

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5294 OF 2009

SHIVAJI S/O. KERBA PAIKRAO
VERSUS
THE UNION OF INDIA AND ORS.

Miss Maya R. Jamdhade & Mrs. Narendra R. Jamdhade,
Advocates, Advocates, for petitioner.

Shri. S.B. Deshpande, Standing Counsel for the Union of
India.

Shri. G.S. Rane, Advocate, for respondent Nos.2 and 3.

**Coram: T.V. NALAWADE &
K.L. WADANE, JJ.**

Date: 12 APRIL 2018

ORDER (Per T.V. Nalawade, J.):

1) The petition is filed under Articles 226, 14, 16 and 21 of the Constitution of India for giving direction to the respondent-Life Insurance Corporation of India ("LIC") to see that the gratuity amount is given to the petitioner and the benefit of revised pay scale from 1-8-2002 to 30-6-2005 is given to him and arrears are paid. Both the sides are heard.

2) The petitioner was working with respondent LIC initially as Assistant and then Higher Grade Assistant. The petitioner came to be terminated from service on 30-6-2005. There was the charge against him that by misusing the post he had first purchased policy in respect of one son and then by falsely showing that the son had died he had taken the amount of policy which was Rs. 3 lakh. Thus by playing fraud he had collected money of Rs.3 lakh of LIC and for that he had misused his post.

3) The petitioner has not challenged the order of termination and he has claimed only aforesaid two reliefs. Learned counsel for the petitioner has placed reliance on the observations made by the Apex Court in the case reported as **(2007) 1 SCC 663 (Jaswant Singh Gill v. Bharat Coking Coal Ltd.)**. In that case, Coal India had disciplinary and appeal rules and they were subject to the provisions of the Payment of Gratuity Act. The employee was allowed to retire after attaining age of superannuation and gratuity was payable to him. There was one departmental enquiry pending and it was continued after the retirement and that was in respect of

causing loss to the employer. By way of penalty, the gratuity amount was forfeited as provided in the rules of the employer but there was no termination order which could have been issued under section 4(6) of the Payment of Gratuity Act 1972. It was held that the rules of the employer need to be read with section 4(6) of the Payment of Gratuity Act, 1972, general Act, and as there was no termination under section 4(6) of the general Act, forfeiture of gratuity amount was not possible.

4) Learned counsel of the respondent LIC drew attention of this Court to section 48 of the Life Insurance Corporation Act, 1956 which gives power to the Central Government to make rules with regard to the terms and conditions of service of the employees. There are powers of making regulations with the Corporation but the rules are framed by Central Government. Copy of the rules viz. Life Insurance Corporation of India Class III and Class IV Employees (Revision of Terms and Conditions of Service) Rules, 1985, is produced on the record and Rule 19(5) is as under.

"19. Gratuity:

(5) Notwithstanding anything contained in sub-rules (1) and (4) --

(i) where the penalty of dismissal is imposed on an employee for any act involving violence against the management or other employees or any riotous or disorderly behaviour in or near the place of employment or for an offence involving moral turpitude provided that such offence is committed by him in the course of his employment, the gratuity payable to him shall stand wholly forfeited; and

(ii) where the penalty of compulsory retirement, removal from service or dismissal is imposed on an employee for any act involving the Corporation in financial loss, the gratuity payable to him shall stand forfeited to the extent of such loss."

5) This rule is a statutory rule in view of the aforesaid provisions and so it is permissible for the employer to forfeit the gratuity in the present matter. Further, section 4(6) of the Payment of Gratuity Act also permits the forfeiture of gratuity and it runs as under.

"4. Payment of Gratuity:

(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."

6) Aforesaid both rules show that when there is a termination, on the ground of moral turpitude and the act amounted to offence, the forfeiture of entire gratuity amount is permissible. In view of the aforesaid facts of the present matter, this Court holds that it is not possible to give direction to the respondent LIC to release the gratuity amount or to quash the forfeiture order of the gratuity amount.

7) So far as the second relief like direction to give the arrears in respect of revision of pay scale which was given effect on 1-8-2002 is concerned, it can be said that those rules which were published in notification dated 5-8-2005, show that if the employee was terminated during period from 1-8-2002 till the date of notification then he will not be entitled to get the arrears of salary on account

of revision. Thus, as per the rules and the scheme of the respondent-Corporation the second direction is also not possible. He was terminated within the aforesaid period. In the result, the petition stands dismissed.

Sd/-
(K.L. WADANE, J.)

Sd/-
(T.V. NALAWADE, J.)

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