

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.17117 of 2019

ORDER:

This writ petition is filed seeking a writ of Certiorari to call for the records relating to and connected with the impugned order in Appeal No.PGA-30/2019 dated 15.07.2019 passed by the 1st respondent i.e., Deputy Chief Labour Commissioner (Central) and Appellate Authority under Payment of Gratuity Act 1972, and upon examination of the same, pass orders quashing the same in the interest of justice.

Heard learned counsel for the parties.

It has been contended by the petitioner Company that the 3rd respondent was employed with it as Executive Director and he has attained the age of superannuation on 31.12.2017 after completion of total service of 6 years 2 months 29 days. It is stated that the disciplinary proceedings were initiated by the petitioner against the 3rd respondent on the ground that while the 3rd respondent was working with erstwhile M/s. GAIL, he has pursued M.B.A Course in 'regular' mode fraudulently seeking permission from the management of M/s. GAIL by concealing the true nature of the course as the rules of M/s. GAIL do not permit to pursue 'regular' course without taking 'study leave'. As the disciplinary proceedings were initiated against the 3rd respondent, the petitioner has withheld the gratuity of the 3rd respondent in terms of Section 4 (6) (b) (ii) of the Payment of Gratuity Act, 1972 (for short, 'the Gratuity Act'). It is the further case of the

petitioner that when a charge memo was issued to the 3rd respondent on 30.12.2017, the 3rd respondent filed W.P.No.12062 of 2018 before this Court challenging the said charge memo, and this Court granted interim suspension of the said charge memo *vide* orders dated 17.04.2018. It is also stated that due to the said interim order, the petitioner is not in a position to proceed with the disciplinary proceedings initiated against the 3rd respondent.

It is also stated that against withholding of gratuity amount, the 3rd respondent has approached the 2nd respondent - Controlling Authority under Payment of Gratuity Act, 1972 and the Assistant Labour Commissioner (Central), Hyderabad, by filing an application requesting the Authority to issue directions to release the gratuity amount of Rs.7,11,748/- along with interest for delayed payment of gratuity, and *vide* orders dated 31.12.2018, the 2nd respondent ordered the Company to pay the amount of Rs.7,11,748/- plus interest @ 10% to the 3rd respondent herein. Aggrieved by the same, the petitioner has preferred an appeal before the 1st respondent - Appellate Authority under Payment of Gratuity Act 1972 & Deputy Chief Labour Commissioner (Central) Hyderabad. However, the 1st respondent *vide* orders dated 15.07.2019, rejected the appeal confirming the decision of the 2nd respondent. Challenging the same, the present writ petition is filed.

Counsel for the petitioner had contended that as per Rule 30 A (i) of BDL-CDA Rules, 1975, the disciplinary proceedings, if

instituted while the employee was in service whether before his retirement or during his re-employment, shall, after the final retirement of the employee, be deemed to be proceeding and shall be continued and concluded by the authority by which it was commenced in the same manner as if the employee had continued in service. In the instant case, the disciplinary proceedings have already commenced by initiation of charge memo and the same are pending, therefore, the petitioner Company has rightly withheld the gratuity of the 3rd respondent. Counsel for the petitioner had further contended that the 1st and 2nd respondents have no authority to direct the petitioner Company to release the gratuity in favour of the 3rd respondent. Counsel also contended that as per Rule 30A of BDL-CDA Rules, 1975, the petitioner is entitled to withhold the gratuity. It is also contended that while the 3rd respondent was working as a Regular Executive with erstwhile M/s. GAIL in the year 1996, the 3rd respondent has acquired MBA Degree through regular mode, without sanction of study leave, by misleading the University and his previous employer. Counsel for the petitioner had also contended that since the disciplinary proceedings are pending, the respondents 1 and 2 could not have passed the orders in favour of the 3rd respondent, therefore, the orders passed by the respondents 1 and 2 are liable to be set aside and the petitioner has every right to withhold gratuity of the 3rd respondent in terms of Rule 30 A of BDL CDA Rules. Counsel for the petitioner, therefore, contended that appropriate orders be passed in

the writ petition by setting aside the order passed by the 1st respondent on 15.07.2019.

Counsel appearing for the 3rd respondent had contended that Rule 30 A of BDL CDA Rules would deal with the disciplinary proceedings, but the petitioner cannot withhold gratuity in terms of Section 4 (6) (b) (ii) of the Gratuity Act. Counsel for the 3rd respondent had further contended that the gratuity of an employee can be withheld by the employer in terms of Sub-Section (6) of Section 4 of the Gratuity Act, which reads as under:

“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.”

Counsel for the 3rd respondent further contended that in the instant case, though the charge memo alleges that the 3rd respondent had indulged in moral turpitude, moral turpitude will not form part of civil consequences and it has to be fastened only to the criminal consequences. Admittedly, in the instant case, no criminal

proceedings are pending against the 3rd respondent involving moral turpitude. Counsel for the 3rd respondent placed reliance on the judgment of the Honourable Supreme Court in **Union Bank of India v. C.G. Ajay Babu**¹, wherein it was held as under:

“Though the learned counsel for the appellant Bank has contended that the conduct of the respondent employee, which leads to the framing of charges in the departmental proceedings involves moral turpitude, we are afraid the contention cannot be appreciated. It is not the conduct of a person involving moral turpitude that is required for forfeiture of gratuity but the conduct or the act should constitute an offence involving moral turpitude. To be an offence, the act should be made punishable under law. That is absolutely in the realm of criminal law. It is not for the Bank to decide whether an offence has been committed. It is for the court. Apart from the disciplinary proceedings initiated by the appellant Bank, the Bank has not set the criminal law in motion either by registering an FIR or by filing a criminal complaint so as to establish that the misconduct leading to dismissal is an offence involving moral turpitude. Under sub-section (6) (b) (ii) of the Act, forfeiture of gratuity is permissible only if the termination of an employee is for any misconduct which constitutes an offence involving moral turpitude, and convicted accordingly by a court of competent jurisdiction”

and contends that though the charge memo issued to the 3rd respondent refers to moral turpitude, the concept of moral turpitude would not fit into the departmental proceedings. Moral turpitude has to be fastened only to the criminal consequences. Admittedly, in the instant case, no criminal proceedings are pending against the 3rd

¹ (2018) 9 SCC 529

respondent and in the absence of the same, the petitioner cannot withhold the payment of gratuity to the 3rd respondent, therefore, there are no merits in the writ petition and the writ petition is liable to be dismissed.

This Court, having considered the submissions of learned counsel for respective parties, is of the considered view that the respondents 1 and 2 have elaborately considered the case of the 3rd respondent and rightly ordered in favour of the 3rd respondent by relying upon the judgment of the Honourable Supreme Court in **C.G. Ajay Babu** (1 supra). The issue as to whether the gratuity can be withheld or not, was considered by the Honourable Supreme Court in the case of **C.G. Ajay Babu** (1 supra) and also in the case of **Jaswant Singh Gill v. Bharat Coking Coal Limited**² and it was held that gratuity cannot be withheld by an employer after retirement. Admittedly, the termination is a pre-condition requirement for withholding gratuity in terms of Section 4 (6) of the Gratuity Act. Admittedly, in the instant case, there is no such termination and only disciplinary proceedings are pending and even in the disciplinary proceedings, the issue of moral turpitude cannot be gone into, as rightly pointed out by the Honourable Supreme Court. Moral turpitude concept would be applicable only in criminal consequences, but not in service matters. Therefore, there are no merits in the writ petition and the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs.

² (2007) 1 SCC 663

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

8th January, 2020
v v

