

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8223 of 2014

Sri Devendra Prasad Singh Son of Prabhu Narayan Singh, resident of
Mohalla - Old Bahadurpur Near Bajar Samiti, Post Office - Rajendra
Nagar, Patna 16, Police Station - Bahadurpur, District - Patna.

... .. Petitioner

Versus

1. The Food Corporation of India through its Chairman.
2. The Chairman & Managing Director, Food Corporation of India.
3. The Managing Director, Food Corporation of India.
4. The Executive Director (East Zone), Food Corporation of India,
Kolkata.
5. The Chief General Manager (F & A/Pers), Food Corporation of India,
Zonal Office (E), Kolkata - 71.
6. The General Manager (Bihar), Food Corporation of India, Arunachal
Bhawan, Exhibition Road, Patna.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Sanjeev Kumar, Advocate Mrs. Minu Kumar, Advocate
For the Respondents	:	Mr. Prabhakar Tekriwal, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 29-06-2018

The writ petition under Article 226 of the
Constitution of India has been filed for quashing the order
dated 24.07.2012 (Annexure-5) passed by the disciplinary
authority imposing penalty of dismissal from service and



forfeiture of terminal benefits including gratuity as well as order dated 15.05.2013 (Annexure-7) passed by the Appellate Authority dismissing the appeal filed by the petitioner and order dated 31.01.2014 (Annexure-10) passed by the Reviewing Authority dismissing the review petition of the petitioner.

2. In brief, the facts of the case is that the petitioner was posted as Manager (storage), Food Corporation of India (in short FCI), Bahadurpur, Patna was served with memorandum dated 12.07.2011 along with memo of charge, by which the Executive Director (East) had initiated departmental proceeding against the petitioner along with two other officers framing three article of charges. The charges related to irregularity committed by the committee comprising three officers of F.C.I. namely, Devendra Prasad Singh, Manager (Stg.), (petitioner), Mishrj Hembrom, Manager (Depot) and Kumar Madan Mohan, AG-I (Depot). They were directed to proceed PPC, Dumraon for supervising delivery of procured paddy stocks to the Millers and its transportation to the base depot through in-charge PPC, Dumraon and to



submit a consolidated report after liquidation of entire paddy stocks vide order dated 08.06.2009.

3. The three article of charges as framed are produced below.

“ARTICLE-I: the aforesaid Committee members did not submit any progress/interim/final report or intimate the factual position even after lapse of more than two months compelling the Area Manager, FCI, DO, Patna to issue another order vide No. PAT/V&S/1/2009 dated 19.08.2009 directing the aforesaid Committee members to conduct the same job as assigned by the order dated 08.06.2009

Thus, the Committee members in clear disobedience to the orders of higher authority were found negligent in their duties and failed to assess the gravity of the matter and to act in the desired manner which is detrimental to the interest of the corporation.

ARTICLE-II: The above Committee members submitted two reports dated 28.08.2009 and dated 28.10.2009 in a very casual manner without supervising the delivery of paddy and its transportation as per direction rather they acted hand in glove with the I/C, PPC, Dumraon in suppressing the factual position and the very purpose of their deployment was defeated.

ARTICLE-III: As per record, for



the above assigned job of supervision of delivery/shifting of paddy, Shri Devendra Prasad Singh, Manager (Stg.) and Kumar Madan Mohan, AG-I(D) stayed at PPC, Dumraon for 39 (thirty-nine) days and 41 (forty-one) days respectively which is abnormal and beyond any justification. Except in the Committee Reports there was no signature of the committee members in any other document enclosed with the reports to justify their presence in the center from 13.06.2009 to 28.08.2009 whereas Sri Devendra Prasad Singh, Manager (Stg.) and Sri Kumar Madan Mohan, AG-I(D) have claimed T.A. bills for their stay in the centre for 39 days and 41 days respectively. Sri Mishrj Hembram, Manager (Depot) another committee member has not claimed any TA bill for his stay which raises doubt over his presence in the PPC, Dumraon. They have submitted false reports in connivance with the I/C, PPC, Dumraon who could misappropriate huge good grain stocks at a later stage.”

4. The disciplinary authority appointed Inquiry Officer to conduct the inquiry and presenting officer to represent department. Petitioner had defended his case.

5. After conclusion of departmental proceeding, the Inquiry Officer submitted his inquiry report



dated 11.07.2012 as contained in Annexure-3 of writ petition to the disciplinary authority. The Inquiry Officer held all the three charges framed against the petitioner to be proved.

6. The disciplinary authority issued a second show cause notice to the petitioner along with copy of inquiry report to submit his reply to the inquiry report. Petitioner submitted his reply on 21.07.2012.

7. The disciplinary authority after considering the inquiry report and reply of the petitioner by order dated 24.07.2012 imposed penalty of dismissal from service and forfeiture of terminal benefits including gratuity.

8. Petitioner thereafter filed an appeal before the Appellate Authority which was also dismissed by order dated 15.05.2013. Petitioner thereafter preferred the review petition and review was also dismissed by order dated 31.01.2014.

9. The order passed by the departmental authority has been assailed by the writ petitioner primarily



on the ground that the relevant document requisitioned by the petitioner to demolish the charge nos. 2 and 3 relating to connivance with in-charge PPC, Dumraon was not supplied to the petitioner as such his defence was prejudiced and he could not defend the charges levelled against him in effective manner which were held to be proved against him. It has been submitted on behalf of the petitioner that the document as demanded by him was not provided to him, although requisition was made by enquiry officer for the same. The charge nos. 2 and 3 could not have been held to prove as the documents were sufficient to demolish charge nos. 2 and 3 framed against the petitioner.

10. It has been argued on behalf of petitioner, that once an employee has superannuated during pendency of departmental proceeding and he was relieved on 31.12.2011, then imposition of punishment of dismissal shows non application of mind and purported exercise of power which per se is impermissible both in law and facts as well.



11. It has also been submitted that Regulation-60-A(iii) of F.C.I. (Staff) Regulations, 1971 speaks of imposition of withholding of gratuity only when there is pecuniary loss ascertained by the Corporation. In the present case, from conjoint reading of show cause notice along with the dismissal order, there is no whisper of pecuniary loss much less the ascertainment of such pecuniary loss by which such punishment could be sustained. There is no justification by the Corporation regarding withholding of gratuity as there is neither any pecuniary loss nor there is any ascertainment of pecuniary loss in the present case.

12. It has been further submitted that Regulation-60-A (iii) of F.C.I. (Staff) Regulations, 1971 speaks, “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 Corporation, if the employee is found in a disciplinary proceedings or judicial proceedings to have been guilty of



offence or misconduct as mentioned in the relevant Sections of the Payment of the Gratuity Act, 1972 (39 of 1972) or to have caused pecuniary loss to the Corporation by misconduct or negligence during his service, including service rendered on deputation or on re-employment after retirement, provided that the provision of relevant Section of the Payment of Gratuity Act, 1972 shall be kept in view in the event of delayed payment, in case, the employee is fully exonerated”.

13. It has been submitted that Hon’ble Supreme Court has held in the case of D.V. Kapoor that for withholding of gratuity, a show cause must be served upon the delinquent. In the present case, no such show cause intending the action of Corporation for withholding of gratuity has ever been issued, therefore, rendering the imposition of punishment of withholding of gratuity being violative of principles of natural justice, therefore, same is vitiated in law and on facts as well.

14. It has been further submitted that the Corporation has merely stated that the gratuity and leave



encashment have not been given to the petitioner in view of the departmental proceeding. The Corporation has erroneously stated that even after dismissal, gratuity can be withheld, hence, the gratuity and leave encashment have not been paid. It is not the case of the petitioner rather the Corporation has wrongly understood the case of the petitioner. The case of the petitioner is that the Corporation cannot withhold gratuity or other amount unless the pecuniary damage is proved and unless such pecuniary damage is not ascertained then such pecuniary damage cannot be proved. Further, such punishment for withholding gratuity or other amount can only be imposed when there is specific show cause for that purpose which admittedly has not been served upon the petitioner at any point of time.

15. Counter affidavit has been filed on behalf of the respondents in which it has been stated that petitioner attained the age of superannuation i.e 60 years on 31.12.2011 and he was relieved from the service of Corporation. However, the disciplinary proceeding



initiated against the petitioner continued as per the provisions under Regulations 60-A of the FCI (Staff) Regulations, 1971.

16. Rule 60-A of Section 5 Discipline and Appeal Regulations under Food Corporation of India (Staff) Regulations, 1971 reads as follows:

“60-A- Procedure for disciplinary proceedings after retirement:

(i) Any disciplinary proceeding, if instituted by issue of chargesheet while the employee was in service, whether before his retirement or during his re-employment, shall, after the retirement of the employee, 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) Such proceeding after retirement should be completed expeditiously and within twelve months from the date of delivery of charge sheet to the charged official, subject to Court Orders, if any.

(iii) 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 Corporation, if the employee is found in a disciplinary proceedings or judicial proceedings to have been guilty of offence



or misconduct as mentioned in the relevant Sections of the Payment of the Gratuity Act, 1972 (39 of 1972) OR to have caused pecuniary loss to the Corporation by misconduct or negligence during his service, including service rendered on deputation or on re-employment after retirement, provided that the provisions of relevant Sections of the Payment of gratuity Act, 1972 shall be kept in view in the event to delayed payment, in case, the employee is fully exonerated.”

17. From reading of Rule 60-A of regulation it is apparent that rule permits continuance of departmental proceeding even after retirement as such departmental authorities are empowered to impose any punishment as enumerated in Rule 54 of Discipline and Appeal Rules including order of dismissal. The Apex Court in judgment rendered in *State Bank of India Vs. Ram Lal Bhaskar and Anr.* reported in **2011 (10) SCC 249** as well as in *UCO Bank and Anr. Vs. Rajinder Lal Capoor* reported in **2007 (6) SCC 694** has held that employer is empowered to pass order of removal/dismissal if regulation permits continuation of departmental proceedings even after retirement. In present case, however, order of dismissal will have no adverse effect on delinquent after retirement unless there is any consequential effect of dismissal such



as dismissal entails forfeiture of gratuity. However, in present case disciplinary authority has also passed order of forfeiture of gratuity which is not permissible for the reasons as explained below.

18. Employee of FCI are paid gratuity under the provisions of Payment of Gratuity Act, 1972. Section 14 of said Act has overriding effect which reads as follows:

“Act to override other enactments, etc.-
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”.

19. Section 4 of Payment of Gratuity Act, 1972 deals with payment of gratuity which reads as follows:

- “1. -----
2. -----
3. -----
4. -----
5. -----

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.”

20. Mere reading of above provisions makes it clear that gratuity partially/wholly can be forfeited to the extent of causing damage, loss or destruction of property of the employer for which employee has been terminated from the service for any misconduct or negligence causing such damage or loss to property of employer or employee has been terminated from service for riotous disorderly conduct or any act of violence, or he has been terminated from service upon his conviction for an offence involving moral turpitude. None of the three eventualities which can lead to forfeiture of part/whole gratuity exists in present case.

21. The second part of Rule 60-A empowers disciplinary authority to recover pecuniary loss sustained by corporation if chargesheeted employee is held guilty of charge of causing pecuniary loss to corporation. In order to



recover said loss suffered by corporation a charge has to be framed against delinquent of causing loss to the corporation by any misconduct or negligence. The total loss suffered by corporation has to be ascertained by the disciplinary authority and same is to be apportioned among the employees who are responsible for said loss according to their responsibilities, degree of misconduct and negligence and if same charge stands proved in departmental proceeding said pecuniary loss can be realised by corporation but not from gratuity, but other terminal benefits.

22. Rule 60-A of discipline and appeal rules acknowledges the overriding effect of Payment of Gratuity Act, 1972 which has restricted power of Disciplinary Authority to impose order of forfeiture of gratuity partly/wholly only on the ground specified under the Payment of Gratuity Act, 1972.

23. Recovery of pecuniary loss suffered by corporation can be realised from pay of employee while in service which is a minor punishment under regulation 54



(iii) but there is no provision to realise pecuniary loss from gratuity and same is beyond competence of punishing authority.

24. Central Government and State Government employees, Bank employees and employees of other institutions who have their own pension regulations who are receiving pension and gratuity under the pension rules are exempted from the provisions of Payment and Gratuity Act, 1972 under Section 2(e) of the Act. However, since FCI has no separate pension regulations for their employees as such they are governed by Payment of Gratuity Act, 1972.

25. Under CCA Rules applicable to Central Government and State Government employees when if during service period the departmental proceeding is not concluded, it get converted into pension rules although procedure for conduct of inquiry remains the same but after retirement only order for forfeiture of part/full gratuity and/or pension can be made. In CCA Rules disciplinary authority can impose punishment of



forfeiture of part/full gratuity/pension proportionate to gravity of proved misconduct but same is missing under regulation of FCI where under Rule 60-A disciplinary authority can only pass an order of punishment of recovery of pecuniary loss suffered by corporation on account of misconduct or negligence committed by delinquent.

26. After going through different provisions of Payment and Gratuity Act, 1972 it can safely be held that the Disciplinary Authority had no authority to order forfeiture of gratuity although he was empowered to pass an order of dismissal/removal as no ground existed under the provisions of Payment of Gratuity Act, 1972, on which gratuity could have been forfeited.

27. Leave encashment is paid to the employee of FCI under the provisions of the Central Civil Services (Leave Rules 1972) in which competent authority is empowered to withhold the leave encashment if there is any possibility of recovery of any amount to be realised from the employee. Section 39 (iii) reads as follows:



Rule 39. Leave /Cash payment in lieu of leave beyond the date of retirement, compulsory retirement or quitting of service.-

(1)-----

(2)-----

(3)The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withhold after adjustment of Government dues, if any.”

28. Since there is no order of recovery of any amount to be realised from petitioner as such petitioner is entitled for leave encashment along with other terminal benefits.

29. Petitioner has also challenged order of termination and forfeiture of gratuity relying upon a judgment and order dated 05.08.2014 passed in C.W.J.C. No. 2945 of 2014 by which this court had quashed the similar proceeding initiated against the employees of



Corporation as the charges framed against employees and misconduct alleged did not come within the purview of misconduct as error of judgment or lack of competence cannot be held to be misconduct and, as a result, order of dismissal was quashed by this Court and direction was issued for reinstatement of employee with minor punishment.

30. In the case (supra), charges was also of similar nature but petitioner was in service, however in present case petitioner has retired from service and in view of Rule 60-A the proceedings continued, culminating in passing of the impugned order. The judgment as referred above was upheld by this Court in L.P.A. No.1289 of 2014 and S.L.P. preferred by the Corporation was also dismissed by the Apex Court by order dated 17.08.2015 passed in Special Leave to Appeal (C) No. 22573 of 2015, modifying the order of High Court giving liberty to the Corporation to pass a minor punishment to the employee.

31. The relevant paragraphs of the order passed by the Apex Court is quoted below:



“No doubt, insofar as the finding of the High Court to the extent that this was a case which did not deserve the harshest punishment is concerned, the same is tenable, but at the same time, it was not open to the High Court to itself decide as to what would be the suitable punishment and substitute the same in place of the punishment awarded by the appellant/management. Therefore, that portion of the order by which the penalty is imposed by the High Court is set aside. The matter is remitted back to the disciplinary authority with the direction that any suitable minor punishment be imposed on the respondent. Necessary order in this behalf shall be passed within one month from today

The special leave petition is disposed of in the aforesaid terms.”

32. Pursuant to order passed by Apex Court the respondent corporation modified the punishment order and benefit of this order was also extended to other similarly placed person like Suman Bhai Patel Manager (O.C.) and Umesh Chandra Rai, Manager (A/C) (retired) by reinstatement and imposing minor punishment.

33. For the reasons as stated above the order



passed by departmental authorities (Annexure-5, Annexure-7 and Annexure-10) are not sustainable and are accordingly quashed. Respondents no. 3 is directed to pay the gratuity and earned leave amount and other terminal benefits to the petitioner within three months from the date of receipt/production of a copy of this order. However, no interest is awarded on the amount of gratuity, earned leave and terminal benefits, if same is paid within three months but if same is not paid within three months then amount will carry simple interest @ 8% per annum.

The writ petition stands allowed.

(S. Kumar, J.)

Rajiv/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	27.08.2018
Transmission Date	

