

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.567 of 2019

In

Civil Writ Jurisdiction Case No.12558 of 2017

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1. National Textile Corporation Ltd. Core IV, Scope Complex, 7 Lodhi Road, New Delhi 110003 through its Managing Director.
 2. The Director HR, NTC, Core IV, Scope Complex, 7 Lodhi Road, New Delhi 110003
 3. The Chief General Manager National Textile corporation, Western Regional office, 15NM- Marg Billard Estate, Mumbai 400001
 4. D.G.M. Marketing, N.T.C. Western Regional Office, 15, N.M. Marg Billard State Mumbai, 400001
 5. The Senior Manager, marketing, National Textile Corporation, 7 Jawahar Lal Nehru Road Kolkatta 700013.

... Respondents ... Appellant/s

Versus

1. Anand Krishna Son of Late Gopal Krishna Resident of Mohalla lal Darwaja, P.O. and P.S. and District Munger.
2. Union of India through Secretary Department of Textile, New Delhi.

... .. Respondents – Respondents

Appearance :

For the Appellant/s : Mr.Dr. Mayanand Jha, Advocate

For the Respondent/s : Mr. (Dr.) K. N. Singh, ASG
Mr. Shyam Bihari Singh, CGC
Mr. Sanchay Srivastava,
Mr. Ravi Rakesh,
Mr. Sourav Suman, Advocates

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.

Date : 06-07-2021

Heard learned counsel for the parties.

Aggrieved by the judgment and order dated 08.04.2019

passed in C.W.J.C. No.12558 of 2017 passed by learned Single



Judge of this Hon'ble Court directing the respondent/appellants to make payment of gratuity to the petitioner/respondent, present LPA has been preferred by National Textile Corporation Limited.

Briefly stated the facts of the case is that petitioner/respondent retired from services of the National Textile Corporation Limited on 28.02.2017 as Assistant Manger (Marketing) and filed writ petition before this Hon'ble Court for payment of gratuity along with statutory interest without invoking jurisdiction of controlling authority under the Gratuity Act.

Counter affidavit was filed by appellant - Corporation stating therein that grave misconduct was committed by the writ petitioner causing huge pecuniary loss to the Corporation by violating and breaching the guidelines issued by the Corporation for purchasing materials from non-NTC mills and also making payment to those non-NTC mills and said materials remained lying in the stock of Corporation and were rendered useless which was in complete violation of the standard operation procedure of the corporation.

It was submitted on behalf of learned counsel for the appellant that memo of charge was issued to petitioner for



various acts of omission and commission committed by him during his service period for causing huge pecuniary loss to the Corporation, as such, until and unless the departmental proceeding is concluded, petitioner cannot be paid gratuity and appellants are ready to deposit the amount of gratuity by way of fix deposit carrying interest to the controlling authority under the Gratuity Act.

Petitioner is governed by NTC Conduct, Discipline and Appeal Rules, 2009 being an employee of NTC, a Government of India Enterprise.

Rule 25.14 of NTC Rules, 2009 clearly stipulates that gratuity can be withheld in a case of misconduct of the employee or if pecuniary loss is caused to the Corporation and the same reads as follows:-

“25.14 Withholding Gratuity in certain cases:

During the pendency of disciplinary proceedings, the Disciplinary Authority may withhold payment of Gratuity, for ordering the recovery from Gratuity of the whole or part of any pecuniary loss caused to the Corporation if the employee is found in a disciplinary proceedings or judicial proceedings to have been guilty of offences/ misconduct as mentioned in sub-section(6) of Section 4 of the Payment of Gratuity Act, 1972 or to have caused pecuniary loss to the Corporation by misconduct or negligence, during his service including service rendered on deputation or on re-employment after retirement. However, the provisions of Section 7(3) and 7(3A) of the Payment of



Gratuity Act, 1972 should be kept in view in the event of delayed payment, in case the employee is fully exonerated.”

The Rules also permit for initiation of departmental proceeding against an employee within 4 years of his retirement for any misconduct committed within 4 years from the date of retirement. Rule 25.13.3 of the aforesaid Rules is reproduced hereinbelow:-

“25.13.3 Initiation of Disciplinary Proceeding after Retirement:

“Disciplinary proceedings if not initiated while the employee was in service shall be initiated against an employees in respect of prima facie established lapses/misconduct after retirement in respect of grave misconduct in respect of any event which took place not more than four years earlier.”

The learned Single Judge has allowed the writ petition filed by petitioner /respondent on the basis of judgment of Full Bench of this Hon’ble Court in case of **Arvind Kumar Singh Vs. The State of Bihar through the Chief Secretary & Ors. Since reported in 2018(2) PLJR 933**. However, same was rendered in a case of employees of State Government who are governed by Bihar Pension Rules where service pension and service gratuity is paid after superannuation and there is no provision for withholding of gratuity during pendency of disciplinary proceeding, however, in present case, respondent is governed by service Rules of NTC and there is provision of



withholding of gratuity during pendency of enquiry initiated against petitioner/respondent for causing pecuniary loss to the Corporation and same can be recovered from gratuity amount payable to petitioner.

Similar provision is made in CCS Pensions Rules for withholding the payment of gratuity during pendency of departmental proceeding and same has been upheld by the Apex Court in case of **Jarnail Singh Vs. The Secretary, Ministry of Home Affairs and Ors.** since reported in AIR 1994 SC 1484, para 9 of the aforesaid judgment is reproduced hereinbelow:-

“9.Reference to some other provisions In the Central Civil Services (Pension) Rules, 1972 supports the view we have taken. Rule 69(1)(c) provides that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. This provision is indicative of the power to withhold payment of gratuity and its payment being subject to the final outcome of any pending departmental or judicial proceeding against the Government servant. Rules 71 and 73 relating to recovery and adjustment of Government dues and the express provision in Rule 73(3) for adjustment of dues against the amount of death-cum-retirement gratuity payable to the Government servant also reinforce this conclusion. Article 366 of the Constitution of India contains the definitions for the purpose of the Constitution and there in Clause (17) is defined 'pension' to include gratuity as well. This definition of 'pension' in the Constitution also indicates



that conceptually the term 'pension' includes gratuity. In Rule 3(1)(o) of the Central Civil Services (Pension) Rules, 1972, the term 'pension' is defined to include gratuity except when the term 'pension' is used in contradistinction to gratuity, in consonance with the basic concept. The contention of the appellant was, therefore, rightly rejected by the Tribunal.”

For the reasons as stated above, the judgment and order dated 08.04.2019 passed in C.W.J.C. No.12558 of 2017 is neither sustainable in law nor on fact and is, accordingly, set aside. However, Corporation is liable to pay the gratuity amount with statutory interest, if petitioner/respondent is exonerated in departmental proceeding which is directed to be concluded within six months from the date of receipt/production of a copy of order passed by this Court.

LPA is, accordingly, disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.07.2021
Transmission Date	NA

