

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.11224 OF 2004

ORDER

This writ petition is filed seeking the following relief:

“...To issue a writ or order or direction more particularly one in the nature of Writ of Certiorari leading to calling of records from the 1st respondent passed in Application No.28/2003, dt. 17.6.2004 and upholding the order of the 2nd respondent dt.1.9.2004 in case No.33/2003 and consequently set aside the same declaring as it illegal, arbitrary and untenable and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

Heard Sri P.Sri Raghu Ram, learned Standing Counsel appearing for the petitioner-Visakhapatnam Port Trust, learned Government Pleader appearing for respondents 1 and 2 and Sri P.B.Vijay Kumar, learned counsel appearing for respondent No.3.

It is the case of the petitioner that the 3rd respondent was employed with the petitioner-Port Trust on 18-3-1965 as Assistant Executive Engineer. While working as such, the 3rd respondent had indulged in certain irregularities. After conducting a detailed enquiry, the disciplinary authority had imposed the penalty of 30% cut in pension per month for a period of five years vide order dated 7.6.2001. Challenging the same, the 3rd respondent had approached appellate authority. The appellate authority confirmed the punishment of the

disciplinary authority vide order dated 31.10.2003. Thereafter, the 3rd respondent approached the 2nd respondent. The 2nd respondent *vide* order dated 1.9.2003 held that the petitioner-Port Trust is liable to pay 10% interest on the total amount of Rs.2,82,658/-. Questioning the same, the petitioner-Port Trust approached the 1st respondent by filing Application No.28 of 2003. The 1st respondent upheld the order of the 2nd respondent for payment of Rs.77,731/- towards interest on delayed payment of gratuity to the 3rd respondent. Questioning the same, the present writ petition is filed.

Learned Standing Counsel appearing for the petitioner submits that because of the irregularity said to have been committed by the 3rd respondent, the petitioner had suffered loss and hence, the disciplinary authority had imposed penalty of 30% cut in pension per month for a period of five years.

Section 4 (6) of the Payment of Gratuity Act, 1972, reads as under:

(6) Notwithstanding anything contained in sub-section (1)—

(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.”

Learned counsel appearing for the petitioner did not produce any material to show what loss has been caused to the petitioner on account of misconduct of the 3rd respondent, except drawing attention of this Court to the proceedings dated 7.6.2001, whereunder the punishment of 30% cut in pension per month for a period of five years, was imposed. In the absence of the same, this Court cannot interfere with the orders passed by the 2nd respondent as well as the 1st respondent.

Learned counsel appearing for the 3rd respondent has relied upon the judgment of the Apex Court in *Union Bank of India and others vs. C.G.Ajay Babu and another* (Civil Appeal No.8251 of 2018, arising out of S.L.P.(Civil) No.3852/2017) *India and another vs. G.Ganayutham*)¹ wherein it was held that forfeiture of gratuity is not automatic on dismissal from service and it is subject to sub-Sections (5) and (6) of Section 4 of the Payment of Gratuity Act, 1972.

¹ (1997) 7 SCC 463

In view of the above settled legal position and as the petitioner did not show what loss was caused to it on account of misconduct of the 3rd respondent, this Court is not inclined to interfere with the orders passed by the 2nd respondent as well as the 1st respondent. There are no merits in the writ petition and the same is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

27th December, 2018
rkk

JUSTICE ABHINAND KUMAR SHAVILI

