

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9886 of 2003

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1. Food Corporation of India, through its Senior Regional Manager, Bihar Region, Arunachal Building, Exhibition Road, Patna
 2. Zonal Manager, Food Corporation of India, null 10A Middleton Row, Kolkata 700 071

.... Petitioner/s

Versus

1. The Union of India, through the Secretary, Department of Labour and Welfare, New Delhi
2. The Regional Labour Commissioner (Central), Patna Morurya Lok Complex, P.S. Kotwali, Distt- Patna
3. The Assistant Labour Commissioner (Central), Patna Mourya Lok Complex, P.S. Kotwali, Distt- Patna
- 4(1). Smt. Shakuntala Sinha Wife of Late Shri Braj Nandan Prasad
- 4 (2). Uday Kumar Sinha Son of Late Shri Braj Nandan Prasad
- 4(3). Sanjay Kumar Sinha Son of Late Shri Braj Nandan Prasad
- 4(4). Rekha Sinha, daughter of Late Shri Braj Nandan Prasad
- 4(5). Prashant Kumar Sinha Son of Late Shri Braj Nandan Prasad
- 4(6). Miss. Neha, daughter of Late Shri Braj Nandan Prasad All resident of 229 Sidheshwar Nagar, Mainpura, Babhantoli, Patna- 1
- 4(7).Smt. Kiran Sinha daughter of Late Shri Braj Nandan Prasad Resident of Railway Colony, Nirala Nagar, Kanpur

.... Respondent/s

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Appearance :

(In CWJC No.9886 of 2003)

For the Petitioner/s : Mr. Prabhakar Tekriwal, Advocate

For the Respondent/s : Mr. Rajesh Kumar Sinha-1, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-05-2018



Heard Mr. Prabhakar Tekriwal, learned counsel for the petitioners and Mr. Rajesh Kumar Sinha, learned counsel for the respondent nos. 4(1) to 4(7).

2. In the instant writ petition filed under Article 226 of the Constitution of India, the petitioners have challenged the order dated 19th August, 2003 passed by the Regional Labour Commissioner (Central)-cum-Appellate Authority in Appeal No.36/1/2003 by which the petitioners' appeal preferred under Section 7(7) of the Payment of Gratuity Act against the order dated 10.06.2002 passed by the Assistant Labour Commissioner (Central), Patna-cum-Controlling Authority, whereby the petitioners have been directed to pay the amount of gratuity to the tune of Rs.1,45,596/- along with 10% simple interest i.e. Rs.98,707/-, which was revised vide corrigendum dated 09.07.2002 issued by the Controlling Authority whereby gratuity has been revised from Rs. 1,45,596/- to Rs.1,67,995/- and interest thereon has been revised from Rs.98,707/- to Rs.1,16,196/-, has been dismissed.

3. One Braj Nandan Prasad, who died during the pendency of the writ petition and has been substituted by his legal heirs as respondent nos. 4(1) to 4(7) vide order dated 11.11.2014 passed by this Court, was the workman in whose favour the impugned orders were passed by the Controlling Authority and the



Appellate Authority. For the sake of convenience, late Braj Nandan Prasad shall be referred as 'workman' hereunder. The workman was dismissed by the disciplinary authority on 30th March, 1991 after a full-fledged inquiry on the ground of misappropriation and not discharging his duties satisfactorily. After series of the litigation, ultimately, the Central Government Industrial Tribunal (for short 'Tribunal') vide its order dated 16th April, 1996 set aside the order of dismissal and directed reinstatement of the workman in the rank below which he was working at the time of dismissal without any continuity of his service treating him as newly appointed in that service and it was directed that his promotion, etc. would commence starting from the date of his reinstatement considering it to be a new appointment for his future service.

4. Learned counsel for the petitioners submitted that in view of the nature of the order passed by the Tribunal, the Controlling Authority could not have allowed payment of gratuity in favour of the workman. According to him, after considering the facts and circumstances of the case and after perusing the award passed by the Tribunal, the petitioners had rightly forfeited his gratuity in terms of Section 4(6)(a) of the Payment of Gratuity Act, 1972 (for short 'Gratuity Act') as the guilt of misconduct and loss caused to the Food Corporation of India (for short 'FCI') by the workman had



been upheld by the Tribunal. He contended the Appellate Authority also failed to appreciate the facts and law involved in the matter and wrongly dismissed the appeal preferred against the order passed by the Controlling Authority. He submitted that in case the Controlling Authority and the Appellate Authority have shown misplaced sympathy to the workman in the name of beneficial legislation while passing the impugned orders.

5. *Per contra*, learned counsel appearing for the respondent nos.4(1) to 4(7) submitted that since the dismissal order of the workman was set aside by the Tribunal, the petitioners could not have forfeited the gratuity fully or partially, as no such authority was vested in them. He submitted that sub-section (6) of Section 4 of the Gratuity Act stipulates that the pre-condition for forfeiting the gratuity is the termination of the services of the employee for the serious misconduct or termination on the ground of riotous or disorderly conduct or any other violation on his part or any act, which constitutes an offence including moral turpitude committed in course of employment. According to him, as it is not the case of the petitioners that the workman had been terminated from services on completion of disciplinary proceeding, the petitioners had no authority to forfeit the gratuity payable to the workman.

6. I have heard learned counsel for the parties and



perused the record.

7. Before appreciating the rival submissions made on behalf of the parties, it would be pertinent to note the admitted facts of the case.

8. The workman was appointed as weightment clerk on 14.07.1959 and his services were transferred to FCI after creation of Food Corporation Act, 1960 in the year 1964. He was promoted as Junior Godown Keeper in the year 1973 and was posted as Incharge, FCI storage depot at Suriya, Hazaribagh. An incident of theft and pilferage took place in the said depot and on 19.11.1988 whereafter the workman was suspended on 16.01.1989. He was subjected to a disciplinary proceeding for the shortage in depots stock and for absconding in course of physical verification. In the disciplinary proceeding, two charges were framed against him. The first charge was of failure to maintain absolute integrity and the second charge was of unauthorized absence from duty from 07.01.1989. In the disciplinary inquiry, the charges relating to shortage of wheat and unauthorized absence were found established. The Enquiry Officer submitted his report on 27.11.1990 on the basis of which, the workman was dismissed from services by order dated 13.03.1991.

9. Being aggrieved, the workman preferred an appeal



before the Zonal Manager, Food Corporation, Calcutta but the appeal was rejected affirming the order of his dismissal. Thereafter, the workman raised an industrial dispute which was ultimately referred to the Tribunal under Section 10(1)(d) of the Industrial Disputes Act, 1947 by the Central Government on 2nd June, 1992 on the following terms:-

“Whether the action of the management of Food Corporation of India, Patna in dismissing Shri B.N. Prasad from service is legal and justified? If not, to what relief the concerned workman is entitled?”

10. Upon consideration of material on record and after hearing the parties, the Tribunal passed its award on 18.02.1994 on the following terms:-

“Thus the order of dismissal dated 30.03.1991 is hereby set aside and the concerned workman is ordered to be re-instated within two months from the date of publication of the Award. There is no question of back wages for he has already been receiving full wages even during the period of suspension. But he will get continuity of service.”

11. The petitioners challenged the award dated 18.02.1994 by way of filing a writ petition vide C.W.J.C. No.7773 of 1994 in which vide order dated 15.09.1995, this Court set aside



the operative portion of the award, leaving the findings recorded therein undisturbed and remitted the matter back to the Tribunal for passing award after hearing the parties and deliberating on the question as to whether or not in view of the finding of proved charges and regard also being had to the nature of misconduct, the workman was entitled to the relief of reinstatement or was entitled to any lesser relief or no relief at all.

12. In view of the order passed by this Court in C.W.J.C. No.7773 of 1994, the Tribunal once again considered the question of relief to be granted to the workman.

13. Thereafter, vide order dated 16th April, 1996, the Tribunal set aside the order of dismissal and directed for reinstatement of the workman in the rank below which he was working at the time of dismissal without any continuity of his service treating him as newly appointed in that service and it was directed that his promotion etc. would commence from the date of his reinstatement considering it to be a new appointment for his future service.

14. The petitioner no. 1 challenged the aforestated award passed by the Tribunal on 16th April, 1996 before this Court vide C.W.J.C No. 1924 of 1997. The workman also challenged the said award vide C.W.J.C No. 8374 of 1997. However, after hearing



the parties, this Court vide a common order dated 22.07.1998 dismissed both the writ petitions.

15. Thereafter, the petitioners have forfeited the gratuity of the workman in terms of Section 4(6)(a) of the Gratuity Act on the ground of proven guilt of misconduct of the workman and loss suffered by the corporation.

16. The contention of the petitioners is that since loss suffered to the corporation because of the misconduct of the workman was to the tune of Rs. 1,45,596/- and even if the amount of gratuity, which has been awarded by the Controlling Authority is taken into consideration, the same would be much lower than the loss suffered to the corporation. Hence, the forfeiture of gratuity of the workman is justified.

17. The contentions advanced by the petitioners in order to justify the forfeiture of gratuity and to challenge the orders impugned whereby the Controlling Authority and Appellate Authority in exercise of their powers conferred under the Gratuity Act have directed the petitioners to pay the workman gratuity with interest cannot be accepted as gratuity is a gratuitous payment extended to an employee on retirement or discharge in addition to the retiral benefits payable to him. It serves as an instrument of social security to the employees in the event of retirement,



resignation, death and in the event of termination.

18. It is not disputed by the petitioners that the services of the workman for the purposes of payment of gratuity was regulated by the provisions of the Gratuity Act.

19. According to Section 4(1) of the Gratuity Act, gratuity is payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease.

20. For the sake of convenience, section 4(1) of the Gratuity Act is extracted hereunder:-

“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:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the



employee, gratuity payable to him shall be paid to his nominee or, if no nomination, has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation.- For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.”

21. Section 4(6) of the Gratuity Act permits an employee to forfeit gratuity payable to an employee in the certain circumstances. It provides as under:-

“4(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.”

22. In terms of clause (a) of sub-section (6) of Section 4 of the Gratuity Act, the forfeiture of gratuity of an employee can be made in case of termination of an employee for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, to the extent of the damage or loss, so caused; or in terms of clause (b), the gratuity payable to an employee can be forfeited if the services of such employee is terminated for his riotous or disorderly conduct or any other act of violence on his part , or 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.

23. By now, it is well settled position in law that withholding/forfeiture of gratuity can be made strictly in accordance with the prescribed limits of Section 4(6) of the Gratuity Act.



24. Further, section 13 of the Gratuity Act provides that no gratuity payable under the Act shall be liable to attachment in execution of any decree or order of any Civil, Revenue or Criminal Court.

25. Section 14 of the Act provides that the provisions of the Act or any Rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Act or in any instrument or contract having effect by virtue of any enactment other than the Act.

26. Thus, keeping in mind the provisions of the Act discussed hereinabove, it can safely be inferred that gratuity of an employee cannot be forfeited or withheld on any ground other than what is mentioned in Section 4(6) of the Act. Further, withheldment or forfeiture of gratuity of an employee can be made only if the services of an employee have been terminated.

27. In **Jaswant Singh Gill vs. Bharat Coking Coal Ltd. and Ors. [(2007) 1 SCC 663]**, the Supreme Court of India laid down the test for forfeiture of gratuity. It observed that for forfeiting any amount from the gratuity two things are important, namely, (i) termination of services for any of the causes enumerated in sub-section (6) of Section 4 of the Act; and (ii) pecuniary loss.

28. The Supreme Court in the matter of **D.S.**



Nakara and Ors. vs. Union of India and Ors. [(1983) 1 SCC 305]

held that gratuity is social welfare measure rendering socio-economic justice by providing economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. Such payment cannot be withheld unless specifically permitted by any statutory provision.

29. In the present case, admittedly, the order of termination of services of the workman has been set aside by the Tribunal. The challenge made to the order of the Tribunal by the petitioner no.1 before this Court also failed and the writ petition preferred by it stood dismissed.

30. In that view of the matter, the petitioners could not have forfeited or withheld the gratuity of the workman on any ground. Apparently, such forfeiture/withholdment of gratuity was bad in law. Hence, the Controlling Authority rightly directed the petitioners to pay gratuity to the workman along with interest. The Appellate Authority also, rightly dismissed the appeal preferred by the petitioners against the order passed by the Controlling Authority.

31. Consequently, the writ petition being devoid of any merit, is dismissed with cost of Rs.50,000/- (rupees fifty thousand). The cost be paid to the heirs of the workman within a



period of two months from today.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.05.2018
Transmission Date	NA

