AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.4945 of 2010

U.S.Daharwal, Aged about 61 years, S/o Late Shri K.S. Daharwal, Retired Deputy Manager, R.G.M. Office, C.G. Rajya Van Vikas Nigam, Bilaspur, at present residing C/o Dr. K.K. Jaiswal, Main Road, Near High School, Ratanpur, Distt.-Bilaspur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Department of Forest, D.K.S. Bhavan, Raipur (CG)
2. The Managing Director, Chhattisgarh Rajya Van Vikas Nigam Limited, Lokash Plaza Shankar Nagar Road, Shankar Nagar, Raipur (CG)
3. The Regional General Manager, Chhattisgarh Rajya Van Vikas Nigam Limited, Ramkrishna Colony, Mangla Road, Bilaspur (CG)
4. Divisional Manager, Kota Project Division, Bilaspur (CG)

---- Respondents

For Petitioner : Mr.Ashok Kumar Swarnakar, Advocate
For Respondent No.1/State: Mr.Sunil Otwani, Addl.A.G.
For Respondents No.2 to 4: Mr.A.S.Kachhawaha, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board (Through video conferencing)

11.8.2021

1. The petitioner herein calls in question the order dated 3.4.2010 (Annexure P-3) passed by respondent No.3, whereby respondent No.3 has directed for recovery of amount of ₹1,31,295/- payable as arrears pursuant to the recommendation of 6th Pay Commission and also calls in question the order dated 20.7.2010 (Annexure P-7A) passed by respondent No.2 by which an amount of ₹ 3,50,000/- payable towards group gratuity and an amount of ₹ 1,10,250/- towards leave encashment, total ₹

4,60,250/- has been directed to be adjusted towards an amount of recovery directed pursuant to the order of disciplinary authority dated 28.7.2009.

2. In a disciplinary proceeding initiated against the petitioner, he was inflicted with penalty by order dated 28.7.2009 (Annexure P-1) and the disciplinary authority directed for reduction of lower scale of pay for one year and also imposed recovery of ₹ 15,53,049/- against the petitioner, against which, the petitioner had preferred an appeal under the provisions contained in Regulation 136 to 139 of the Chhattisgarh Van Vikas Nigam Karmchari Sewa Adhiniyam, 1984 (hereinafter called as 'Regulation 1984'). That appeal was pending and during the pendency of appeal before the appellate authority, the orders dated 3.4.2010 (Annexure P-3) and 20.7.2010 (Annexure P-7A) came to be passed adjusting the amount of leave encashment, arrears of 6th Pay Commission and group gratuity, which has been called by the petitioner as arbitrary, illegal, without jurisdiction and without authority of law.

3. Return has been filed by respondents No.2 to 4 supporting the orders dated 3.4.2010 (Annexure P-3) and 20.7.2010 (Annexure P-7A) stating inter-alia that the petitoner has caused loss to the tune of ₹ 42,41,693/- to the respondent-Nigam and that is why, he has been penalty as well as directed for recovery of

₹ 15,53,049/-.

4. Mr.Ashok Kumar Swarnakar, learned counsel for the petitioner, would submit that the order adjusting amount of group gratuity, leave encashment and arrears of 6th Pay Commission is absolutely illegal, without jurisdiction and without authority of law.

5. On the other hand, Mr.A.S.Kachhawaha, learned counsel for respondents No.2 to 4, would support the impugned orders.

6. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

7. In a regular departmental proceeding held against the petitioner, vide Annexure P-1 he was inflicted with penalty of reduction in lower stage of pay for one year and also directed for recovery of ₹ 42,41,693/-. Since at that time, an amount of ₹ 11,35,595/- had already been recovered and out of balance amount i.e. ₹ 31,06,098/-, 50% amount i.e. ₹ 15,53,049/- was directed to be recovered against the petitioner and during pendency of the appeal, the impugned orders dated 3.4.2010 (Annexure P-3) and 20.7.2010 (Annexure P-7A) came to be passed.

8. The question is whether the respondent-Nigam is justified in adjusting the amount of leave encashment, group gratuity and arrears of recommendation of 6th Pay

Commission by the impugned orders dated 3.4.2010 (Annexure P-3) and 20.7.2010 (Annexure P-7A).

9. Regulation 158 of the Regulations 1984 provides for gratuity which states as under:-

> "**158. GRATUITY**
> Every employee of the Nigam irrespective of the amount of his salary, shall be entitled to the payment of gratuity in the manner and at the rates prescribed under the payment of Gratuity Act, 1972. Employees who are in technical, managerial, administrative or executive services of the Nigam, shall also be entitled to the benefits of gratuity scheme, even if they do not fall within the purview of payment of Gratuity Act, 1972."

10. A careful perusal of the aforesaid provisions would show that every employee of the Nigam shall be entitled to the payment of gratuity in the manner and at the rates prescribed under the payment of Gratuity Act, 1972 and also provides that employees who are in technical, managerial, administrative or executive services of the Nigam, shall also be entitled to the benefits of gratuity scheme, even if they do not fall within the purview of payment of Gratuity Act, 1972.

11. In the instant case, the petitioner has been held entitled for group gratuity to the extent of ₹ 3,50,000/-, which has been directed to be adjusted towards the order of recovery, which has been imposed upon the petitioner as a measure of punishment.

12. Since the provisions of the Payment of Gratuity Act, 1972 (hereinafter called as 'Act of 1972') would be applicable, it would be appropriate to notice Section 4(1) & (6) of the Act of 1972 which states as under:-

> "**4. Payment of gratuity.**-(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years.-
>
> (a) on his superannuation, or
> (b) on his retirement or resignation, or
> (c) on his death or disablement due to accident or disease:
>
> Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:
>
> Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.
>
> (2) to (5) xxx xxx xxx
>
> 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."

13. A conjoint reading of sub-section (1) and sub-section (6) of Section 4 of the Act of 1972 would show that forfeiture to the extent of damage or loss caused can be done where the services of the employees have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer.

14. It is not in dispute that the services of the petitioner were not terminated and he was allowed to superannuated on 30.11.2009, as such, sub-section (6) of Section 4 of the Act of 1925 does not come with the aid of the respondent-Nigam.

15. The right to gratuity is a statutory right and it cannot be withheld under any circumstance other than those enumerated in sub-section (6) of Section 4 of the Act of 1972. The gratuity as a term itself suggests a gratuitous payment given to an employee on retirement or discharge. This is an addition to other retiral benefits payable to the employee.

16. The Supreme Court in the matter of **Burhanpur Tapti Mills Ltd., v. Burhanpur Tapti Mills Mazdoor Sangh**[1] has held that gratuity is a lump sum payment while pension is a periodic payment of a stated sum. They are both "efficiency devices" and are considered necessary for an

1 AIR 1965 SC 839

"orderly and humane elimination" from industry of superannuated or disabled employees, who but for such retiring benefits would continue in employment even though they function inefficiently.

17. In the context of pension, the Supreme Court in the matter of **D.S. Nakara and others v. Union of India**[2] has held that it is a social welfare measure rendering in socio-economic justice by providing economic security in the fall of life when physical and mental process is ebbing corresponding to aging process and therefore, one is required to fall back on savings. Such payments cannot be withheld unless specifically permitted by statutory provision.

18. The Division Bench of the Kerala High Court in the matter of **Mathew K.C. v. Plantation Corporation of Kerala**[3] has held that the recovery of loss caused to the Corporation and rendered by the Corporation to be recovered from the petitioner therein, the amount of gratuity cannot be adjusted to the extent of loss permissible only when service of employee is terminated for wilful loss to the employer and if the employee's service is not terminated, the direction to withhold amount of gratuity is not permissible.

19. As such, I am of the considered opinion that the respondent-Nigam is absolutely unjustified in

2 AIR 1983 SC 130
3 (2000) 6 SLR 681

withholding the amount of gratuity by adjusting it to the amount of recovery directed towards measure of punishment against the petitioner as service of the petitioner has not been terminated for wilful loss to the employer/respondent No.1, as such, adjustment of the aforesaid amount towards an amount of group gratuity was clearly impermissible in law, therefore, the order dated 20.7.2010 (Annexure P-7A) directing adjustment of group gratuity amount to the extent of ₹ 3,50,000/- is hereby set-aside. The respondent-Nigam is directed to make payment of said amount along with 9% interest from the date of entitlement till the date of payment to the petitioner.

20. Coming to the question of non-payment of amount of leave encashment and amount of arrears of 6^{th} Pay Commission.

21. Since the above-stated amount was adjusted by the respondent-Nigam without affording an opportunity of hearing to the petitioner, the impugned order adjusting the said amount is hereby set-aside. The matter is remitted to the respondent-Nigam who after giving a reasonable opportunity of hearing to the petitioner qua the amount of leave encashment and arrears of 6^{th} Pay Commission will take a decision in accordance with law with regard to the payment of said amount within 45 days from the date of receipt of a copy of this order. The petitioner is at liberty to make additional representation within 10 days from today.

22. The writ petition is allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-