IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18110 of 2015

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The General Manager (Region), Food Corporation of India, Regional Office, Arunachal Building, Exhibition Road, Patna- 800 001

.... Petitioner/s

Versus

1. The Union of India, through the Secretary, Ministry of Labour and Employment, New Delhi
2. The Regional Labour Commissioner (Central), Patna- cum-Appellate Authority under the Payment of Gratuity Act, 1972, Maurya Lok Complex, 2nd Floor, Patna- 800 001
3. The Assistant Labour Commissioner (Central), Patna- cum- Controlling Authority under the Payment of Gratuity Act, 1972, Maurya Lok Complex, 2nd Floor, Patna- 800 001
4. Shri Arun Kumar Goerge, ex- Manager (Depot), Son of Late George Michael, resident of Ganga Vihar Colony (Fair Field Colony), P.O. & P.S.- Digha Ghat, District- Patna, Pin- 800 011

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhakar Tekriwal, Adv.
For the Respondent/s : Mr. Awadhesh Kumar Pandey, ASCGC
Mr. Ravinder Kumar Sharma, Adv.
For the Respondent No.4 : Mr. Dwivedy Surendra, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 24-01-2018

This writ petition has been filed by the petitioner Food Corporation of India (for short 'Corporation') challenging the order of the Controlling Authority and the Appellate Authority under the Payment of Gratuity Act, 1972 (for short 'Act, 1972') whereby the action of the petitioner to withhold the gratuity of the respondent no.4 has been held to be inconsistent to the provisions of Section 4(6) of the Act, 1972 and, hence, illegal since Section 4(6) of the Act, 1972 has overriding effect to the provisions of Regulations 58 and 60A of the Food Corporation of India Regulation, 1971 (for short 'Regulation, 1971') in accordance withy the provisions of Section 14 of the Act, 1972 and, thus, the petitioner has been directed to pay the amount of gratuity with interest to the respondent no.4.

2. The respondent no.4 is a retired Manager (Depot) in the Corporation. At the time of his retirement on 31.01.2013, he was posted in the Corporation Depot at Digha Ghat, Patna. He fled an application before the Controlling Authority stating therein that on some false charges of misappropriation, which was not proved till the date of his superannuation, due to non-completion of departmental enquiry, his gratuity was withheld by the Corporation and prayed for a direction to the Corporation to make payment of due amount of gratuity along with interest for delay in paying the same.

3. In reply, the Corporation pleaded that the respondent no.4 had been charge-sheeted under Regulation 58 read with Regulation 60-A of the Regulation, 1971 and as per Headquarter Circular No. 93 of 2011 issued under Reference No. Vig.2(i)/2010 dated 13.05.2011 those ex-officials who have been charge-sheeted under Regulation 58, gratuity amount should be withheld. It pleaded that in the light of the above circular, gratuity of the respondent no.4 would not be released till finalization of the departmental proceeding.

4. After hearing the parties, the Controlling Authority vide order dated 03.10.2013 concluded as under :-

> "The applicant was retired from service and therefore entitled for gratuity in accordance with the provisions of Sec. 4(1) of the Act.
>
> The action of Non applicant to withheld the gratuity

of the applicant was inconsistent to the provisions of the section 4(6) of the payment of gratuity Act and hence wrong since the Sec. 4(6) is having overriding effect to the provisions of Regulation 60-A & 58 of FCI in accordance with the provisions of sec.14 of the Act.

Since the gratuity has not been paid to the applicant within the stipulated time hence it is mandatory for the non applicant to pay interest on the amount of gratuity of the applicant as per provisions of sec. 7(3A) and therefore; order the non-applicant to pay the amount Rs.10,32,437/- (Rs. Ten lakhs thirty two thousand four hundred thirty seven) only within the period of one month as per the calculations given below :-

Amount of Gratuity – Rs. 9,75, 531/-

Date of payment of gratuity – 31.01.2013

Delay in payment of Gratuity – 07 months

10% interest on the amount of Rs.9,75,531/- in 7 months = Rs.56,906/-

Amount to be paid is Rs.10,32,437/-."

5. Being aggrieved by the aforesaid order passed by the Controlling Authority, the petitioner filed an appeal under sub-section (7) of Section 7 of the Act, 1972 before the Appellate Authority. The Appellate Authority vide order dated 3rd July, 2015 dismissed the appeal and upheld the order passed by the Controlling Authority.

6. Being aggrieved by the aforestated orders passed by the Controlling Authority and the Appellate Authority, the instant writ petition has been filed by the petitioner.

7. Mr. Prabhakar Tekriwal, learned counsel for the petitioner submitted that the charge-sheet dated 23.01.2013 was filed by the management of the Corporation against the respondent no.4

under the major penalty clause of Regulation 59 read with Regulation 60-A of the Regulation, 1971. The Corporation brought to the notice of the Controlling Authority about pendency of the major disciplinary proceeding against the respondent no.4, but without appreciating the facts and the law involved in the matter, the Controlling Authority allowed the prayer of the respondent no.4.

8. He submitted that there is statutory provision for withholding of gratuity during pendency of the disciplinary proceeding under Regulation 60-A of the Regulation, 1971. He further submitted that the Corporation Headquarter has issued Circular No. 93 of 2011 dated 13.05.2011, which provides that if disciplinary proceeding is pending under major penalty clause under Regulation 58, the gratuity is to be withheld for taking action in terms of Section 4(6) of the Act, 1972, if the situation so warrants. However, the Appellate Authority also failed to appreciate the facts and law involved in the case properly and dismissed the appeal preferred by the petitioner under Section 7(7) of the Act, 1972 and upheld the order passed by the Controlling Authority erroneously.

9. On the other hand, Mr. Dwivedy Surendra, learned counsel for the respondent no.4 submitted that there is concurrent finding of fact by the Controlling Authority and the Appellate Authority against the petitioner, which does not warrant any interference by this Court, as the facts and law involved in the case

have correctly been appreciated by the statutory Authorities. He submitted that in view of the provisions prescribed under Section 4(i) of the Act, 1972, the respondent nos. 2 and 3 have rightly decided the petition filed by the respondent no.4 for payment of gratuity in his favour.

10. He further submitted that the charge-sheet was issued to the respondent no.4, which was received by him on 30.01.2013, i.e. one day before his retirement. He submitted that on account of sincerity, devotion and honesty the respondent no.4 was promoted from the post of Assistant Grade-I (Depot) to Manager (Depot) and he joined the post of Manager (Depot) on 19th November, 2012. Not only this, he was given 'very good' ACR remark for the period 2011, 2012 and January, 2013 at one hand and on the other hand on account of vague and unfounded allegations, charge-sheet was issued and delivered to him.

11. He also submitted that the word termination used under Section 4(b) of the Act, 1972 relates to penalty, i.e. termination from service due to imposition of penalty. If the service of an employee is termination on account of penalty only in that case his gratuity can be forfeited. Since the respondent no.4 was not terminated from service under Section 4(6) of the Act, 1972, his gratuity should not have been forfeited.

12. He also submitted that in compliance of the order dated

03.10.2013 passed by the Controlling Authority after dismissal of the appeal by the Appellate Authority, the respondent no.4 has received the amount of gratuity on 21.07.2015 and there is no legal ground on the basis of which the benefit of gratuity granted to the respondent no.4 can be held to be bad.

13. I have heard learned counsel for the parties and perused the record.

14. Section 4(1) of the Act, 1972 provides that 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.

15. Thus, an employee becomes entitled to receive gratuity in three eventualities, i.e. on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease.

16. Section 4(6) of the Act, 1972, which prescribes under which grsatuity of an employee may be withheld wholly or partially reads as under :-

"Notwithstanding anything contained in sub-section (i) -

(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."

17. It would be of salience to note here that by now, it is well settled in law that the right to receive the gratuity by the employee is the statutory right and cannot be withheld under any circumstance but for the exception enumerated in Section 4(6) of the Act, 1972.

18. Further Section 13 of the Act, 1972 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. Thus, Section 13 of the Act, 1972 gives protection of the gratuity that is receivable by the employee.

19. Again, Section 14 of the Act, 1972 provides that 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.

20. Section 14 of the Act, 1972 gives an overriding effect to the provisions contained in the Act irrespective of anything inconsistent in any enactment or instrument or contract having effect by virtue of any enactment other than Act, 1972. Therefore, unless the provisions prescribed under Regulations 58 and 60-A of the Regulation, 1971 comes within the exceptions provided under Section 4(6) of the Act, 1972, the same cannot be consistent for the purpose of withholding gratuity as service regulations or rules inconsistent with Section 4(6) of the Act, 1972 cannot have overriding effect over the Act, 1972.

21. In ***D.S. Nakara & Others vs Union Of India [(1983) 1 SCC 305]***, the Supreme Court held that the gratuity is a social welfare measure rendering socioeconomic justice by providing economic security in the fall of life when physical and mental prowess is ebbing corresponding to ageing process and, when one falls back on savings, such payment would not be withheld unless specifically prohibited by any statutory provision.

22. In ***Jaswant Singh Gill vs M/S. Bharat Coking Coal Ltd. & Ors [(2007) 1 SCC 663]***, the Supreme Court held that the rules framed under the Coal India Executives' Conduct Discipline and Appeal Rules, 1978, which provides for forfeiture of gratuity, were

not statutory rules and the provisions of the Act, 1972 must, therefore, prevail over the rules.

23. In ***D.V. Kapoor vs Union Of India & Ors [(1990) 4 SCC 314]***, the Supreme Court held that right to gratuity is also a statutory right. In the said case, the appellant was not charged with nor was given an opportunity that his gratuity would be withheld as a measure of punishment. There is no provision of law under which the President is empowered to withhold gratuity as well, after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is illegal and devoid of jurisdiction.

24. Thus, in the light of discussions made above and in view of the ratio laid down by the Supreme Court, it is apparent that the gratuity may be forfeited either partially or in full from an employee during his service, whose service is terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of property belonging to the employer or if the service of such employee is terminated for his riotous or disorderly conduct or any other act of violence on his part or if the service of such employee is terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed in the tenure of employment. In the present case, it is not the case of the petitioner that the service of the respondent no.4 was terminated for any of the

abovesaid reasons, so as to withhold his gratuity wholly or partially within the provisions of Section 4(6) of the Act, 1972.

25. Under the circumstances noted above, I find that the Controlling Authority and the Appellate Authority have correctly decided the principle of law and have applied the same to the facts of the present case. There is no infirmity in the orders impugned.

26. Accordingly the writ petition is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	01-02-2018
Transmission Date	