IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP-26564-2016

Food Corporation of India ...Petitioner

Versus

Amarjit Singh Brar and others .....Respondents

2. CWP-14474-2016

Food Corporation of India ...Petitioner

Versus

Tarlok Singh and others .....Respondents

3. CWP-11524-2014

Food Corporation of India ...Petitioner

Versus

Virsa Singh and others .....Respondents

4. CWP-11527-2014

Food Corporation of India ...Petitioner

Versus

Bhupinder Singh Dhillon and others .....Respondents

5. CWP-11556-2014

Food Corporation of India ...Petitioner

Versus

Sardul Singh and others .....Respondents

6. CWP-11562-2014

Food Corporation of India ...Petitioner

Versus

Balbir Singh and others .....Respondents

7. CWP-11650-2014

Food Corporation of India ...Petitioner

Versus

Amrik Singh Bhullar and others .....Respondents

8. CWP-11671-2014

Food Corporation of India ...Petitioner

Versus

Jarnail Singh and others .....Respondents

9. CWP-14688-2014

Food Corporation of India ...Petitioner

Versus

Suraj Parkash and others .....Respondents

10. CWP-1875-2018

Food Corporation of India ...Petitioner

Versus

Mohinder Singh and others .....Respondents

11. CWP-2079-2017

The General Manager,
Food Corporation of India & Anr. ...Petitioners

Versus

The Appellate Authority
under Payment of Gratuity Act and others .....Respondents

12. CWP-15274-2020

Food Corporation of India ...Petitioner

Versus

Kuldeep Kumar Sharma and others .....Respondents

Date of decision: - 14.12.2020

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. K.K. Gupta, Advocate for the petitioner(s).

Mr. Manav Bajaj, Advocate for Mr. Sumit Goel, Advocate for the petitioner in CWP No.2079 of 2017.

Mr. Rajinder Goyal, Advocate for respondent No.1 in CWP No.14474 of 2016.

Mr. Dinesh Kumar Jangra, Advocate for respondent No.1 in CWP No.26564 of 2016.

Mr. Arun Batra, Advocate for respondent No.1 in CWP Nos.11524,11527,11556,11562,11650, 11671,14688 of 2014 and CWP No.1875 of 2018 and for respondent No.2 in CWP No.2079 of 2017.

Mr. Piyush Khanna, Advocate for respondent No.2 and 3 in CWP No.26564 of 2016, CWP No.14474 of 2016, CWP No.11524 of 2014, CWP Nos.14688, 11562 of 2014; and CWP No.1875 of 2018.

Ms. Deepali Puri Sandhu, Advocate for respondent No.1 in CWP-15274-2020.

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<u>HARSIMRAN SINGH SETHI, J. (ORAL)</u>

The present is a bunch of 12 petitions, which are being decided by this common order, as the question of law raised in these writ petitions is identical and is based upon similar facts. For the order, facts are being taken from CWP-26564-2016 titled as Food Corporation of India Vs. Amarjit Singh Brar and others.

The question of law, which has been posed before this Court in these petitions is whether, recovery of any amount due from an employee can be done from the gratuity, which an employee is entitled to receive after superannuation or not.

As per the impugned orders passed by the authorities under the Payment of Gratuity Act, 1972, it has been held that no recovery can be done from the gratuity payable to an employee even if there exist a valid order of recovery against the concerned employees either before superannuation or immediately thereafter and a direction has been issued to the petitioner-Food Corporation of India (hereinafter referred as 'petitioner-Corporation') to release the full gratuity payable to the employees concerned without any deduction.

As per the averments in CWP-26564-2016, in the disciplinary proceedings initiated against respondent No.1-employee, he was held liable for recovery of an amount of ₹56,830/- and for the said recovery, an appropriate order was also passed against respondent No.1. After superannuation, respondent No.1 was found entitled for gratuity amounting to ₹3,49,816/- and while releasing the said gratuity, an amount of ₹56,830/- was deducted. The said deduction was not liking to the respondent-employee and he approached the authorities under the Payment of Gratuity Act, 1972 against the said deduction. Similar are the facts in the other petitions as well, wherein also, the employees concerned had objected to the recovery of an amount from their payable gratuity after their superannuation and had approached the authorities under the Payment of Gratuity Act for a direction that total gratuity payable to them be released by the petitioner-Corporation without any deduction and the deduction made be refunded to them.

In the present writ petitions, this Court is not deciding whether the orders of recovery passed by the petitioner-Corporation are valid or not, as the same will be decided wherever the said order of recovery has been challenged by the concerned employee i.e. before the Competent Court of Law or before the petitioner-Corporation by filing an appeal etc. as the case may be. The precise question, which is being decided in these writ petitions is, whether, the direction given by the authority exercising powers under the Payment of Gratuity Act, 1972 to release the total gratuity by ignoring the order of recovery passed against the concerned employee, is a valid order or not.

Learned counsel for the petitioner-Corporation argues that the question, which has been raised before this Court, has already been answered in favour of petitioner-Corporation by a Division Bench of this Court in **CWP-16555-2006** titled as '**Devinder Singh** Vs. **F.C.I. and others'**, **decided on 28.03.2008**.

In the said writ petition also, the order passed by the authorities exercising powers under the Payment of Gratuity Act, 1972 was under adjudication, which order had restrained the petitioner-

Corporation from effecting any recovery from the gratuity of the employee concerned despite an order of recovery passed against the said employee prior to his retirement. This Court after considering the provisions of the Payment of Gratuity Act, 1972, passed a detailed order by holding that the petitioner-Corporation has power to effect recovery from the gratuity payable to an employee keeping in view Section 4(6)(a) of the Payment of Gratuity Act, 1972 and held that the recovery of the payable amount, in respect of any such order passed against an employee, is valid and the recoverable amount can be deducted from the gratuity payable to the said employee. The relevant paragraphs of the said judgment are as under: -

> "It was also argued that in the circular Annexure P.4, the matter was considered by the respondent-Corporation keeping in view the provisions of the Act; Discipline and Appeal Regulations of FCI (Staff) Regulations, 1971 as well as opinion/views of Panel Advocates. It was communicated that as per Section 4(6)(a) of the Act, the gratuity of an employee whose services have been terminated for any act, wilful omission or negligence causing any damage or loss or destruction of property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused. It is contended that on account of loss suffered, the amount of gratuity to the extent of loss, can be recovered without any specific mention in the punishment order.
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> Having heard learned counsel for the parties at some length, we do not find any merit in the present petition. The orders of punishment are Annexures R.1 to R.3. The relevant extracts from the order (Annexure R.1) read as under:-
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> "Sh. Devinder Singh is due to retire on superannuation on 31.7.2006. Therefore, taking his submission as made out in his reply

dated 19.6.06, as his written statement of defence, the undersigned feels that minor penalty may be imposed on him. In view of the loss being to the tune of Rs.1.26 crores and that too on the basis of cost as applicable for crop year 1997-98, a token penalty of Rs.3,00,000/- (Rupees three lacs only) to partially offset a small percentage of the colossal loss is imposed upon him."

The relevant extracts from the order Annexure R.2, read as under:-

"Now therefore, the undersigned in exercise of the power conferred under Regulation 56 of Staff Regulations 1971 hereby orders imposition of a penalty of Rs.2,00,000/- (Rupees two lacs only) upon said Shri Devinder Singh, AGM in this case."

Similarly, the relevant extracts from the order Annexure R.3, read as under:-

"Now therefore, the undersigned in exercise of the powers conferred under Regulation 56 of FCI (Staff) Regulations, 1971 hereby orders imposition of penalty of recovery of Rs.2.5 lakhs (Rs. Two Lakhs Fifty Thousand Only) upon the said Shri Devinder Singh, AGM (Genl.) in this case."

No doubt, there is no specific order of forfeiture of gratuity in the order of dismissal passed against the petitioner, but the fact remains that the competent authority has considered the fact that charges have been proved against the petitioner and financial loss has been suffered by the Corporation. Therefore, it is apparent that lack of supervisory control by the petitioner has led to financial loss to the respondent Corporation. The relevant provisions of the Act, reads as under:-

"4(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."

A perusal of Clause (a) of Section 4(6) of the Act, would show that a gratuity of an employee shall be forfeited to the extent of damage or financial loss caused by his act, wilful omission or negligence. The orders of punishment appended as R-1 to R-3 with the written statement, as confirmed by the Appellate Authority on 29.1.2008, would show that the punishment of recovery of loss has been imposed upon the petitioner. Therefore, such recovery of loss is mandatorily required to be effected from the amount of gratuity in terms of Clause (a) of Section 4(6) of the Act. The forfeiture of gratuity under Clause (a) of Section 4(6) of the Act is mandatory to the extent of loss caused, but in respect of a forfeiture within the ambit of Sub-clause (b), the competent authority is required to pass an order of forfeiture of gratuity wholly or partly. Since the order of punishment has imposed the penalty of recovery of the loss, therefore, the amount of gratuity is required to be forfeited in terms of Section 4(6)(a) of the Act. The circular issued by the Corporation has to be read in consonance with the statutory provisions of the Act and, therefore, in terms of the interpretation of the statutory provisions, it cannot be held that the gratuity cannot be forfeited without any specific order even if the penalty imposed is on account of loss suffered by the Corporation. Similar view was taken by this Court in CWP No. 3291 of 2006 (D.S. Chauhan v. The Food Corporation of India and others) vide order dated 23.1.2008.

Consequently, we do not find any patent illegality or irregularity in the impugned order, which may warrant interference by this Court in exercise of its writ jurisdiction. Hence, the present petition is dismissed."

Learned counsel appearing on behalf of the respondents-employees have not been able to rebut the contention raised on behalf of the petitioner-Corporation that the impugned orders passed by the authorities under the Payment of Gratuity Act, are contrary to the law laid down in **Devinder Singh's case (supra),** as noticed hereinbefore.

Not only this, learned counsel appearing on behalf of the respondents-employees have not been able to pinpoint any provision of the Payment of Gratuity Act, 1972 or any law, which supports the contention of respondents-employees that the amount recoverable on the basis of an order passed either before superannuation or thereafter by the employer, cannot be recovered from the gratuity payable to an employee. Keeping in view the facts stated in these bunch of writ petitions, especially when in similar situation in **Devinder Singh's case (supra)**, a similar order, as impugned in the present petitions, has already been set aside, the impugned orders passed by the authorities under the Payment of Gratuity Act, cannot be sustained. The orders impugned in this bunch of petitions passed by the authorities exercising powers under the Payment of Gratuity Act, 1972, are contrary to the settled principle of law and hence, cannot be sustained and are accordingly set aside.

Learned counsel appearing on behalf of the respondents-employees very fairly argues that the respondents still have a right to challenge the orders of recovery passed by the petitioner-Corporation, on the basis of which recovery is being effected from their gratuity.

Learned counsel for the respondents submit that some of the respondents have already filed the appeals qua the orders of punishment/recovery, which are pending before the authorities concerned and the said orders imposing recovery have not attained finality. Learned counsel for the respondents further submit that some of the employees had approached the Competent Court of Law challenging the said orders imposing recovery and are contesting the recovery, being imposed upon them by the FCI, before the Competent Court.

Be that as it may, in case, the respondents-employees have challenged the orders imposing recovery upon them and those proceedings are still pending either before the petitioner-Corporation or before the Competent Court of Law, the outcome of those proceedings will be binding upon the petitioner-Corporation as well as upon the respondents-employees. In case, the respondents-employees succeed in those proceedings, the petitioner-Corporation will be under obligation to act accordingly, but at this stage, as nothing has been placed on record before this Court that any of the order imposing recovery has been set aside either by the petitioner-Corporation or by the Competent Court of law, no relief qua the orders imposing recovery can be granted to the respondents-employees.

Learned counsel for the petitioner-Corporation undertakes that any appeal, which has been preferred by an employee against the order of recovery, if still pending, will be decided within a period of two months from today positively and in case, after the passing of the said order, it is found that the employee is entitled for any benefit, the same will also be released to the said employee within a period of two months thereafter.

Mr. Rajinder Goyal, learned counsel appearing on behalf of respondent No.1-employee in CWP-14476-2016 submits that the dispute qua the recovery is already pending consideration before this Court in **RSA No.1983 of 2017** titled as '**Tarlok Singh** Vs. **Food Corporation of India**'.

That being so, the order passed in RSA No.1983 of 2017 will be binding upon the petitioner-Corporation and in case this Court finds that the respondents-employees are entitled to any monetary benefit while deciding the said RSA, the same will be implemented by the petitioner-Corporation.

Mr. Dinesh Kumar Jangra, learned counsel appearing on behalf of respondent No.1 in CWP-26564-2016 submits that respondent No.1 also intend to approach the petitioner-Corporation by filing an appropriate representation qua the order imposing the recovery.

This Court has not restrained any of the respondents from exercising any right/option available to them under law against the order of recovery. In case, any employee avails the option of filing an appeal or a representation, it becomes the duty of the petitioner-Corporation to dispose of the said appeal/representation expeditiously in accordance with law. As the cases relate to retired employees, it is directed that in case any of the respondents file an appeal or a representation in respect of the order imposing recovery, the same be decided in accordance with law within a period of two months from the date of receipt of the said appeal/representation.

At the cost of repetition, it is once again reiterated that the recovery of an amount from the gratuity by the petitioner-Corporation will be subject to the order passed by the competent authority/Competent Court of Law, as the case may be, where, the challenge to the order of the recovery is pending.

Learned counsel for the petitioner-Corporation submits that the amount deducted from the gratuity of the respondents-employees has already been released to them in pursuance to the impugned orders, which have been set aside. That being so, the respondents are directed to refund the amount within a period of two months from today, which they have received in pursuance to the impugned orders, as the impugned orders have been set aside by this Court.

This Court has been informed that the amount was released to the respondents on the basis of surety. In case, the amount is not refunded by the employees concerned within a period of two months, the petitioner-Corporation will be within its jurisdiction to recover the amount in accordance with law. Further, the amount, which is lying with the authorities under the Payment of Gratuity Act, 1972 and the same could not be released to the respondents-employees due to an interim order granted by this Court, the authorities under the Payment of Gratuity Act, 1972, where the amount is lying, will refund the said amount to the petitioner-Corporation forthwith.

Present writ petitions stands allowed in the above terms.

December 14, 2020 **(HARSIMRAN SINGH SETHI)**
naresh.k **JUDGE**

Whether reasoned/speaking? Yes/No
Whether reportable? Yes/No