

W.P.A. 7047 of 2017

**Food Corporation of India & Anr.
Vs.
Deputy Chief Labour Commissioner & Anr.**

**Mr. Pratick Dhar
Mr. Prasun Mukherjee
Mr. Deepak Agarwal**

...for the petitioners

**Mr. Soumya Majumder
Mr. Victor Chatterjee
Mr. Barnamay Basak**

...for the respondent no. 2

The writ petition pertains to the order of the Appellate Authority passed in terms of relevant provisions of the Payment of Gratuity Act, 1972 (for short “said Act of 1972”). The Deputy Chief Labour Commissioner (Central) Kolkata being the Appellate Authority, while considering the appeal of the respondent no. 2, set aside the order of the Controlling Authority under the said Act of 1972 upon considering the relevant provisions under Section 2A.

The Food Corporation of India being aggrieved by the order of the Appellate Authority dated 22nd August, 2016 has preferred the present writ petition questioning the entitlement of the respondent no. 2 to get the benefit of gratuity in respect of the period from 28th February, 2001 to 18th January, 2009.

Mr. Pratick Dhar, learned senior advocate appears on behalf of the petitioners and submits that the respondent no.

2 retired on 31st December, 2013. Relating to the period from 28th February, 2001 to 18th January, 2009, the petitioner could not attend place of work which resulted in sanction of extra-ordinary leave in his favour without pay vide order dated 10th March, 2014.

It has also been contended on behalf of the petitioners that in view of sanctioning leave for the said period (28th February, 2001 to 18th January, 2009) which was treated as an extra-ordinary leave without pay the respondent no. 2 is not entitled to get the benefit of Section 2A of the said Act of 1972.

Mr. Soumya Majumder, learned counsel appears on behalf of the respondent no. 2 and submits that the reason of absence of the respondent no. 2 from 28th February, 2001 to 18th January, 2009 was order of punishment dated 14th May, 2001 issued by the Senior Regional Manager of Food Corporation of India whereby the punishment of removal from service was slapped on the said respondent no. 2. It has also been submitted on behalf of the respondent no. 2 that subsequently the Reviewing Authority of the Food Corporation of India vide order dated 21st November, 2008 set aside the order of punishment dated 14th May, 2001 which ultimately came in aid of the respondent no. 2 and accordingly, he resumed duty after 18th January, 2009. In addition thereto, it is also submitted by the respondent no. 2 that the enactment of 1972 is beneficial legislation and it

ought to have been interpreted liberally for the benefit of the employees/workers.

This Court has heard the learned advocates representing the writ petitioners and the respondent no. 2 and also perused the impugned order of the Appellate Authority dated 22nd August, 2016. On consideration of the contents of the order of the Appellate Authority, it appears that the Appellate Authority rightly proceeded on the basis of sanction of extra-ordinary leave granted in favour of the respondent no. 2 for the period from 28th February, 2001 to 18th January, 2009 and in terms of the relevant provisions as contemplated under Section 2A of the said Act of 1972 necessary direction was made for releasing the amount of gratuity (Rs. 1,59,074/-) to the respondent no. 2. While considering grant of such benefit in favour of the respondent no. 2 it was also considered by the Appellate Authority that the respondent no. 2 could not remain present in his office for the aforesaid period due to the order of the punishment dated 14th May, 2001 by which he was removed from service and on quashing the said order of removal ultimately the respondent no. 2 was permitted to resume his duty.

On consideration of the aforesaid facts it transpires that the failure of the respondent no. 2 to attend his place of work during the aforesaid period is not attributable to him rather the order of punishment to the extent of removal from service issued by the writ petitioners prevented him from

attending his duty which was ultimately interfered with by the Reviewing Authority.

In view of aforesaid discussion this Court does not find any merit in the present writ petition and the same stands dismissed confirming the order of the Appellate Authority.

In view of the dismissal of the writ petition the Registrar General, High Court, Calcutta is directed to release sum of Rs. 1,59,074/- in favour of the respondent no. 2 within 3 (three) weeks from date along with accrued interest.

After the order is dictated in Court Mr. Dhar representing the writ petitioners has prayed for stay of operation of this order and such prayer is considered and refused.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)