of gratuity alongwith interest under the Act. In the said application it was contended by the said respondent that he was an employee as defined under Section 4 of the Act and had compulsorily retired from service on 10/12.01.2005 after rendering thirty one years and seven months of continuous services with the petitioner. The gratuity amount due to him was not paid till date as an amount of Rs.2,00,000/- (Rupees two lakhs) had been levelled as penalty against him by the order dated 10/12.01.2005 passed by the Zonal Manager of the petitioner establishment. It was also stated therein that the recovery of the said amount from gratuity was in violation of Section 13 and 14 of the Act. The compulsory retirement would not operate as a bar for the payment of gratuity. The petitioner filed its reply to the said application stating therein that due to the illegal acts, willful omission and negligence committed by respondent No.3, the petitioner suffered immense financial losses which could not be compensated except by attaching the gratuity money payable to respondent No.3. The petitioner also stated in its reply that in view of Section 4(6)(a) of the Act, gratuity can be forfeited for the penalties as imposed.

3. Vide order dated 30.11.2006, Controlling Authority under the Act and Assistant Labour Commissioner, New Delhi dismissed the claim of respondent No.3 and held that the gratuity can be forfeited as per Section 4(6)(a) of the Act. It was also held by the Controlling Authority that no sufficient cause to release the gratuity amount was established by respondent No.3, consequently his claims were dismissed.

4. Against the order of the Controlling Authority, respondent No. 3 preferred an appeal under Section 7(7) of the Act being Appeal No.ND36(1)2007-P.A. which was allowed by the Appellate Authority vide impugned order dated 07.05.2008 with the observation that the gratuity amount cannot be attached in execution of any decree or order of any civil, revenue or criminal court. The Appellate Authority while passing the aforementioned order directed the petitioner to pay a sum of Rs.1,90,000/- (Rupees one lakh ninety thousand) as balance amount of gratuity.

5. Learned counsel for the petitioner contended that respondent No.3 was an employee of the petitioner and committed several irregularities for which a charge-sheet was issued and several penalties were imposed. In view of the huge recoveries, a sum of Rs.1,90,000/- (Rupees one lakh ninety thousand) was recovered out of the gratuity amount. The remaining amount of Rs.194/- (Rupees one hundred and ninety four) was already paid to respondent No.3. By virtue of Section 4(6)(a) of the Act, the gratuity amount payable to any employee whose services have been terminated or who has been found guilty of willful omission or negligence causing any damage of the property belonging to the employer, is liable to forfeiture.

6. No one has been appearing on behalf of respondent No.3 for the last several occasions i.e. 17.03.2015, 15.04.2015, 07.05.2015 and 26.05.2015. On 26.05.2015, respondents were given liberty to file written submissions however, no written submissions were filed on behalf of respondents.

7. I have given my thoughtful consideration to the submissions made by learned counsel for the petitioner and also perused the record.

8. Before examining the merits of the present case, it is pertinent to consider the relevant provisions of Section 4 and 13 of the Act which reads as under:-

“Section 4 - Payment of gratuity

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

(a) 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;

(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.

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Section 13. Protection of gratuity No gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under section shall be liable to

attachment in execution of any decree or order of any civil, revenue or criminal court.”

9. A gratuity is essentially a retiring benefit payable to a workman which under the Act has been made payable on voluntary resignation as well. Gratuity is a reward for good, efficient and faithful service rendered for a considerable period. The main purpose and concept of gratuity is to help the workman after the retirement, whether the retirement is a result of the rules of superannuation or physical disability or impairment of the vital part of the body. Gratuity is the amount which is not connected with any consideration and has to be considered as something given freely for the service the employee has rendered to the organization.

10. The Act was enacted as a beneficial piece of legislation for the payment of gratuity amount to the employees covered under the said Act. The Act gives a statutory right to an employee for payment of gratuity on his superannuation, retirement or resignation, or on his death or disablement due to accident or disease. Section 4(6)(a) of the 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. Sub-section 6(b), provides that 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.

11. The scheme of the Act and the provisions of Section 4(6)(a) and (b) show that for depriving an employee of his statutory right to receive gratuity, an order must be passed forfeiting the gratuity, and conscious decision to be taken with regard to reasons specified in Sub-section (a) and to damage or loss so caused. Sub-section (b) after its amendment by Act No. 26 of 1984 (w.e.f February 11, 1981) is to the effect that gratuity may be wholly or in part forfeited, gives discretion to the employer and thus postulates application of mind and recording of reasons.

12. The Hon'ble Supreme Court discussed the scope of the Act and especially of Section 4(6)(a) of the Act in '**Jaswant Singh Gill v. Bharat Cooking Coal Ltd. & Ors.**', (2007) 1 SCC 663 in the following terms:-

“The Act provides for a closely neat 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 Sub-section (1) thereof. As by reason thereof, an accrued or vested right is sought to be taken away, the conditions laid down there under 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, willful 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 No. 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. Termination of services for any of the causes enumerated in Sub-section (6) of Section 4 of the Act, therefore, is imperative.”

In the instant case, respondent No.3 joined the services of petitioner on 20.12.1971 and he was compulsorily retired vide order dated 10/12.01.2005. About 20 enquiries were conducted against respondent No.3 during his tenure and several penalties were imposed on different occasions as per vigilance profile which is Annexure-5 to the petition. The disciplinary authority after taking into consideration the relevant record and the facts of the case imposed penalty of dismissal from service upon respondent No.3 along with a token recovery of Rs.2,00,000/- (Rupees Two lakhs) as the proportionate share of loss cannot be recovered fully even by forfeiture of his gratuity. It was further ordered that his entire amount of gratuity be forfeited as compensation to the petitioner for losses caused by him due to his negligent and deliberate acts as per the provisions of Section 4(6) (a) of the Act. The token penalty amount of Rs.2,00,000/- was to be recovered from his other terminal benefits from which recovery could

be effected as per law, vide order No.V&S7(403)/96 dated 02.08.2002. The respondent No.3 preferred an appeal and the Appellate Authority observed that the order of the disciplinary authority was harsh as such remitted back the matter to Senior Regional Manager, FCI, RO, Haryana for imposing an appropriate fresh penalty and to pass speaking order vide order dated 04.06.2004. Thereafter, vide order dated 31.08.2004 the disciplinary authority imposed the same penalty with the remarks that there was no ground to revise old penalty orders which were issued vide order dated 02.08.2002. Again respondent No.3 preferred an appeal to the appellate authority. Vide order dated 10/12.01.2005, Zonal Manager, who is the Appellate Authority set aside the penalty imposed by the disciplinary authority and imposed penalty of compulsorily retirement and token recovery of Rs.2,00,000/- (Rupees Two lakhs) which can be recovered from gratuity payable to respondent No.3.

13. The vigilance profile of respondent No.3 (Annexure-5) shows that penalty was imposed upon respondent No.3 by the disciplinary authority on several occasions. On perusal of the said disciplinary proceedings, following allegations *inter alia* have come on record:

- (a) R.D. Singla (Respondent No.3) was directed to visit destination for joint inspection of stocks but he did not comply with the instructions and did not visit destination/submit joint inspection report.
- (b) Acted in an irresponsible manner and disobeyed lawful orders of the Corporation.

- (c) Intentionally avoided going to the destination with a view to shirk from responsibility of having (illegible) rice not according to specifications.
- (d) Dispatched sub-standard rice from Safidon (Haryana) to Penambur during the year 1995.

14. Therefore, on the basis of the aforementioned charges *inter alia*, the petitioner herein ‘forfeited’ the gratuity payable to respondent No.3 as it had to recover huge amount of penalty from respondent No.3 in terms of Section 4(6) of the Act.

15. The core question which comes up for consideration in the present case is whether the amount of gratuity can be forfeited or not?

16. A perusal of provisions of clause (b) (ii) of sub-section (6) of Section 4 of the Act makes it clear that the amount of gratuity payable to an employee may be forfeited if the services of such an employee have been terminated for any act which constitutes an offence of moral turpitude, provided such offence is committed by him in the course of his employment.

17. The term “moral turpitude” has been defined in Words and Phrases, Permanent Edition, Volume 27 at page 554 as:

““Moral turpitude” is anything done contrary to justice, honesty, modesty or good morals. In re Williams, 167 page 1149, 1152, 64 Okl. 316.”

18. The term ‘moral turpitude’ is somewhat vague by its very nature because it involves examination of an action in the light of the existing

moral norms. Unlike legal norms, moral norms are somewhat unformulated. They can change from time to time, from society to society and even from individual to individual. Hence it is quite possible that an action which may be violative of moral norms in one society may appear acceptable to another. Hence one can only judge the action in any given case in the light of what one considers to be the prevailing moral norms of the society in which such action has taken place. Hence, the action should not merely be contrary to moral norms but it should involve turpitude that is to say a violation of the moral code in such a manner that it indicates business or depravity of character. The term 'moral turpitude' has been discussed in a number of cases.

19. The High Court of Madras in '**A. Padmanabhan v. Joint Commissioner of Labour, (Appellate Authority under the Payment of Gratuity Act), and The Management of Parry and Company Ltd.**', (2010)III LLJ 792 *Mad* settled the interpretation of the term 'moral turpitude' beyond any cavil by stating *inter alia* that:

"7.1. The term 'Moral turpitude' is a phrase which can hardly be accurately defined. It can have various shades of meaning in various sets of circumstances and will have different meanings in different contexts. No absolute standard can be laid down for deciding whether a particular act is to be considered as one involving 'moral turpitude'. The said term is rather vague one, where it is virtually important not to be vague.

7.2. If an act or a behaviour is inherently bad, it could be known as 'malum in se' in contrast to the behaviour that is bad because it is forbidden in law, viz., 'malum

prohibitum'. 'Moral turpitude', in the normal sense, is understood only with reference to an act or behaviour of a person, which, in turn, would amount to an offence. In criminal law, it is a phrase used to describe the conduct that is considered contrary to the community standards of justice, honesty and good morals.

7.3. The Law Lexicon refers to the term 'moral turpitude' to be an act of baseness, vileness or depravity in private and social duties owing to fellow men of society in general, contrary to the accepted and customary rule of right and duty between man and man. The Random House Dictionary of the English Language explains the word Moral - of pertaining to or concerned with right conduct or its principles and being in accordance with such principles. Conforming to these principles rather than to law, custom, etc. turpitude is stated to mean - baseness or depravity.....”

20. Hence, the term ‘moral turpitude’ can be understood to mean that it is a conduct which is not only contrary to the accepted behaviour, but also a behaviour which is grossly misdirected. Therefore, anything done contrary to justice, honesty, modesty or good morals involves moral turpitude. This proved misconduct by an employee must be considered on facts to facts basis to find out as to whether such misconduct would be moral turpitude.

21. In these circumstances, I fail to understand how the appellate authority has allowed the claim of the respondent on the basis that amount of gratuity cannot be attached in execution of any decree or order of any civil, revenue or criminal court. In my view, the findings arrived at by the Appellate Authority have been arrived at on the basis

of incorrect observations. There is no decree or order by any civil, revenue or criminal court in execution of which the amount of gratuity has been attached. Rather the gratuity amount has been forfeited in terms of Section 4 (6) (a) of the Act on account of losses caused by respondent No.3 due to his negligent and deliberate acts.

22. Therefore, as respondent No.3 was found to be guilty of gross misconduct by acting in an irresponsible manner and disobeying lawful orders. Hence, his gratuity was rightly forfeited by the petitioner. This court, therefore, finds no illegality or infirmity in such forfeiture.

23. For the aforesaid reasons, the writ petition is allowed and the impugned order dated 07.05.2008 passed by the Appellate Authority under the Payment of Gratuity Act, 1972 and Regional Labour Commissioner (Central), New Delhi in appeal No.ND36(1)2007-P.A. is hereby set aside. No order as to costs.

(VED PRAKASH VAISH)
JUDGE

AUGUST 03, 2015
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