In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Before:
The Hon'ble Justice Lapita Banerji

WPA No. 24815 of 2016

Dibajyoti Ghosh

Vs.

Coal India Limited and others

For the petitioners	:	Mr. Mukul Lahiri, Adv. Mr. Sanjib Dawn, Adv. Mr. Debasish Mukhopadhyay, Adv. Ms. Madhushri Dutta, Adv.
For the respondent/C.I.L.	:	Mr. Shiv Shankar Banerjee, Adv. Ms. Sanchita Barman Roy, Adv. Mr. Sk. Selim Mallick, Adv.
Hearing concluded on	:	20.07.2022
Judgment on	:	27.09.2022

Lapita Banerji, J.:- In the instant writ application being WPA 24815 of 2016, the writ petitioner has challenged an order of the Appellate Authority dated March 23, 2015 *vide* Reference No.CIL/C5A(iv)/D Ghosh/D21/AA/457 ('Impugned Order'). By the 'Impugned Order' the penalty of "withholding increment for a period of two years without cumulative effect" as imposed by the Disciplinary Authority *vide* Order No.ECL/C-5(D)/113/2724/27 dated February 3, 2014 was reduced to "**Censure**" by the Appellate Authority.

2. Two issues have been primarily contended in this writ petition:-

(i) The Impugned order dated March 23, 2015 should be set aside and the Writ Petitioner should not be even penalised with the minor penalty of '**Censure'.** He should be exonerated completely of the charges since there is no misconduct on his part.

And

(ii) Being completely exonerated of the charges, the Writ Petitioner should be entitled to notional benefits of promotion since December 2013 and not from August 2014 (the time from when it has been granted).

3. The facts as culled out from the pleadings are enumerated herein below:

a. One Koka Nunia/ex-employee of the company retired on July 1, 2009.

b. Prior to his retirement, the ex-employee was issued a notice with Form I prescribed under the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the 1972 Act') for processing the payment of his gratuity dues. Despite handing over of the Form, the said workman did not submit his claim for gratuity in the prescribed format with his employer, Eastern Coalfield Ltd. (in short, ECL).

c. By a letter dated August 13, 2012, the Senior Manager of ECL asked the Agent to immediately enquire upon the factual position regarding the claim of the ex-workman so that appropriate action could be taken in the matter. By the said letter, it was also intimated that non-payment of retiral benefits, dues was looked upon very seriously by the competent authority. Letter dated August 13, 2012 was in reply to the request made by the ex-employee by his letter dated August 6, 2012, for disbursement of his retiral dues.

d. The said employee instead of filing his claim for gratuity before the company filed his claim before the Controlling Authority on September 6, 2012, three years after his retirement.

e. By a letter dated September 17/19, 2012, the agent/Deputy GM (M) informed the Senior Manager that the management is trying its level best to settle the retiral benefits of the ex-workman/ex-employee. Furthermore, it was intimated that the wife of the ex-workman obtained an order of injunction from the Lower Court regarding disbursement of his dues. As such, without the order of Lower Court no disbursement could be made by the management. Enclosed with the said letter was the opinion of the Ld. Advocate given on September 3, 2012.

f. During the continuation of the proceedings before the Assistant Labour Commissioner ALC(C), Asansol, a deposit of the gratuity amount payable to the ex-workman was directed to be made within a period of one month, by an order dated July 17, 2013, at the interim stage.

g. The ex-workman chose to remain absent on July 17, 2013 which was a crucial date of hearing according to the ALC(C).

h. Immediately, upon passing of the said order, the management of the Colliery deposited with the Controlling Authority the gratuity amount with a calculation sheet attached thereto on August 6, 2013 i.e. within a period of 1 month from the date of the interim order.

i. By a letter dated August 6, 2013, the Deputy General Manager (M)/agent, Dhemomain Colliery informed to the ACL (C), Asansol that, pursuant to his order dated July 17, 2013, the gratuity amount was deposited by the Colliery management on August 6, 2013. The same stand was again reiterated by the letter of the Senior Manager (M)/Agent dated September 9, 2013 issued to the ALC(C). In the meantime, the ex-workman lodged a complaint with the Chairman, National Human Rights Commission (NHRC) regarding the non-payment of his gratuity amount and other terminal benefits. Accordingly, the Chairman, NHRC issued a notice to the Secretary, Ministry of Coal for early redressal of his grievances. Pursuant to an emergency meeting held by the management, the Controlling Authority was requested to disburse the gratuity amount at the earliest possible date.

j. By a Memo dated September 4, 2013 vide Memo 20/440/01/2013, the Director (PRIW), Ministry of Coal issued a notice to the Commissioner, Coal Mines Provident Fund Organization with a copy to General Manager, Sodepur area to immediately redress the grievance of the ex-workman and furnish the factual position regarding his case with the National Human Right Commission.

k. By a letter dated September 11, 2013, the ALC(C) informed the Senior Manager (M)/agent that since a maintenance case was pending against the ex-workman which has been filed by his wife and the ex-workman was not cooperating with the authority for early disposal of his case, the issue regarding payment of gratuity to Koka Nunia was still pending with the ALC. Even though, the gratuity amount was deposited by the Colliery Management, the case could not be disposed in haste as it would lead to further legal complicacy.

l. Thereafter, Memorandum of Charges dated November 27, 2013 was issued against the writ petitioner which culminated into the order dated February 3, 2014 passed by the Disciplinary Authority and the 'Impugned order' dated March 23, 2015 passed by the Appellate Authority.

m. By a Memorandum of Charges dated November 27, 2013, the Chairman-cum-Managing director, Disciplinary Authority directed the writ petitioner to submit his representation within 15 days in respect of a charges of misconduct/misbehavior by him on which an action was proposed to be taken.

n. By the said Memo of Charges dated November 27, 2013 it was alleged that since a complaint was filed before the General Manager on August 6, 2012 by the ex-workman/employee regarding non-payment of his retiral dues when the writ petitioner was the Deputy Personnel Manager of Dhemomain Colliery, he should have taken the matter seriously and made efforts for payment of Gratuity. There were acts of commission and omission on his part which tantamounted to non-fulfillment of duties and obligations contained under Rules 4.1(ii), 4.2, 4.3 and 4.6 of the Conduct Discipline and Appeal Rules, 1978 (CD&AR) of Coal India Limited (CIL) applicable to its subsidiaries and also amounted to misconduct under Rules 5.5, 5.9, 5.26 of the said Rules.

o. A reply to the said Memorandum of Charges was given by the writ petitioner on December 10, 2013. It was, *inter alia*, stated in the said reply that since no claim for gratuity in the prescribed format with the documents as required by the colliery authorities was filed by the ex-workman, he was not paid. Even though initially there was a confusion with regard to the wife's claim on the retiral benefits of the ex-workman but later the claim of his wife was negated.

p. In the said reply dated December 10, 2013, the petitioner claimed that since there was no dispute with regard to the amount of gratuity payable under Section 7(4) of the 1972 Act to the ex-employee/ex-workman, no deposit could be made by the management of ECL with the Controlling Authority, by its own discretion.

q. The writ petitioner submitted before the Disciplinary Authority that there was no negligence on his part regarding non-payment of gratuity to the ex-workman, and he had taken all steps as required under the 1972 Act.

3. Mr. Lahiri, Learned Senior Advocate, appearing on behalf of the writ petitioner submitted that there was no willful negligence or deliberate failure on the part of the writ petitioner to disburse the dues on account of

gratuity to the ex-workman.

4. The only circular that was prevalent at the time of retirement of the ex-workman in July 2009 was the Circular dated June 5, 1987 issued by ECL. As per the 1987 Circular, it was directed that every effort should be made for timely payment of workers' claim. Gratuity payment must not be delayed for more than a month from the receipt of the application. In case of any dispute over wrongful claims of gratuity, the same may be deposited in time with the Controlling Authority.

5. According to the writ petitioner, there was no dispute in respect of the amount of gratuity payable to the ex-workman. Therefore, the deposit on account of gratuity was not made with the Controlling Authority. Furthermore, since no application for claim in the prescribed format was deposited by the ex-workman, the question of making payment to him within a month of receipt of the application did not and could not arise.

6. By the order dated February 3, 2014 passed by the Disciplinary Authority, it was held that as per Section 7(2) of the 1972 Act, the employer was to determine the gratuity, irrespective of whether an application for release of the same was made or not and inform the person concerned and also the ALC. Under Section 7(3A) either gratuity amount was to be paid within 30 days or interest was required to be paid on the amount. Alternatively, written permission for holding up of the gratuity could be obtained from the ALC.

7. It was recorded in the said order dated February 3, 2014 passed by the Disciplinary Authority that the provisions of the 1972 Act were either *"not understood"* or were not complied with by the petitioner due to *"lack of*

concern". It was after three years of the ex-workman's retirement that an opinion of the advocate regarding the pendency of a civil suit was obtained on September 3, 2012. Three years from the date of retirement of the ex-employee were sufficient to obtain details of the case and consult the same with the area authorities. Things could have been finalized in September, 2012 after receiving the letter from the Area authorities. In the event, the case was dealt with seriousness, the same would have been resolved in September 2012. The fact that it was not done so clearly shows lack of 'concern' and 'seriousness' on the part of the writ petitioner. Hence, it was ordered that a minor penalty of "withholding increment for a period of two years without cumulative effect" would be imposed on the writ petitioner.

8. An appeal was filed by the writ petitioner on March 3, 2014 and the said appeal was disposed of by the 'Impugned Order' dated March 23, 2015. The Appellate Authority examined the grounds of appeal and came to the finding that due to a large number of gratuity cases pending at the Area Level or at the level of the Controlling Authority, an Office Order dated September 13, 2012 was issued on the subject for clarification regarding the payment of gratuity. The relevant portion of the Office Order read thus:

> *"**Non application**-Gratuity falls due immediately after retirement/death/termination & payable by 30 days regardless of application. Hence, gratuity must be calculated, employee/legal heirs informed in Form-'L' & if no response is found be deposited with Controlling Authority with details & same be informed to the employee/legal heirs/nominee."*

9. It was held by the Appellate Authority that no specific reply was received from ECL as regards the practice prevalent prior to September

13, 2012 in respect of effect of non-receipt of applications from the superannuated employees on the gratuity amount to be released. In the Memorandum of charge it has been alleged that the efforts to pay gratuity to the ex-workman was the responsibility of the colliery management. Hence, the writ petitioner being the Deputy Manager (Personnel) should have taken the efforts to pay the gratuity to the ex-employee. The appellate authority took into account the writ petitioner's concern with regard to the imperative requirement for vacating the company's quarters before preferring a claim in respect of gratuity payment. Till the date of the 'Impugned order' in 2015, the ex-workman did not vacate the company's quarters allotted to him and there was no certainty when the same would be done. Therefore, no misconduct could be alleged on the part of the Writ Petitioner.

10. Mr. Lahiri further submitted that the Appellate Authority came to the finding that the role of Koka Nonia in the entire issue was not fair as also recorded in the order of ALC(C) *vide* Order dated September 11, 2013 and also letter dated April 24, 2014 issued by the Director (Personnel) ECL to the Under Secretary to the Government of India, Ministry of Coal. Therefore, the contention of the writ petitioner that the ex-workman was seeking to withdraw all his retiral benefits without vacating the company's quarters could not be ruled out. The Appellant Authority came to the finding that the writ petitioner had not delayed the issue deliberately and the role of the ex-workman was very dubious. It was, however, held that a prompt effort on the part of the writ petitioner could have resolved the matter at an early stage without further complications. Therefore, the

Appellate Authority moderated the penalty of 'withholding increment for a period of two years without cumulative effect' imposed by the Disciplinary Authority on February 3, 2014 to a penalty of "**Censure**".

11. It was submitted that since the Appellate Authority held that there was no deliberate intention in delaying the gratuity payment to the ex-workman, the penalty of **'Censure'** should not have been imposed. The writ petitioner should have been exonerated from the charges completely. The act of omission was neither deliberate nor willful and related to only one instance. Therefore, no **'misconduct'** could be imputed to the writ petitioner.

12. Mr. Lahiri relied on the following decisions to corroborate his claim:-

(i) **Balasinor Nagrik Cooperative Bank Limited Vs. Babubhai Shankerlal Pandya And Others reported in (1987) 1 SCC 606**, It was held that a statute must be read as a whole and no part of a section can be omitted for interpretation. In that case, a resolution for expulsion of a member had to be decided by the Registrar as per the first proviso. Such a decision had to be taken within 3 months as per the second proviso. In such a circumstance, it was held that both the provisos had to be read together and any decision taken after 3 months was to be set aside since the Registrar had no jurisdiction.

(ii) **Sanjay Ramdas Patil vs. Sanjay And Others reported in (2021) 10 SCC 306** at Paragraphs 24 to 30 was cited for the proposition that a duty is cast upon the Court to construe the statute as a whole and one provision has to be construed with reference to the other provisions so as to make a consistent enactment of the whole statute. While interpreting a particular statutory provision, the other provisions should not be made "*useless lumber*" or "*dead* *letter*".

(iii) **Union of India and Others vs. J. Ahmed reported in (1979) 2 SCC 286,** the employee was due to retire and his service was extended from time to time for completion of the disciplinary proceedings. Finally, upon completion of the enquiry, the employee was removed from his service. The enquiry proceedings established that the respondent was not fit to hold a responsible post. It was held, with the employee's imminent retirement, there was no question of him holding a responsible position. There appeared to have been a large scale disturbance in the State of Assam. The employee was made a scapegoat for such a disturbance. Some of the charges were held to be mere surmises and therefore, it was held that the deficiencies in the capacity of the employee did not constitute misconduct.

(iv) **In Shri Dipankar Sengupta vs. United Bank of India And Others reported in (1998) 2 CLJ 2014,** the Enquiry Officer by virtue of total non-application of mind arrived at a conclusion, which was against the finding of the Disciplinary Authority. The Enquiry Officer found the writ petitioner's guilty of only of procedural and supervisory lapses, but, when being charged with the commission of any specific misconduct in terms of conduct regulations, the alleged procedural lapses and lack of supervision did not come under the purview of misconduct. The Disciplinary Authority set out the charges levelled in verbatim and imposed a major penalty of reduction of basic pay even though the charges were either partly established or not established by the Enquiry Officer.

(v) **Inspector Prem Chand vs. Govt. of NCT of Delhi And Others reported in (2007) 4 SCC 566,** It was clearly held that "**misconduct**" was a relative term and has to be construed with reference to the subject matter and the context, wherein, the term occurs having regard to the scope of the act or statute, which is being construed. In that case, it was necessary for the Disciplinary Authority to arrive at a finding of fact that the appellant was guilty of an unlawful behavior in relation to discharge of his duties in service, which was wilful in character. No such finding was arrived at in the DP. It was held that an error of judgment in not seizing the tainted money was an error of "**judgment**" and *per se* not **"misconduct**".

(vi) **Punjab State Civil Supplies Corporation Ltd. Vs. Sikander Singh reported in AIR (2006) Supreme Court 1438,** At paragraph 21, it has been clearly held that "*negligence simpliciter may or may not amount to misconduct".*

13. On the second issue, Mr. Lahiri argued that during the pendency of the departmental proceedings, departmental promotion committee's (DPC's) recommendation from grade E4 to E5 was issued. The promotion order was issued by CIL on December 24, 2013, but unfortunately only 27 days before the issuance of the promotion order, the Memorandum of charges was issued against the writ petitioner and his promotion was withheld even though he was the second senior most employee in the list.

14. By an order issued by the Senior Manager dated October 16, 2015, it was intimated that since the writ petitioner's penalty was moderated to "**Censure**" *vide* Order dated March 23, 2015, his promotion from E4 to E5 grade could be issued as recommended in the DPC meeting, from August 14, 2014 with notional seniority and notional fixation of pay at par with those promoted in August, 2014. However, his claim for promotion with

effect from December, 2013 could not be considered since he was not exonerated from the charges levelled against him when the candidates were considered for promotion by the previous DPC meeting.

15. It was submitted on behalf of the petitioner that by withholding promotion for eight months, the petitioner who was the second senior most in the seniority list of E4 personnel executives, his career had been ruined. The petitioner would be deprived of natural justice since the penalty has been moderated to "**Censure**" and there was no bar in releasing his promotion from E4 to E5 with effect from December 24, 2013. "**Censure**" does not indicate any duration of time and has no time bar so there was no impediment in releasing the benefits 8 months prior from December, 2013.

16. In support of the contention, Mr. Lahiri relies on the Judgment of **Union of India vs. K.V. Jankiraman reported in (AIR 1991 SC 2010),** for the proposition that when an employee is completely exonerated, he has to be given the benefit of the salary of the higher post along with other benefits from the date on which he would have been normally promoted but for the Disciplinary/ Criminal Proceedings.

17. Mr. Banerjee appearing for the respondent/ECL argued that the writ petitioner being the Deputy Manager (Personnel), ECL, should have acted with 'seriousness' and also in terms of the 1972 Act.

18. There was no excuse for not depositing the amount of gratuity with the ALC(C), even if there was a reason for not disbursing the gratuity amount to the ex-workman/employee. He submitted that since a directive was issued by the Ministry of Coal on the enquiry made by the NHRC, the

image of the company was tarnished. The petitioner failed to maintain devotion to duty and acted in a manner prejudicial to the interest/image of the company. He neglected his work and was negligent in performance of his duty towards the company itself. Furthermore, the writ petitioner acted in breach of the provisions of the CD & AR as well as the provisions of the Statute by omitting to perform his duty and, therefore, the order of the Appellate Authority with regard to imposing minor punishment of "**Censure**" was not unjustified or illegal or materially irregular or perverse in any respect, to merit judicial interference.

19. Having considered the rival submissions of the parties, and the materials-on-record, I find that the 'Impugned Order' dated March 23, 2015 has been arrived at after considering all the representations made by the writ petitioner and also the grounds of defence taken by him. The General Manager, Sodepur area received a complaint dated August 6, 2012 from the ex-workman regarding non-payment of his dues. He enquired into the matter on August 13, 2012. The Area Personnel Manager, Sodepur area/the agent *vide* his letter dated 17/19.09.2012 replied to the query dated August 13, 2012 stating that due to an order of injunction from Asansol Court in a civil suit filed by his wife, the dues of the ex-workman could not be disbursed without further order of Court.

20. The ex-workman made an application on August 23, 2012 about the inaction in respect of the application dated August 6, 2012 to the General Manager under the Right to Information Act. It was intimated to the ex-workman that his dues could not be disbursed because of the order of injunction. Thereafter, the appellate authority under the RTI Act intimated

to the ex-workman that there was no order of injunction against disbursement of the retiral dues to him, passed by the Civil Court.

21. By the 'Impugned order' it was held that efforts should have been made by the petitioner to pay the gratuity of the ex-workman which was the responsibility of the Colliery Management at that time. After issuing the initial form which was to be deposited by the ex-workman himself, no steps were taken to pay the gratuity amount for three years. Even after receipt of the complaint dated August 6, 2012 made to the GM and the Clarification Circular dated September 13, 2012, no steps were taken to either pay the gratuity amount to the ex-workman nor deposit the same before the ALC(C) by the writ petitioner.

22. Due to such non-payment, the ex-workman had subsequently on September 6, 2012 filed a case for payment of gratuity before the ALC(C). The management deposited the cheque with the ALC(C) on August 7, 2013 pursuant to the ALC's interim order dated July 17, 2013.

23. Opportunity of personal hearing and to make representations were given to the writ petitioner. After considering the representations of the petitioner, the disciplinary authority decided to impose the minor penalty of "withholding increment for a period of two years without cumulative effect" on February 3, 2014. An appeal was filed by the writ petitioner before the Appellate Authority on March 3, 2014 against the order of penalty.

24. The petitioner was heard on December 26, 2014, January 27, 2015 and February 18, 2015. The petitioner personally appeared before the appellate authority on February 23, 2015 and made his submissions.

25. The writ petitioner decided to withhold the payment of gratuity to the

ex-workman due to the practice followed by the company/ECL in case of retired employees. His submissions that no charge of dereliction of duty could be levelled against him because of the administrative practice prevailing in 2009 which included payment of gratuity only after the receipt of the claim in Form-I as per the 1972 Act from the employee was considered by the Appellate Authority.

26. The office order issued on September 13, 2012 by the Respondent Company succinctly clarified the issue.

27. The relevant portions of the office order dated September 13, 2012 are reproduced herein below:

> *"Non-vacation of company's quarter :- Gratuity should not be held up for non-vacation of company's quarters as has been decided by FDs earlier. The other dues like arrear, leave wages, LCS, settling allowances etc. has to be withheld. If no other due is there for withholding, the gratuity be deposited with Controlling Authority with a requested to disburse the amount after the person concerned vacates the public premises/quarter.*
> *From the above, it appears that prior to 13.09.2012, a practice was prevalent at ECL that in the event of non-submission of claim in Form-I by the superannuated employee, the gratuity amount was not released. In this respect, the payment of Gratuity Act has also been misinterpreted by the Colliery Authorities at ECL. There may also be the practice in ECL to release gratuity amount only after vacation of company's quarters by the employee concerned. Owing to some confusion and wrong practices likely to be prevailing, the ECL management subsequently noticed the matter and clarified the issues for payment of gratuity in line with the provisions of the Payment of Gratuity Act."* The aforesaid comments of the ECL were contradictory to the Charged levelled against the writ petitioner.

28. At Point No.4 of the order dated September 13, 2012 it was clarified that gratuity should not be held up for non-vacation of company's quarters as has been decided by the office order. The ex-workman was also aware of the fact that in the event of non-vacation of company's quarters gratuity

would not be paid to him during the time of his retirement. The ex-workman's conduct was not fair and he only had to make an application in Form-I for payment of gratuity (as per practice) and also had to vacate the company's quarters. Therefore, the contention of the writ petitioner that ex-workman was trying to withdraw the retiral benefits without vacating the company's quarters was accepted by the Appellate Authority.

29. This court finds that no explanation was given by the writ petitioner as regards the reason for failing to make payment to the ex-workman or deposit the same with the Controlling Authority even after considering point no. 4 of the clarification order issued on September 13, 2012 by the ECL. Had a prompt effort being made on the part of the writ petitioner pursuant to the office order dated September 13, 2012 unnecessary legal complications could have been avoided. This court sees no reason to differ with the reasoning of the Appellate Authority on that score.

30. The writ petitioner's contention with regard to failure to vacate the company's quarters by the ex-workman prior to consideration of his claim for gratuity was also considered by the Appellate Authority as per the prevailing practice during the relevant point in time.

31. The Appellate Authority held that the writ petitioner had not delayed the issue deliberately and the role of the ex-workman was very dubious. However, a "prompt effort" on the part of the writ petitioner would have resolved the issue instead of unnecessary complication of the same. Therefore, the previous punishment was moderated to "**Censure**".

32. The decisions in **Balasinor Nagrik** (Supra) and **Sanjay Ramdas Patil** (supra) do not come to the aid of the writ petitioner since a statute is

supposed to be read as a whole. If, the argument that without a written application made under Section 7(1) of the 1972 Act, payment could not be made on account of gratuity to a retired employee is accepted, it would render Section 7(3) of the Act "useless" lumber" or "dead letter".

33. The Payment of Gratuity Act, 1972 is a beneficial legislation and the intention of the legislature must have been to facilitate the payment of the gratuity dues to the employees. The intention of the legislature cannot be to deprive an employee from payment of his gratuity dues in the event an employee fails to make an application in the prescribed form.

34. The argument of Mr. Lahiri on the issue that the claim of Kokanuia/ex-employee was not disputed by the company and therefore, did not fall under the purview of the word "*dispute*" as contemplated under Section 7(4)(a) of the 1972 Act, cannot be accepted. Even in case of a dispute, the employer was required to make a deposit of the gratuity dues with the Controlling Authority/Assistant Labour Commissioner and where there was no dispute, there can be no question of withholding the payment to the employee. In case it was withheld for some reason, it had to be deposited with the Controlling Authority.

35. This Court is constrained to hold that the argument enhanced on behalf of the writ petitioner is hyper-technical, and if accepted, would render the provisions of a beneficial legislation nugatory.

36. Being fully aware of the provisions of the 1972 Act, the writ petitioner acted in breach of the same. The interpretation now sought to be given to the provisions of 1972 Act to aid the writ petitioner is

untenable.

37. In the Prevailing Office Circular dated May 5, 1987, it was clearly stipulated that in case of any dispute about the rightful claimant, deposit was required to be made with the Controlling Authority. It is an admitted fact that there was an uncertainty/confusion regarding the rightful claimant of the gratuity amount since the wife of the retired employee filed a Civil Suit and the Lawyer appearing for the employer by his written communication on September 3, 2012 communicated that a subsisting Order of Injunction in the Civil Suit did not permit payments to be made to the retired employee. Hence, the amount should have been deposited at least in September 2012 with the Controlling Authority.

38. As per the Clarification Office Order dated September 13, 2012, it was clearly intimated that the employees/legal heirs should be informed of the gratuity dues and if no response is found from them, the same should be deposited with the Controlling Authority. After the issuance of the said office order, the payment of gratuity dues should have been made promptly and the issue should have been considered seriously.

39. Both the 1987 and 2013 Circulars have been issued following the provisions of the 1972 Act. Since admittedly, there was no dispute between the parties regarding the gratuity dues payable to the retired employee, there was no legally tenable reason for withholding the same several years after the retirement of the employee.

40. It was observed in **J. Ahmed (supra)** that had the employee being a young man, who was to continue in the post for a long period, an enquiry

could have been made as to whether he could retain a very responsible post. Given the imminent retirement of the employee and the fact that his service was extended from time to time for the purpose of completion of the disciplinary proceedings, the High Court came to the view that the employee was no longer in service as on date on which an order **"removing"** him from service was made and therefore, the said Order was illegal and void. The Supreme Court upheld the decision of the High Court.

41. In the present case, the writ petitioner/delinquent employee had a long tenure of service at the time the charges were framed. The writ petitioner acted in breach of the statutory provisions tarnishing the image of the company as per the CD&AR, which was not the case in **J. Ahmed** (Supra). Therefore, **J. Ahmed**'s case does not aid the petitioner's case in any manner.

42. There was no breach of any statutory provisions while discharging the service in **Inspector Prem Chand** (Supra). An error of judgment in not seizing the tainted money during a raid was held not to be "**misconduct**" "*in the peculiar facts and circumstances of the case*". The ratio/observation in **Prem Chand** (Supra) is restricted to the facts of the case cannot be held to be a binding precedent. Hence, it does not aid the writ petitioner's case.

43. The primary question that was considered in **Sikander Singh** (Supra) was whether the loss caused to the employer due to negligent performance of duty was recoverable by way of filing of Civil Suit. In paragraph 34 it has been clearly held that negligence in performance of a duty under a contract of employment may give rise to disciplinary

proceedings, but, on the facts of the case, did not give rise to a cause of action for recovery of money for the goods lost as in the disciplinary proceeding itself recovery of money from the delinquent employee can be directed by way of punishment. The said case, in fact, supports the proposition that negligence in performance of duty can give rise to disciplinary proceedings.

44. The failure of the writ petitioner to comply with the provisions of the 1972 Act led to the tarnishing to the company's image as per the Conduct Discipline and Appeal Rules, 1978. The case of **United Bank of India** (Supra) does not come to the aid of the writ petitioner as the charges were not established in that case, in terms of conduct regulations applicable in that case.

45. Having considered the reasoning of the Appellate Authority, I find that there is no illegality or material irregularity or procedural impropriety/ failure to act in accordance with the principles of Natural Justice in the "Impugned Order" passed by the Appellate Authority.

46. The conduct of the writ petitioner has to be assessed in the light of the statutory duties imposed under the payment of Gratuities Act, 1972. The relevant section of the Act is reproduced herein below:-

> *"**Non application**-Gratuity falls due immediately after retirement/death/terminal & payable by 30 days regardless of application. Hence, gratuity **must** be calculated, employee/legal heirs informed in Form-'L' & if no response is found be deposited with Controlling Authority with details & same be informed to the employee/legal nominee."*

The word '**Must**' indicates that the obligation to perform the same is mandatory and not discretionary.

The writ petitioner is squarely is violation of the Act.

47. The Supreme Court has restated the grounds of judicial review as

enumerated herein below:-

> *(a) Where there has been a violation of natural justice; or*
>
> *(b) The proceedings have been held in violation of the statutory regulations prescribing the mode of such enquiry; or*
>
> *(c) The decision is vitiated by considerations extraneous to the evidence and merits of the case; or*
>
> *(d) If the conclusion made by the authority is expressly arbitrary or capricious that no reasonable person could have arrived at such conclusion; or*
>
> *(e) Other very similar grounds.*

48. Having considered the aforesaid grounds, I find that no case has been made by the writ petitioner meriting interference of the "Impugned Order" on the aforesaid grounds in the instant writ petition. Just because an alternative decision could have been arrived at cannot be a reason to Merit judicial interference.

49. Therefore, this Court finds no reason to set aside the Impugned Order passed by the Appellate Authority on March 23, 2015.

50. Immediately, upon the said order being passed, the writ petitioner made representations on March 30, 2015, April 6, 2015, October 26, 2015 for consideration of his promotion from Grade E4 to E5 with notional seniority and notional fixation of pay with effect from December 24, 2013. The Departmental Promotional Committee (DPC) recommended the promotion in its meeting dated July 24, 2015 the petitioners promotion from August 14, 2014 and not from December 24, 2013. The petitioner made several representations to urge that his service career would be ruined if being the second senior most in the promotional list of 2013, his promotional increment was not fixed from December 24, 2013.

51. The petitioner also made a representation on January 5, 2016 to the Chairman, CIL for consideration of his representation for notional fixation of promotion from December 24, 2013. Such representation is still pending for adjudication.

52. In the instant case the writ petitioner has not been completely exonerated and Disciplinary Proceedings were pending against him when the DPC's meeting was held in 2013. The recommendation of promotion was kept in a sealed cover till the Appellate Authority's order was passed. The order of promotion to E5 grade dated October 8, 2015 was passed with effect from August 14, 2014 with Notional security and Notional fixation of pay. Hence, on facts distinguishable from **K.V. Janakiraman** (supra).

53. In **State of M.P. And Another vs. I.A. Qureshi reported in (1998) 9 SCC 261,** at paragraph 8 it has been held that "**Censure**" cannot be equated with a warning as it is one of the minor penalties that can be imposed on a Government servant. It cannot be argued that the penalty of "**Censure**" was not a penalty and was only a "*mere warning*". Once a penalty has been imposed, the sealed cover containing the recommendations could not have been given effect to during the pendency of the proceedings and the employee could only be considered for promotion on a prospective basis from a date after the conclusion of the departmental proceedings. The law laid down by the Apex Court on the question of whether an employee can be considered for promotion during the pendency of departmental proceedings which resulted in the minor penalty of "**Censure**" is clear and unambiguous. Therefore, no legal right of the petitioner was violated in considering his promotion in

July 2015 with effect from August 2014.

54. On the issue of promotion, This Court finds that since there was a moderation of penalty to "**Censure**" by the Appellate Authority and since the "**Censure**" itself does not indicate any time bar for consideration of promotion, the representation of the petitioner dated January 5, 2016 should be disposed of with a reasoned order keeping in mind the finding of the Appellate Authority that the delay in payment of gratuity to the ex-workman was not deliberate considering the role of the ex-workman which was dubious and also the relevant 1987 Circular of ECL that was in force when the ex-workman retired. The fact that there has been no previous complaint against the writ petitioner in his service record and that he was in fact considered for promotion and was second senior most in the list prepared in December 2013 is to be kept in mind. The aforesaid direction is passed keeping the equity of the situation in mind as the role of the ex-employee in delaying the payment of gratuity dues to him is evident, in the facts of the case.

55. In the circumstances, this court directs, the representation *vide* Reference No. PD/C6/PERS/D Ghosh/Appeal/2015/91/2516 dated January 5, 2016 be **disposed of** within a period of six weeks from date by a reasoned order upon allowing a personal hearing to the writ petitioner. The said reasoned order should be communicated to the writ petitioner within two weeks of passing of the same. This order is being passed on the peculiar facts of the case where the ex-employee's role is found to be dubious.

56. With the aforesaid directions, the writ petition being **WPA No.24815**

of 2016 is **disposed** of. Old CAN **3640 of 2018** is accordingly **disposed of**.

57. All parties to act on server copy of this Order as downloaded from the official website of this Hon'ble Court.

58. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

(Lapita Banerji, J.)