

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 2209 of 2016
Reserved on: July 26, 2017

Date of Decision: August 01, 2017

Om Parkash

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Ajay Bhardwaj, Advocate,
for the petitioner.

Mr. J.S. Bedi, Addl. A.G., Haryana

P.B. Bajanthri, J.

1. In the instant writ petition, petitioner has assailed orders dated 28.04.2015 and 15.09.2015 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as “Act 1972”) and the Appellate Authority vide Annexures P/3 and P/5 respectively and further sought for direction to the respondents to pay gratuity which is due to the petitioner along with interest.

2. Petitioner joined respondent – Haryana Roadways as a Conductor on 09.03.1979. In the year 1992, he was involved in a criminal case for the offences under Sections 279 and 304-A of the Indian Penal Code (for short “IPC”) and an FIR has been registered on 08.10.1992. In the criminal proceedings, petitioner was convicted on 18.04.1996 by the

Chief Judicial Magistrate, Gurgaon. Third respondent while taking into consideration the fact that petitioner has been convicted in a criminal case, terminated petitioner's services w.e.f. 18.04.1996 vide order dated 19.08.1996. In this backdrop, petitioner submitted an application for extending gratuity under Act, 1972. Petitioner's application for extending gratuity was rejected on 28.04.2015 on the ground that petitioner is a dismissed employee, therefore, he is not entitled to gratuity. Aggrieved by the order of the Controlling Authority, petitioner preferred an appeal before the Appellate Authority. The Appellate Authority while affirming the order of the Controlling Authority, dismissed petitioner's appeal on 15.09.2015. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that gratuity can be withheld by employer if an employee is terminated or dismissed with reference to moral turpitude. Learned counsel for the petitioner relies on Haryana Government letter No. 6857/5-GSI-72/2756 dated 02.02.1973 in which list of offences which constitute moral turpitude under IPC Sections are indicated. Section 304-A of IPC is not one of the Section of the IPC included in the list of offences which constitute moral turpitude. Therefore, termination from service on account of petitioner being convicted for offence under Section 304-A of IPC read with order of termination would not fall under the list of offences which constitute moral turpitude. Thus, orders of the Controlling Authority as well as Appellate Authority in denying gratuity to the petitioner is without application of mind. In support of the petitioner's claim relating to

extending the benefit of gratuity, learned counsel for the petitioner relied on the following decisions:-

1. **(1996) 4 SCC 17 – Pawan Kumar vs. State of Haryana;**
2. **2013(3) S.C.T., 272 - UCO Bank and others vs. Anju Mathur;**
3. **2013 (2) S.C.T. 95 – State of Haryana and another vs. Ram Chander;**
4. **1993 (2) LJR 555 – Mann Singh vs. Dharamjit Singh and others.**

Supreme Court in the case of ***Pawan Kumar*** supra in para no.12 discussed at length what is the meaning of moral turpitude. While doing so, it was also considered the policy decision of the State of Haryana issued on 17/26.03.1975 that Section 294 of IPC remains out of the list, to contend that Section 294 of IPC do not fall under moral turpitude. Even in the present case, Section 304-A of IPC under which petitioner has been convicted would not amount to moral turpitude. Therefore, orders of the Controlling and Appellate Authority are liable to be set aside.

4. Per contra, learned State counsel resisted the claim of the petitioner stating that Discipline and Appeal Rules in respect of denial of gratuity to an employee who has been terminated or dismissal from service is not entitled for gratuity. Therefore, petitioner is not entitled for gratuity with reference to Para 7 of Rule 6.16 A of Punjab Civil Services Rules (Haryana) [for short “PCSR (Haryana)"]. Thus, petitioner's claim for extending the benefit of gratuity is governed by Para 7 of Rule 6.16 A of PCSR (Haryana). Consequently, the Controlling and Appellate Authority rightly held that petitioner is not entitled for gratuity.

5. Heard learned counsel for the parties.

6. Crux of the matter is whether petitioner is entitled for gratuity even though his services were terminated or not?

7. Undisputedly, petitioner was involved in a criminal case for the offence under Sections 279 and 304-A of IPC. He was convicted for offence under Section 304-A of IPC. State Government issued a policy decision dated 02.02.1973 which are offences constitute moral turpitude under IPC read with policy decision dated 17/26.03.1975 State Government clarified which are the Sections under IPC constitute moral turpitude. Perusal of the policy decision of the State of Haryana, it is evident that Section 304-A of IPC is not one of the Section included in the list of offences which constitute moral turpitude. Further, Section 14 of Act 1972 would prevail over the Rules cited by the respondents in particularly para 7 of Rule 6.16-A of PCSR (Haryana). Further, Supreme Court in **Pawan Kumar's case** supra has held as under:-

"12. "Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity. The Government of Haryana while considering the question of rehabilitation of ex-convicts took a policy decision on 2.2.1973 (Annexure E in the Paper-book), accepting the recommendations of the Government of India, that ex-convicts who were convicted for offences involving moral turpitude should not however be taken in government service. A list of offences which were considered involving moral turpitude was prepared for

information and guidance in that connection. Significantly Section 294 IPC is not found enlisted in the list of offences constituting moral turpitude. Later, on further consideration, the Government of Haryana on 17/26-3-1975 explained the policy decision of 2-2-1973 and decided to modify the earlier decision by streamlining determination of moral turpitude as follows:

".. ... The following terms should ordinarily be applied in judging whether a certain offence involves moral turpitude or not:

(1) whether the act leading to a conviction was such as could shock the moral conscience of society in general.

(2) whether the motive which led to the act was a base one.

(3) whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society.

Decision in each case will, however, depend on the circumstances of the case and the competent authority has to exercise its discretion while taking a decision in accordance with the above mentioned principles. A list of offences which involve moral turpitude is enclosed for your information and guidance. This list, however, cannot be said to be exhaustive and there might be offence which are not included in it but which in certain situations and circumstances may

involve moral turpitude."

Section 294 IPC still remains out of the list. Thus the conviction of the appellant under Section 294 IPC on its own would not involve moral turpitude depriving him of the opportunity to serve the State unless the facts and circumstances, which led to the conviction, met the requirements of the policy decision above-quoted."

In view of Supreme Court's decision and the fact that petitioner's termination is with reference to his conviction for the offence under Section 304 A of IPC which do not fall under the moral turpitude definition with reference to State policy. Therefore, petitioner's termination is not based on moral turpitude and it is only on conviction.

8. Petitioner is also entitled to interest on gratuity. Supreme Court in the case of ***Y.K. Singla vs. Punjab National Bank and others***, (2013) 3 SCC 472, in para no.25, held as under:-

"25. We, therefore, have no hesitation in concluding that even though the provisions of the 1995 Regulations are silent on the issue of payment of interest, the least that the appellant would be entitled to are terms equal to the benefits envisaged under the Gratuity Act. Under the Gratuity Act, the appellant would be entitled to interest on account of delayed payment of gratuity (as has already been concluded above). We therefore hold that the appellant herein is entitled to interest on account of delayed payment, in consonance with sub-section (3-A) of Section 7 of the Gratuity Act."

Thus, orders of Controlling and Appellate Authority dated 28.04.2015 and 15.09.2015 vide Annexures P/3 and P/5 respectively are hereby set aside. The respondents are liable to extend the benefit of gratuity to the petitioner. Under Section 7 (3-A) of Act, 1972, if there is delay in settlement amount, in that event an employee is entitled for interest on belated settlement. Therefore, petitioner is also entitled to interest @ 6% per annum on the gratuity amount which is due to him. The same shall be calculated and disbursed to the petitioner within a period of three months from the date of receipt of certified copy of this order.

9. Accordingly, instant writ petition stands allowed.

August 01, 2017
vkd

[P.B. Bajanthri]
Judge

Whether speaking / reasoned : Yes

Whether reportable : Yes