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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(i) **CM-660-LPA-2022 and**
CM-2015-LPA-2022 in/and
LPA-424-2020 (O&M)

M/s Hindustan Everest Tools Ltd. now M/s Algoquant Fintech Limited

...... Appellant

Versus

Inderjeet and another ...... Respondents

(ii) **CM-2018-LPA-2022 in/and**
LPA-422-2020

M/s Hindustan Everest Tools Ltd. now M/s Algoquant Fintech Limited

...... Appellant

Versus

Rajbir and another ...... Respondents

(iii) **CM-2020-LPA-2022 in/and**
LPA-425-2020 (O&M)

M/s Hindustan Everest Tools Ltd. now M/s Algoquant Fintech Limited

...... Appellant

Versus

Baljit Singh and another ...... Respondents

(iv) **CM-2019-LPA-2022 in/and**
LPA-426-2020 (O&M)

M/s Hindustan Everest Tools Ltd. now M/s Algoquant Fintech Limited

...... Appellant

Versus

Sunil Kumar and another ...... Respondents

(v) **CM-2022-LPA-2022 in/and**
LPA-427-2020 (O&M)

M/s Hindustan Everest Tools Ltd. now M/s Algoquant Fintech Limited

...... Appellant

Versus

Satya Narain and another ...... Respondents

(vi) **CM-2026-LPA-2022 in/and LPA-428-2020 (O&M)**

M/s Hindustan Everest Tools Ltd. now M/s Algoquant Fintech Limited

...... Appellant

Versus

Unus and another ...... Respondents

(vii) **CM-2024-LPA-2022 in/and LPA-429-2020 (O&M)**

M/s Hindustan Everest Tools Ltd. now M/s Algoquant Fintech Limited

...... Appellant

Versus

Phool Kanwar and another ...... Respondents

(viii) **CM-2025-LPA-2022 in/and LPA-430-2020 (O&M)**

M/s Hindustan Everest Tools Ltd. now M/s Algoquant Fintech Limited

...... Appellant

Versus

Raghbir Singh and another ...... Respondents

(ix) **CM-2014-LPA-2022 in/and LPA-431-2020 (O&M)**

M/s Hindustan Everest Tools Ltd. now M/s Algoquant Fintech Limited

...... Appellant

Versus

Gopal Singh and another ...... Respondents

(x) **CM-2028-LPA-2022 in/and LPA-432-2020 (O&M)**

M/s Hindustan Everest Tools Ltd. now M/s Algoquant Fintech Limited

...... Appellant

Versus

Rati Ram and another ...... Respondents

(xi) **CM-2017-LPA-2022 in/and LPA-589-2020 (O&M)**

M/s Hindustan Everest Tools Ltd. now M/s Algoquant Fintech Limited

...... Appellant

Versus

Mahabir and another ...... Respondents

(xii) CM-2023-LPA-2022 in/and LPA-590-2020 (O&M)

M/s Hindustan Everest Tools Ltd. now M/s Algoquant Fintech Limited

...... Appellant

Versus

Raghbir Singh and another ...... Respondents

(xiii) CM-2016-LPA-2022 in/and LPA-672-2020 (O&M)

M/s Hindustan Everest Tools Ltd. now M/s Algoquant Fintech Limited

...... Appellant

Versus

Vinod Kumar and another ...... Respondents

Date of Decision : 19.12.2022

CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

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Present : Mr. Gurminder Singh, Senior Advocate with
Mr. Ashwani Talwar, Advocate and
Ms. Harpriya Khaneka, Advocate
for the appellant(s).

Mr. Ramesh Goyat, Advocate
for the respondents.

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VIKRAM AGGARWAL, J

CM-2015-LPA-2022 in LPA-424-2020
CM-2018-LPA-2022 in LPA-422-2020
CM-2020-LPA-2022 in LPA-425-2020
CM-2019-LPA-2022 in LPA-426-2020
CM-2022-LPA-2022 in LPA-427-2020
CM-2026-LPA-2022 in LPA-428-2020
CM-2024-LPA-2022 in LPA-429-2020
CM-2025-LPA-2022 in LPA-430-2020
CM-2014-LPA-2022 in LPA-431-2020
CM-2028-LPA-2022 in LPA-432-2020
CM-2017-LPA-2022 in LPA-589-2020
CM-2023-LPA-2022 in LPA-590-2020

<u>CM-2016-LPA-2022 in LPA-672-2020</u>

Through these applications, prayer has been made for seeking incorporation of the name of applicant as appellant and for placing on record Annexure A3 and the amended memo of parties.

As per the applications, during the pendency of the appeal, the factory was closed and the name of the appellant-Company has been changed from M/s Hindustan Everest Tools Limited to Algoquant Fintech Limited as per the certificate of incoroporation dated 15.11.2021, a copy of which is annexed with the application. The application is supported by an affidavit of Mukesh Aggarwal, authorized signatory of M/s Aloquant Fintech Limited (Formerly Hindustant Everest Tools Limited).

For the reasons mentioned in the applications, the same are allowed, subject to all just exceptions. The name of the applicant-Company is permitted to be incorporated as the appellant.

Amended memo of parties and Annexure A-3 which is the copy of the certificate of incoroporation are taken on record.

The applications stand disposed of accordingly.

<u>CM-660-LPA-2022 in</u>
<u>LPA-424-2020</u>

This is an application under Order 41 Rule 27 read with Section 151 CPC for production of award dated 11.11.2021, passed by the Labour Court, by way of additional evidence. The application is supported by an affidavit of Mukesh Aggarwal, Authorized Signatory and Estate Officer of erstwhile M/s Hindustan Everest Tools Limited.

It has been averred that during the pendency of the present appeal, the Labour Court, Panipat has announced its award which is sought to be placed on record as Annexure A-4. It has also been averred that the award Annexure A-4 is important for the fair and just decision of the appeal.

For the reasons mentioned in the application and considering the fact that the document being sought to be placed on record is award of the Labour Court, Panipat, the application is allowed subject to all just exceptions and the award dated 11.11.2021 is taken on record as Annexure A-4.

LPA-424-2020
LPA-422-2020
LPA-425-2020
LPA-426-2020
LPA-427-2020
LPA-428-2020
LPA-429-2020
LPA-430-2020
LPA-431-2020
LPA-432-2020
LPA-589-2020
LPA-590-2020
LPA-672-2020

This judgment shall dispose of the aforesaid 13 connected appeals, filed by appellant(s) which arise out of an unfortunate and bitter litigation between the appellant-Management and its employees. By way of the impugned judgment dated 06.03.2020, the writ petitions, filed by the appellant were dismissed. The facts have been taken from LPA No.424-2020 as the counsel for the parties have referred to and putforth their arguments and submissions based on the same.

The facts, as pleaded by the parties, in brief, are that the appellant, as the name suggests, seems to have been engaged in the manufacturing of tools, having its factory at Village Jatheri, District Sonepat. On account of some unrest, the workers Union submitted a general demand notice on 20.01.2013 to the appellant. Finding that its demands had not been acceded to, the workmen resorted to a strike. The matter reached the labour department which prohibited the strike on

20.06.2013. In the meantime, the appellant called upon the workmen by way of notices to join back but they did not pay any heed. As per the appellant, repeated notices were issued in the month of May and June, 2013 calling upon the workmen to join back as the appellant was incurring huge production and financial losses. A press notice/publication was issued on 02.07.2013 followed by another press publication dated 04.07.2013. Majority of the workmen joined back as fresh appointees but few did not join back despite repeated notices and publications. Finally show cause notices dated 10.07.20213 were issued calling upon to explain as to why on account of the financial loss, as indicated in the notices, the gratuity payable to them be not forfeited in terms of Section 4 (6) of the Payment of Gratuity Act (hereinafter referred to as 'the Act'). The notice was issued by way of a fresh publication on 12.07.2013 but no reply was received. Under the circumstances, an order of forfeiture of gratuity was passed on 20.07.2013. In between the matter went to the Controlling Authority and respondent No.2 but finally, on 11.07.2017, the Controlling Authority rejected the claim of the workmen but in appeal, respondent No.2 vide its order dated 30.04.2018 accepted their claim and held that gratuity could not have been forfeited. The stand of the workmen all through has been that the appellant could not have forfeited the gratuity as no order of termination was passed nor any inquiry was held nor the losses alleged to have been suffered by the appellant on account of the strike were quantified in a proper manner so as to determine as to what loss has been caused on account of an individual workman. It has been the stand of the workmen that the provisions of the Act cannot be given a go-bye and have to be scrupulously complied with in letter and spirit.

Aggrieved against the said order dated 30.04.2018, the appellant preferred writ petitions and the same were dismissed vide order dated 06.03.2020 against which the present Letters Patent Appeals have been filed.

We have heard learned counsel for the parties and with their assistance, have gone through the record.

Sh. Gurminder Singh, learned Senior counsel representing the appellant has strenuously urged that the order dated 30.04.2018 (Annexure P-1 with the writ petition) (reference to annexures hereinafter shall indicate reference to annexures with the writ petition), passed by respondent No.2 as also the impugned judgment dated 06.03.2020, passed by learned Single Bench are not sustainable. He has referred to the provisions of Sections 4 & 6 of the Act and has contended that keeping in view the conduct of the workmen and the manner in which they had resorted to an illegal strike as also not reporting for duty despite repeated notices justifies the action taken against them.

Learned Senior counsel has submitted that on account of the illegal strike resorted to by the workmen, the appellant suffered huge losses as a result of which it eventually closed down. Learned Senior counsel has referred to the various notices issued by the appellant to the workmen both individually and through the press as also the orders passed by the appellant and has contended that the view taken by respondent No.2 and the learned Single Bench that since it was abandonment of service by the workmen and not termination by the appellant, gratuity could not have been forfeited is erroneous. Learned Senior counsel has taken the Court through the impugned judgment dated 06.03.2020, passed by the learned Single Bench and the order dated 30.04.2018, passed by respondent No.2 and has contended that the same are not sustainable on a plain reading of Section 4 (6) (1)(a) of the Act. To support his arguments, learned Senior counsel has placed reliance upon the judgments of Hon'ble Supreme Court in ***The Oriental Textile Finishing Mills, Amritsar vs. The Labour Court, Jullundur and others 1972 AIR (Supreme Court) 277; Chairman-cum-Managing Director, Mahanadi Coalfields Limited vs. Rabindranath Choubey (2020) 18 Supreme Court Cases 71; Punjab and Sind Bank vs. Sakattar Singh 2001 (1)CLR 468; U.P.State Bridge Corporation Ltd. And Ors. vs. U.P. Rajya Setu Nigam S.Karamchari Sangh 2004 (1) S.C.T. 753; Hindustant Paper Corporation vs. Purnendu Chakrabarty and others 1996 (11) SCC 404 and Viveka Nand Sethi vs. Chairman, J & K Bank Ltd. & Ors. 2005 (2) S.C.T. 702*** and the judgments of this Court in ***D.S.Chauhan vs. The Food Corporation of India and others 2008 (1) S.C.T. 707 and Devinder Singh vs. Food Corporation of India and others 2008 (2) S.C.T. 434*** and also the judgment of Gujrat High Court in ***Sabarkantha, District Central Co-op. Bank Ltd. vs. Ramanbhai M.Patel and Ors. 2011 (3) LLJ 579***.

It has also been submitted that the judgment in the case of ***Jaswant Singh Gill vs. M/s Bharat Coking Coal Ltd. & Ors. 2007 (1) J.C.R. 129*** which has been relied upon by the respondents has been overruled by the Hon'ble Apex Court in ***Chairman-cum-Managing Director, Mahanadi Coalfields Limited's case*** (supra). Learned Senior counsel has also referred to Clause 15 of the standing orders and has contended that in view of this provision, the workmen lost their lien on their appointments and, therefore, the gratuity was rightly forfeited.

On the other hand, learned counsel for the respondents, with equal vehemence, has supported the decisions of respondent No.2 and the learned Single Bench. He has referred to the provisions of Section 4 of the Act and has submitted that the stand of the workmen is that the provisions of the Act cannot be given a go-bye and have to be scrupulously complied with in letter and spirit. H has also read out the orders passed by respondent No.2 and the judgment of learned Single Bench and has contended that there is no illegality and infirmity in the same.

Referring to the cross-examination of MW-1 Mukesh Aggarwal, learned counsel for the respondents has submitted that the witness admitted that the notices had not been delivered to the workmen. It has been argued that since no disciplinary proceedings were initiated against the workmen and consequently no order of termination was passed, their gratuity could not have been forfeited. It has also been argued that when as per the own case of the appellant, the workmen had absented from 21.05.2013 itself, how the appellant company suffered losses on account of their absence.

Learned counsel has also referred to the provisions of Section 2 (q) of the Act and has contended that at best the workmen can be said to have retired in the present case since they had not superannuated. It has also been contended that without there being categoric findings as regards to the loss incurred by the appellant on account of individual workmen, gratuity could not have been forfeited. To support his contentions, learned counsel has relied upon the judgments of Hon'ble Supreme Court in ***Jaswant Singh Gill's case*** (supra) and ***Union Bank of India and others vs. C.G.Ajay Babu and Another 2018 (3) CLR 325.***

We have examined the submissions made by Sh. Gurminder

Singh, learned Senior counsel representing the appellant and Sh. Ramesh Goyat, learned counsel representing the respondents and have also gone through the various notices, orders, petitions and the decisions of various authorities passed in the matter from time to time. However, we are unable to agree with learned counsel for the appellant and do not find any reason to interfere with the judgment of the learned Single Bench. In arriving at this conclusion, we would first refer to the bare provisions.

Section 4 (1) of the Act deals with the payment of gratuity. Section 4 (2 to 5) of the Act are not much relevant for the purposes of the present dispute and Section 4(6) deals with the forfeiture of gratuity. Section 4 (1) and Section 4 (6) of the Act read as under:-

> ***(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.]
>
> Explanation .— For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(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 [17] [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.

Section 2(q) defines retirement whereas Section 2 (r) defines superannuation and lays down as under:-

"2(q) "retirement" means termination of the service of an employee otherwise than on superannuation;

2(r) "superannuation", in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employer shall vacate the employment."

Coming to the facts, the same are not disputed. Admittedly on 22.05.2013, 203 workmen had gone on a strike as their demands which they had raised by way of a demand notice in January, 2013, as per them, had not been acceded to. The operations of the appellant came to a halt. The matter went to the Labour Department which in-turn referred the same to the concerned Industrial Tribunal and the Industrial Tribunal prohibited the continuation of the strike on 19.06.2013. As per the appellant, it suffered losses running into crores of rupees on account of the strike. Various notices to the workmen to join back were not responded to though majority of the workmen did join back on fresh appointments. Eventually orders dated 20.07.2013 were passed vide which invoking the provisions of Section 4(6)(a) of the Act and Clause 15 of the Standing Orders, the gratuity of the respondents-workmen was forfeited.

The word '*termination'* has not been defined under the Act. The dictionary meaning of the word '*termination'* would be the act of ending something or the end of something. Termination of service, therefore, means the end of a person's service. The end may of course be by way of different methods. It may be by way of retirement as defined under Section 2 (q) of the Act which itself says that the retirement would be termination of service otherwise than on superannuation, by way of superannuation or as a punitive measure.

Now it has to be seen as to whether gratuity can be forfeited on account of termination of service by way of all modes or whether it can be forfeited only on account of termination as a punitive measure only. A plain reading of Section 6(a) of the Act, which the appellant states to have been invoked would show that it refers to services specifically terminated for any Act, wilful omission or negligence on the part of the workmen.

The order dated 20.07.2013 (Annexure P-7) simply talks about the forfeiture of gratuity on account of the loss caused to the appellant due to the strike. It does not terminate the services of the workmen. Admittedly, no disciplinary proceedings were initiated and no consequential order of termination was passed. The non-joining of the workmen irrespective of the fact whether notices had been received by them or not would not amount to termination of service. At best or it may be akin to resignation which the language of clause 15 of the Standing Orders suggests. Clause 15 of the Standing Orders states that if a workman remains absent for a continuous period of 10 days without permission or intimation, he shall loose lien on his appointment and it shall be deemed that he has left the services from the date of his absence. Leaving a service can never be termed to be termination for the purposes of forfeiture of gratuity. Even retirement means termination and if the stand of the appellant is to be accepted, in a case of retirement also, Section 4 (6) could be invoked. This can never be the case and the provisions of Section 4 (6) of the Act are to be read as they are and are not open to any other interpretation. It is settled that no words can be added to the statute as has been rightly held by the learned Single Bench.

Still further, the appellant did not assess or convey the loss/damages caused to it by individual workmen. There is nothing on record to show as to on account of which workman, what kind of loss/damage and amount of financial loss had been suffered by the appellant. In the absence of the same, merely by quantifying the total loss suffered during the period of strike would not be sufficient to hold any workman responsible for the purposes of forfeiture of gratuity.

Another argument which has been raised is that since the workmen did not challenge the order dated 20.07.2013 (Annexure P-7), respondent No.2 could not have set aside the same and the workmen would have to challenge the said order separately. This argument is also devoid of merit. As rightly observed by respondent No.2, the moment the authority under the Act was moved for the payment of gratuity, the order dated 20.07.2013 (Annexure P-7) stood automatically contested. The action of the appellant in forfeiting the gratuity of the workmen who had been working with it for many years is, therefore, totally unjustified.

We have gone through the judgments relied upon by both sides. We find that none of the judgments squarely covers the case of either side because in most of the cases, the services of the employees therein had been terminated on account of their misconduct after the initiation of disciplinary proceedings which is not so in the present case. Further, in all cases there was a misconduct, as can be said in the present case though merely proceeding on strike would not be a misconduct in the strict sense. In the case of ***Oriental Textile Finishing Mills, Amritsar's case*** (supra), the workmen went on a lightning strike as some workmen had initially been suspended and further the talks between the two sides had failed. Efforts of conciliation were made but the same also failed. Charge-sheets were served on the workmen to which replies were given. Workmen were asked to resume work but they did not relent. Further, notices were sent asking them to show cause as to why their names should not be struck off. However, the workmen again did not relent. The names of these workmen were eventually struck off from the muster roll. There also many workmen rejoineded their duties. The matter was referred to the Labour Court to determine whether the termination of these 31 workmen was justified. The workmen therein were contending that they had abandoned their services. They came to this Court but this Court also took a view that the management had terminated their services and the workmen had not abandoned their services and the matter was remanded to the Labour Court for a fresh decision. The Labour Court held that since the termination had taken place without holding any inquiry, it was not valid and ordered the reinstatement of the workers. The matter went to the Hon'ble Supreme

Court to decide as to whether the termination of employment of the workmen without inquiry was justified. The Hon'ble Apex Court held that on account of the misconduct of the workmen, the termination without inquiry was not improper. The reason for which this judgment is not applicable to the facts of the case in hand is that in the present case, there was no termination of services by the appellant. At no point it was said that the names of the workmen had been removed from the muster roll or that their services had been terminated. The order dated 20.07.2013 only referred to the forfeiture of gratuity. This judgment would, therefore, not come to the help of the appellant.

In ***Chairman-cum-Managing Director, Mahanadi Coalfields Limited's case*** (supra), the issue was entirely different as to whether disciplinary proceedings could have continued after the age of superannuation or not. This judgment would also, therefore, not come to the succour of the appellant.

In ***D.S.Chauhan, Devinder Singh, Punjab and Sind Bank, U.P.State Bridge Corporation Ltd., U.P. Rajya Setu Nigam S.Karamchari Sangh's cases (supra),*** there was specific termination of the employee/employees in question and, therefore, these judgments would not be applicable to the facts of the present case. In the case of ***Sabarkantha, District Central Co-op. Bank Ltd.*** (supra) also, the workmen had been dismissed from service. It was held that till the time the dismissal of the workmen was not declared to be illegal by the competent Court, the eventuality of payment of gratuity would not come into play. This would also not help the appellant as in the present case again there is no specific order of dismissal and the order dated 20.07.2013 vide which the gratuity was forfeited stood challenged by the filing of the claim for payment of gratuity.

In the case of ***Viveka Nand Sethi's case*** (supra), the workman had not reported for duty after his leave. An explanation was sought and he was asked to join back on duty. The workman, however, did not join back. A show cause notice was issued stating that if he did not resume his duties he would be deemed to have been discharged from service. Ultimately his services were dispensed with. On the issue of grant of back wages, the Hon'ble Apex Court held that such an employee did not deserve any relief and that dispensing with of the services without inquiry was not illegal. This judgment would again not help the appellant as in the present case there is no order vide which services of the respondents-workmen had been terminated or dispensed with.

In ***Jaswant Singh Gill's*** case (supra), the Hon'ble Apex Court held that the Act provides for a close knit scheme providing for payment of gratuity. It was held that it is a complete code containing detailed provisions. It not only creates a right to payment of gratuity but also lays down the principles of quantification and also the conditions on which the gratuity may be denied. It was observed that these conditions are to be fulfilled and in case an accrued or vested right is sought to be taken away, the conditions for the same must also be fulfilled. It was further held that the provisions contained in the Act must, therefore, be scrupulously observed. However, this judgment was over-ruled in ***Chairman-cum-Managing Director, Mahanadi Coalfields Limited's case*** (supra). No reliance is, therefore, being placed on the same.

For the reasons aforementioned, we find no reason to interfere in the judgment passed by the learned Single Bench and also do not find any merit in the present appeals, as a result of which, the same are dismissed.

(AUGUSTINE GEORGE MASIH)	**(VIKRAM AGGARWAL)**
JUDGE	**JUDGE**

19.12.2022
mamta

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No