

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

217

CWP No.3421 of 2018 (O&M)
DATE OF DECISION: 20th JULY, 2022

District Manager, the Haryana State Co-operative Supply & Marketing Federation Ltd.

.... Petitioner

Versus

Appellate Authority under the Payment of Gratuity Act, Rohtak & others.

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Vivek Chauhan, Advocate,
for the petitioner.

Mr. Ram Pal Verma, Advocate,
for respondent No.3.

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RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Articles 226/227 of the Constitution of India for issuance of a writ, order or direction especially in the nature of Certiorari for quashing of order dated 21.11.2017 (Annexure P-6) passed by respondent No.1 and for quashing of order dated 28.10.2016 (Annexure P-5) passed by respondent No.2, whereby the respondent No.3 has been held entitled for gratuity along with interest.

The brief facts of the case are that the husband of respondent No.3 was serving on the post of Assistant with the petitioner-federation. By virtue of his omission and commissions, the said employee had

caused loss to the petitioner-federation. The petitioner had sought explanation from the said employee so as to initiate the disciplinary proceedings against him. However, the said employee had given in writing admitting his guilt with an undertaking that the amount of loss be recovered from his retiral benefits. Accordingly, the loss was assessed and an amount of Rs.7,06,346/- plus interest was crystallized against the employee. The employee retired from service on 28.02.2014. On 26.02.2014 prior to this retirement, the petitioner-Federation had passed the order of adjustment of the above said amount from the retiral benefits of the said employee. Thereafter, the employee had expired on 11.11.2014. After the death of the employee, respondent No.3, the wife of the employee filed an application before the authority concerned under the Payment of Gratuity Act, 1972 (for short, the Act) claiming the amount of gratuity payable to her deceased-husband. The authority has passed the order against the petitioner holding it liable to make the payment of gratuity amounting to Rs.7,59,368/-; along with interest amounting to Rs.1,02,515/-; to respondent No.3. Appeal filed by the petitioner was also dismissed. Accordingly, the present petition has been preferred by the petitioner-federation.

Arguing the case, learned counsel for the petitioner has submitted that since disciplinary proceedings were initiated against the employee before his retirement and the employee had admitted the misconduct and had given in writing that the amount of loss be recovered from his retiral benefits, therefore, by passing a specific order dated 26.02.2014, the amount of loss of Rs.7,06,346/- plus interest has been fixed and adjusted against the amount of gratuity payable to the

employee. Accordingly, learned counsel for the petitioner has submitted that in terms of provisions as contained in Section 4 (6) of the Act, the amount of gratuity to the extent of loss assessed by the petitioner-federation stood forfeited. The recovery has rightly been effected by the petitioner-federation. Hence, the Controlling Authority has wrongly passed the order holding the respondent No.3 to be entitled to the amount of gratuity. Learned counsel for the petitioner has further submitted that the order dated 26.02.2014 was addressed to the deceased employee as well. He had also accepted the order of recovery. Therefore, while filing another writ petition i.e. CWP No.13747 of 2014 challenging the second charge-sheet issued to him regarding another matter, the deceased employee had not even questioned the action of the respondents-authorities qua adjustment of the amount of loss against gratuity. Moreover, the order of effecting recovery from the employee was appealable under the service rules. However, even that action was not taken by the employee. Hence, it is conclusively established that the employee had accepted the order in toto. The legal representatives of the employee cannot now rack up the issue of gratuity after the death of the employee.

On the other hand, learned counsel for respondent No.3 has submitted that the order has rightly been passed by the Controlling and Appellate Authority. The amount of gratuity was not paid to the husband of respondent No.3. So far as the order of adjustment dated 26.02.2014 is concerned, the same was not communicated to the deceased husband of respondent No.3. Referring to the language of the Section 4 (6) of the Act, learned counsel for respondent No.3 has submitted that the language

of sub Section (6) of Section 4 contemplates a specific situation where the service of the employee has been terminated by way of punishment; accompanied by order of loss assessed against him. In the present case, not even an enquiry was held by the petitioner. Hence, the order dated 26.02.2014 cannot have the effect of forfeiture of the gratuity of the deceased-husband of respondent No.3. Learned counsel has further submitted that; otherwise also; on account of misconduct, the amount of gratuity cannot be withheld. Learned counsel has relied upon the judgments rendered by this Court in the case of ***Mewa Singh Versus State of Punjab and others, CWP No.12343 of 2005, decided on 30.04.2007*** and rendered by Madras High Court in the case of ***The Special Officer, The Management of R.1779 Srirangam Co-operative Union Bank Ltd. Versus The Joint Commissioner of Labour (Appellate Authority under the Payment of Gratuity Act), Trichy and others, W.P. (MD) No.2683 of 2011, decided on 13.10.2011.***

Before proceeding further, it would be appropriate to have reference to the provision of law as contained in Section 4 of the Payment of Gratuity Act, 1972, which is as reproduced here under:-

“Section 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.]

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.

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(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."*

Having heard learned counsel for the parties and having perused the record, this Court finds substance in the arguments of the counsel for the petitioner. The record shows that the petitioner-federation had passed a specific order 26.02.2014 adjusting the amount of loss assessed by the petitioner, as per admission of guilt and undertaking given by the deceased employee. Obviously, the admission of guilt and undertaking for recovery was given by the deceased employee to avoid adverse order in formal departmental enquiry. The order of recovery was even accepted by the deceased/husband of respondent No.3. The said order contains an endorsement of the same to the deceased-employee as well. Learned counsel for respondent No.3 has not been able to dispute the fact that the said order was never challenged by the deceased-employee during his life time. It is also not disputed that the deceased-employee had filed another writ petition i.e. CWP No.13747 of 2014 raising his grievance qua another aspect and in that writ petition, he had not even asserted any grievance qua the amount of gratuity nor had he asserted that the order dated 26.02.2014 was never communicated to him. Therefore, the record shows that there is an order passed by the competent authority fixing the amount of loss and adjusting the amount of loss from the amount of gratuity. To that extent, the amount of gratuity shall be deemed to have been forfeited in favour of the petitioner. Hence,

the respondent No.3 cannot raise a valid claim for the amount of gratuity as such.

Needless to say that Section 4 (6) of the Act contemplates and stipulates the forfeiture of gratuity amount of an employee in case the loss is caused by him. Of course, the section mentions the situation where the termination order is passed by the employer on the ground of loss caused by the employee, however, the termination *per se* cannot be taken a pre-condition for forfeiture of gratuity amount of an employee in case the loss is otherwise not contested by the employee and the order of loss has been crystallized even before the date of retirement. The word 'termination' is used in this Section because gratuity is payable on retirement or termination. Otherwise, emphasis is on right of employer to recover the loss from gratuity. Sub Section (1) of Section 4 is an entitling provision prescribing conditions for grant of gratuity. However, sub Section (6) of Section 4 is an exception to sub Section (1) and sub Section (6) starts with non-obstante clause. Essence of sub Section (6) is the loss caused by the employee and consequential forfeiture of the gratuity. Therefore, the provisions of Section 4 (6) of the Act would also cover those cases where the employee retires but before that an order of recovery of loss has already been passed against him, particularly when such an order has been passed on undertaking given by the employee that the amount of loss be recovered from his retiral benefits. If to avoid a possible order of dismissal the employee admits having caused loss and give consent for recovery; as mentioned above, then a formal order of dismissal or termination for the misconduct of causing loss would not be necessary for adjusting the loss crystallized by the authority from the

gratuity. If the language is not interpreted in this manner, then the provision itself would be rendered nugatory. That would be giving premium to a delinquent employee on his own misconduct coupled with the trick which he played on the employer by admitting guilt and consenting for recovery from gratuity.

Although, learned counsel for respondent No.3 has relied upon the judgments rendered by this Court in the case of *Mewa Singh (supra)* and rendered by Madras High Court in the case of *The Special Officer (supra)*, however, the same are totally distinguishable on the facts of the present case. In case of *The Special Officer (supra)*, there was no order of having caused loss passed against the employee whereas in the present case, the loss caused has even been admitted by the employee and has been crystallized by the competent authority on 26.02.2014, just before two days when the employee was retired. In the judgment rendered by this Court in the case of *Mewa Singh (supra)*, the proposition was altogether different. In that case, the excess amount otherwise paid to the employee; was sought to be recovered from the gratuity amount of the employee but that had not found favour with the Court because it was found that the employee had not received the said amount earlier through any fraud or mis-representation. Even, this case does not help the case of respondent No.3, by any means. In the present case, the actual loss is stated to have been caused by acts and omissions of the deceased employee only. The loss had been crystallized before his retirement and the order of adjustment from the gratuity had already been passed as per the written authorization by the employee. As noted above, the said order of adjustment was not even ever questioned by the said

employee before his death. Therefore, the gratuity payable to the employee has validly been adjusted against the loss caused to the petitioner. The petitioner-federation was free to even forfeit the entire amount of gratuity; if the amount of gratuity was lower than the loss caused; had the employee been dismissed from service. In the present case, specific order of recovery of loss was separately passed on 26.02.2014 on admission of guilt by the employee and the employee retired on 28.02.2014. Therefore, the petitioner has rightly adjusted the amount of loss against the payable amount of gratuity. No fault could be found with the action of the petitioner in that regard.

The aspect of admission of misconduct leading to the loss caused by the employee and the fact of he having given the undertaking for recovery and the amount of loss being adjusted by the petitioner against the amount of gratuity was duly brought to the notice of the Controlling Authority and the Appellate Authority. However, that aspect has wrongly been discarded by the Controlling Authority and the Appellate Authority on the ground that the petitioner had not conducted any inquiry and had not passed any separate order with regard to forfeiture of gratuity payable to respondent No.3. Once, the order of adjustment of loss against the amount of gratuity is passed by the authority on admission of the guilt by the deceased-employee, that is nothing but, in effect, a forfeiture of the amount of gratuity to the extent of loss. Hence, the reasoning given by the authorities below is not in consonance with the law as such. Hence, the same deserves to be set aside. Accordingly, the present petition is allowed. The orders impugned in the present petition are set aside.

The amount, if any, already deposited with the Controlling/Appellate Authority is ordered to be refunded to the petitioner-federation.

The pending miscellaneous applications, if any, are also disposed of as such.

20th JULY, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes