**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Letters Patent Appeal No.963 of 2018**
**In**
**Civil Writ Jurisdiction Case No.9886 of 2003**

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1. Food Corporation Of India through its Senior Regional Manager Bihar Region [Now General Manager (Region)], Arunachal Building, Exhibition Road, Patna
2. Zonal Manager, Food Corporation of India, 10A Middleton Row, Kolkata 700 071.

... ... Petitioners/ Appellant/s

Versus

1. The Union of India through the Secretary, Department of Labour and Welfare, New Delhi.
2. The Regional Labour Commissioner (Central), Patna Morurya Lok Complex, P.S. Kotwali, Distt- Patna 3.
3. The Assistant Labour Commissioner (Central), Patna Maurya Lok Complex, P.S. Kotwali, District-Patna.

4 (1) Smt. Shakuntala Sinha wife of Late Shri Braj Nandan Prasad

4(2) Uday Kumar Sinha son of Late Shri Braj Nandan Prasad

4(3) Sanjay Kumar Sinha son of Late Shri Braj Nandan Prasad

4(4) Rekha Sinha, daughter of Late Shri Braj Nandan Prasad

4(5) Prashant Kumar Sinha son of Late Shri Braj Nandan Prasad

4(6) Miss. Neha, daughter of Late Shri Braj Nandan Prasad,
All resident of 229 Sideshwar Nagar, Mainpura, Babhantoli, Patna-1

4(7) Smt. Kiran Sinha, daughter of Late Shri Braj Nandan Prasad, resident of Railway Colony, Nirala Nagar, Kanpur.

... ... Respondents/Respondent/s

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**Appearance :**

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| For the Appellant/s | : | Mr. Prabhakar Tekriwal, Advocate |
| For the Union of India | : | Mrs. Kanak Verma, CGC |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**
**and**
**HONOURABLE MR. JUSTICE PARTHA SARTHY**

**ORAL JUDGMENT**
**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 24-08-2023**

The appellants are the employers and the party respondents 4(1) to 4(7) are the legal representatives of the deceased employee, who was dismissed from service, the proceedings against which are also relevant in deciding the question raised in the present case, of payment of gratuity under the Payment of Gratuity Act, 1972 (for brevity, 'the Act').

2. The learned Single Judge having discussed the provisions under the Act found that it leads to an inference that the gratuity of an employee cannot be forfeited or withheld on any ground other than what is mentioned in Section 4(6) of the Act and that too only when the services of the employee is terminated. The termination of the employee in the present case has been set aside by the Central Government Industrial Tribunal (for brevity, 'the Tribunal') and the employer unsuccessfully challenged the same before this Court. It was hence held that there could have been no forfeiture/withholding of gratuity and the employee was entitled to the same. The writ petition was found to be devoid of merit and a cost of Rs.50,000/- was imposed.

3. We heard Shri Prabhakar Tekriwal, learned counsel for the Food Corporation of India; the appellants. There is no appearance for the private party-respondents despite notice issued to some of them having been accepted and later, one of

them 'Respondent No.4(7)' being issued with notice by way of a paper publication.

4. Learned counsel for the appellants pointed out that there was a termination of the service of the employee, by way of imposition of penalty of dismissal, after a due enquiry proceedings. It is true that the Tribunal had interfered with the order of dismissal and directed reinstatement, by which time the employee had passed the age of superannuation. The employee challenged the said order but the writ petition was dismissed. It is also submitted that the gratuity computed by the Tribunal was far in excess of the limit prescribed under the Act. It is argued that there was no reason to impose costs on the writ petitioners, the employers, who had raised valid contentions in the writ petition.

5. As we noticed, the proceedings against the order of dismissal has relevance insofar as the consideration of the payment of gratuity, which is the subject matter of the above appeal.

6. Annexure-1 produced in the writ petition is the order of the disciplinary authority, finding the delinquent employee to be guilty of the charges levelled against him, as per the evidence brought on record in the departmental enquiry. The delinquent employee was imposed with the penalty of dismissal

from service with immediate effect. The order of dismissal was challenged before the Tribunal in Reference Case No.26 of 1992 which was disposed of by Annexure-2 produced in the writ petition. The Tribunal found that the enquiry officer had rightly come to the conclusion that the concerned workman was guilty of the two charges levelled against him. However, for reason of the delinquent employee having not been offered an opportunity of hearing against the proposed penalty and a hearing not being afforded by the appellate authority, the order of dismissal was set aside. The delinquent employee was directed to be reinstated within two months.

7. Annexure-2 order was challenged before this Court in a writ petition in which Annexure-3 judgment was passed. A learned Single Judge of this Court relying on **Workmen of *Motipur Sugar Factory (P) Ltd. v. Motipur Sugar Factory, AIR 1965 SC 1803***, held that even when there was no enquiry held before an order of dismissal, it would stand in the same footing as a defective enquiry and the Tribunal would have the competence to consider whether the allegations were proper; on the employer justifying its stand by adducing necessary evidence to substantiate the charges levelled. This translates as a right conferred on the employer to seek sustenance of the

penalty by adducing necessary evidence before the Tribunal itself. It was held that when even a total absence of enquiry would clothe the Tribunal with such powers, the absence of hearing on the penalty proposed would not result in the setting aside of the dismissal order. This Court hence set aside the award to the extent the dismissal order was set aside. The matter was remitted back to consider whether there could be any interference caused to the penalty imposed under Section 11A of the Industrial Disputes Act. Hence, the finding of the Tribunal regarding the guilt of the delinquent employee, as found by the enquiry officer and affirmed by the disciplinary authority stood sustained.

8. On remand, the Tribunal passed Annexure-4 order. In purported invocation of Section 11A of the Industrial Disputes Act, the Tribunal set aside the order of dismissal and directed the employee to be posted in the next below rank he was holding at the time of dismissal, without any continuity of service. The delinquent employee was directed to be considered as newly appointed, commencing from the date of such reinstatement. Both the employer and the employee challenged the order of the Tribunal, which writ petitions were both dismissed by a common order produced as Annexure-5. The

Writ Court found that the reinstatement now directed cannot be effectuated since the delinquent employee has crossed the age of superannuation. It was held that the order thus causes no prejudice to the employer. As to the entitlement of pension and gratuity, the Writ Court found that such issue having not been considered by the Tribunal, it would be the prerogative of the employer to consider the same. As far as the writ petition of the delinquent employee is concerned, it was found that since he did not challenge the finding of guilt as recorded in the initial order, there could be no further consideration of the same. The entire issue of severance of employment thus came to a quietus on 22.07.1998 when Annexure-5 order was passed rejecting both the writ petitions filed by the employer and the delinquent employee challenging Annexure-4 order. Hence, by the rejection of the challenge against the award of the Tribunal, the termination of dismissal was set aside. The modification to the penalty imposed by way of directing reinstatement as a fresh recruitment could not be effectuated since the delinquent employee had passed the age of retirement. Hence, the delinquent employee can only be treated as having superannuated on the latter date and not terminated as on the date of order of dismissal.

9. The delinquent employee then approached the Assistant Labour Commissioner (Central), Patna, who was also the Controlling Authority under the Act with an application for disbursal of gratuity due. The Controlling Authority by Annexure-6 order computed the gratuity payable for the thirty-three years' service at Rs.1,45,596/- and directed simple interest at the rate of 10% on the gratuity amount, i.e. Rs.98,707/- from 01.07.1995 to 31.5.2002.

10. Before we proceed further, we have to notice that the dismissal order was passed on 30.03.1991 and the date of superannuation of the employee was 30.06.1995. True, the delinquent employee was not employed between the order of the dismissal and the date of superannuation and he cannot have any claim for wages during the said period. However, the entitlement of gratuity has to be determined as on 30.06.1995.

11. The Act of 1972 provides for a limit insofar as the amount of gratuity payable by sub-section (3) of Section 4 which as of now is an amount not exceeding that notified by the Central Government from time to time. However, as on the date of dismissal, i.e. 30.03.1991, the maximum amount that could be disbursed as gratuity was Rs. 50,000/-. By the Payment of Gratuity (Amendment) Act, 1994 (34 of 1994) introduced with

effect from 24.05.1994, the limit was enhanced from Rs.50,000/- to Rs.1,00,000/-. Hence, as on the date of superannuation of the delinquent employee, i.e. 30.06.1995, an amount of Rs.1,00,000/- is payable. As computed by the authority, if the total amount payable for thirty-three years' service, with reference to the wages last drawn by him was Rs.1,45,596/-, then disbursement has to be confined to Rs.1,00,000/-.

12. We interfere with the order of the Controlling Authority as affirmed by the appellate authority to the extent only of the entire gratuity amounts computed for thirty-three years with reference to the last wages drawn, being confined to the maximum prescribed under the Act of 1972. We do not interfere with the interest granted for the amounts till payment. If the amounts are not paid till now, the same shall be paid to the legal heirs of the delinquent employee within a period of three months from today with interest as ordered by the Controlling Authority and affirmed by the Appellate Authority. If amounts have already been disbursed, even in excess of the limit prescribed, we direct that no refund shall be made, especially since the delinquent employee is no more. We also delete the costs directed to be paid in the judgment. On this respect also,

we make it clear that if the costs have already been paid, the appellants shall not attempt to recover the same from the family of the deceased employee.

13. The Letters Patent Appeal is allowed on the above terms. The parties are left to suffer their respective costs.

**(K. Vinod Chandran, CJ)**

**(Partha Sarthy, J)**

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| **AFR/NAFR** | NAFR |
| **CAV DATE** | |
| **Uploading Date** | 28.08.2023 |
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