

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3937 OF 2020

Babarao/Narayanrao Wankhade
 Aged about 69 years, Occ.: Ex-employee,
 r/o. Lehriya Nagar, Kaulkhd, Akola,
 Tq. & Dist. Akola

}

.. Petitioner

Versus

1. Maharashtra State Road Transport
 Corporation (M.S.R.T.C.), Through its
 Divisional Controller, Divisional Office
 Akola, Tq. & Dist. Akola (M.S.)

2. The Assistant Labour Commissioner,
 Hon'ble Appropriate Authority,
 appointed under the payment of Gratuity
 Act, Akola, office at Income-Tax Chowk,
 Gaurakshan Road, Akola,
 Tq. & Dist. Akola.

}

.. Respondents

Mr. D.R. Khapre, Advocate for petitioner.

Mr. P.S. Gawai, Advocate for respondents.

CORAM : MANISH PITALE, J.

DATE : 13.07.2022.

Oral Judgment

Rule. Rule made returnable forthwith. Heard finally
 with the consent of the learned counsel appearing for the rival parties.

(2) By this writ petition, the petitioner employee has
 approached this Court challenging an order dated 18.06.2020 passed

by the appellate Authority under the provisions of Payment of Gratuity Act, 1972, whereby the appeal filed by the respondent No.1 – Corporation was allowed and gratuity directed to be paid to the petitioner as per order of the controlling authority, was set aside.

(3) The respondent No.1 – Corporation claimed that it had forfeited the payment of gratuity to the petitioner by invoking Section 4(6)(b)(ii) of the aforesaid Act, which empowers the employer to do so, if the service of the employee has been terminated for any act which constitutes an offence involving moral turpitude, when the same is committed in the course of employment. While the controlling authority did not accept the stand taken by respondent No.1 – Corporation, the appellate Authority, by the impugned order, accepted the said stand on the basis of the findings in the enquiry report against the petitioner and reversed the order of the controlling authority.

(4) The learned counsel appearing for the parties, brought to the notice of this Court that the issue arising for consideration in the present petition is already covered by judgments of the Hon'ble Supreme Court as well as this Court. This Court has perused the aforesaid judgments.

(5) In the case of *Union Bank of India and Ors. Vs. C.G. Ajay Babu and anr.*, in the context of the aforesaid provisions, it was held as follows:

“16. ‘Offence’ is defined, under The General Clauses Act, 1897, to mean “any act or omission made punishable by any law for the time being in force”.

17. Though the learned counsel for the appellant-Bank has contended that the conduct of the respondent-employee, which leads to the framing of charges in the departmental proceedings involves moral turpitude, we are afraid the contention cannot be appreciated. It is not the conduct of a person involving moral turpitude that is required for forfeiture of gratuity but the conduct or the act should be made punishable under law. That is absolutely in the realm of criminal law. It is not for the Bank to decide whether an offence has been committed. It is for the court. Apart from the disciplinary proceedings initiated by the appellant- Bank, the Bank has not set the criminal law in motion either by registering an FIR or by filing a criminal complaint so as to establish that the misconduct leading to dismissal is an offence involving moral turpitude. Under sub-Section (6)(b)(ii) of the Act, forfeiture of gratuity is permissible only if the termination of an employee is for any misconduct which constitutes an offence involving moral turpitude, and convicted accordingly by a court of competent jurisdiction.”

(6) The said position of law was followed by this Court in the case of *Western Coal Fields Limited Vs. Presiding Officer, Appellate Authority and anr.* 2020 SCC OnLine Bom 168.

(7) As per the said position of law, it becomes clear that

Section 4(6)(b)(ii) of the said Act can be invoked by the employer to forfeit gratuity payable to the employee, only if the termination of the employee is for any misconduct which constitutes an offence involving moral turpitude and the employee is convicted accordingly, by a Court of competent jurisdiction. Therefore, in order to invoke the said provision for forfeiting gratuity, there has to be a criminal trial and conviction of the employee for such an offence involving moral turpitude.

(8) In the present case, admittedly, there was no criminal proceeding initiated against the petitioner and therefore, the very basis of the impugned order is taken away.

(9) Accordingly, the writ petition is allowed and the impugned order is quashed and set aside and that of the controlling authority is restored.

(10) Rule made absolute in the above terms.

(11) Pending civil applications, if any, disposed of.

[MANISH PITALE, J.]

Prity

Signed By:PRITY S GABHANE
Reason:
Location:
Signing Date:15.07.2022 18:29