**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

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Regular Second Appeal No.1662 of 2017 (O&M)
Date of Decision: January 9th, 2019

Food Corporation of India, New Delhi and others

...Appellants

Versus

S.P. Dubey

...Respondent

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present: Mr. Atul Gaur, Advocate
for Mr. Sumeet Goel, Advocate
for the appellants.

Mr. Kamal Gupta, Advocate
for the respondent.

**AUGUSTINE GEORGE MASIH, J. (ORAL)**

Challenge in this appeal is to the judgment and decree dated 18.12.2014 passed by the Civil Judge (Junior Division), Kurukshetra, in a suit preferred by the respondent-plaintiff, wherein he had challenged the order dated 15.02.2011 imposing penalty of compulsory retirement from service and forfeiture of gratuity to the extent of 30% for recovering the losses allegedly suffered by the Corporation because of inaction on the part of the respondent, in which the trial Court has set aside the order dated 15.02.2011 partly by holding the imposition of penalty of forfeiture of 30% of gratuity as illegal, unlawful, inoperative, null and void, unconstitutional and against the rules and regulations and mandatory injunction has been issued by releasing the same along with 24% interest per annum, appeal against which preferred by the appellants stands dismissed by the learned Additional District Judge, Kurukshetra, vide judgment dated 29.09.2016, whereby the decree passed by the trial Court has been modified to the extent of reduction of interest from 24% to 12%.

2. It is the contention of learned counsel for the appellants that the

Courts below have wrongly proceeded to hold that there cannot be two punishments imposed in a single disciplinary proceedings initiated against an employee. He contends that the said issue is pending consideration before a Division Bench of this Court in LPA No.1888 of 2013. He further contends that the judgments and decree as passed by the Courts below, therefore, deserve to be set aside.

3. On the other hand, learned counsel for the respondent has referred to the judgment passed by the Hon'ble Supreme Court in *Civil Appeal No.6770 of 2013* titled as *State of Jharkhand & Ors. Versus Jitendra Kumar Srivastava & Anr. decided on 14.08.2013*, to contend that the recovery from gratuity could not have been effected from the respondent as there was no quantification of the amount of loss alleged to have been caused because of the conduct of the respondent. He further contends that neither at the stage of issuance of the charge-sheet nor at the stage of passing of the punishment order, any amount has been mentioned as loss caused because of the conduct of the respondent and since there is no quantification of the amount, an arbitrary cut of 30% in the gratuity, as has been imposed, is unjustified and cannot be said to be in consonance with the statute or with the principles of natural justice. He, therefore, prays that the appeal deserves to be dismissed.

4. I have considered the submissions made by learned counsel for the parties and with his assistance, have gone through the impugned judgments.

5. The contention as raised by the learned counsel for the appellants that the question with regard to the imposition of two punishments on the basis of a single inquiry by a Punishing Authority as per

the statutory rules is a subject matter before the Division Bench of this Court and, therefore, do not call for any comments by this Court on this aspect, however, keeping in view the fact that at no stage either at the time of issuance of charge-sheet, inquiry or at the time of issuance of show cause notice on the basis of the inquiry report, there has been any quantification of the amount of loss, which is alleged to have been caused to the appellants because of the conduct of the respondent. Even the order of punishment does not indicate as to what was the loss caused to the appellants-Corporation and, therefore, the arbitrary imposition of 30% cut in gratuity cannot sustain. This can be said in the light of the judgment of the Hon'ble Supreme Court in *Jitendra Kumar Srivastava's case supra*.

6. In view of the above, this Court does not find any reason to interfere in the present appeal.

7. Counsel for the appellants has asserted that the interest, as has been ordered to be paid to the respondent at the rate of 12%, is on the higher side but this Court does not find any ground for interference with regard to the interest, as has been imposed by the Lower Appellate Court as the same has already been reduced from 24% per annum, as was granted by the trial Court, to 12% per annum. Even under the Payment of Gratuity Act, respondent would have been entitled to interest and, therefore, the amount over and above that interest, which has been granted to the respondent, appears to be justified, especially when the amount of gratuity was withheld, not in consonance with the statutory rules and the principles of natural justice.

8. In view of the above, the present appeal stands dismissed.

9. In the light of the dismissal of the appeal, the applications for stay i.e. CM No.3798-C of 2018 and CM No.4002-C of 2017 stand disposed of as infructuous.

**January 9th, 2019** **(AUGUSTINE GEORGE MASIH)**
*Puneet* **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No