01.09.2023
Ct. No.12
Sl. No.15
NAREN

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 2225 of 2014

Dinabandhu Satapathy.
Vs.
Hindustan Copper Ltd. & Ors.

Mr. Mukul Lahiri, Sr. Adv.,
Mr. Atish Dipankar Ray,
Ms. Sutapa Dutta
... For the appellant.

Mr. Bikash Ranjan Neogi,
Ms. Ananya Neogi
... For the respondents.

The appellant was working as Director (Personnel) in the first respondent Company. On 22nd July, 2009, the first respondent issued a charged memo to the appellant containing following charges:-

"Article-I

It is alleged that the said Shri D. Satapathy, Director(Personnel), Hisdustan Copper Limited, Kolkata forwarded the recommendation of the selection committee minutes dated 16.07.2007 to the CMD, Shri Satish C. Gupta, for an out of turn selection of a particular officer, namely Shri H.S. Mann, Deputy Manager (HR)/KCC, in contravention of the provisions of the circular no. Estt/1/1057 dated 24.05.2007, laid down systems and procedures without exercising due caution and care and has thus acted in a manner prejudicial to the interests of the company *which constitute a misconduct under Rule-5.1(e) of Hindustan Copper Limited (Conduct, Discipline & Appeal) Rule, 1979.*

Article-II :

It is alleged that the said Shri D. Satapathy, Director(personnel), Hindustan Copper Limited had agreed to proposal for relaxation of selection criterion to favour one Shri Milan Kumar Pandit at the time of his recruitment/selection for the post of Secretary to the Chief Executive of HCL in contravention of the Company's R&P Rules, 1979 for executives (as amended in 1984), systems and procedures and exercised discretion in excess and thereby acted in a manner unbecoming of a public servant which amounts to misconduct in terms of Rule – 5.1(e) – acting in a manner prejudicial to the interests of the company under Hindustan Copper Limited (Conduct, Discipline & Appeal) Rules, 1979.

Article-III :

It is alleged that the said Shri D. Satapathy, Director (Personnel), Hindustan Copper Limited had taken action to favour one Shri Milon Kumar Pandit, not Assistant Manager (Secretarial), HCL, Head Office, Kolkata by agreeing to grant of two advance increments to the said Shri Milon Kumar Pandit w.e.f. the date of his joining in contravention of Company's R&P Rules, 1979 for executives (as amended in 1984), systems and procedures and exercised discretion in excess and thereby acted in a manner unbecoming of a public servant which amounts to misconduct in terms

> *of Rule – 5.1(e) – acting in a manner prejudicial to the interests of the company under Hindustan Copper Limited (Conduct, Discipline & Appeal) Rules, 1979. "*

The appellant retired from service of first respondent on 31st July, 2009 on attaining the age of superannuation. The respondent /employer company did not pay the gratuity payable to the appellant. The appellant approached the Controlling Authority / third respondent herein for payment of gratuity. The third respondent / Controlling Authority directed the first respondent to pay the gratuity together with simple interest @ 12% for the delayed payment. The first respondent deposited the said amount so determined and filed the appeal before the second respondent / Appellate Authority. The Appellate Authority by the order dated 7th August, 2012 dismissed the appeal. Challenging both the orders dated 31st May, 2012 of third respondent and 7th August, 2012 of second respondent, the first respondent has filed the writ petition being WP No.10685(W) of 2013.

The learned Judge accepting the contention of the first respondent that as per Rule 30(4)(c) of Conduct Rules of the first respondent, the first respondent can withhold the gratuity due to an employee till disposal of the disciplinary proceedings and also held that the first respondent is not liable to pay any interest pending disciplinary proceedings. The learned Judge also directed the respondent nos.2 and 3 to pay the principal amount of gratuity to the appellant and the interest amount to the first respondent.

Against the said order dated 8th October, 2013 passed by the learned Judge in the writ petition, the present appeal is filed.

Heard the learned Advocates appearing for the parties and perused the entire materials on record placed before us.

The appellant retired from service on 31st July, 2009 on attaining the age of superannuation. Within 30 days from the date of retirement, the appellant is entitled to receive the gratuity amount payable to him. As per Section 4(6) of Payment of Gratuity Act, 1972 (for short, "the Act of 1972"), the gratuity can be forfeited only if conditions mandated therein or satisfied. The said Section is extracted herein for better appreciation.

"4. Payment of Gratuity.-

(6) Notwithstanding anything contained in sub-section (1),-

(a) the gratuity of an employee, whose services have been terminated for any act, willful 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 his in the course of his employment."*

This Section makes it clear that only when the employee due to his willful omission or negligence caused any damage or loss, or destruction of property belonging to the employer the gratuity can be forfeited to the extent of damages or loss so caused to the management wholly or partially to the extent of the damage or loss so caused by the employee.

Another condition of forfeiture of gratuity is riotous or fraudulently or disorderly conduct or any other act of violence on the part of the employee or the employee was terminated for the offence of moral turpitude committed by him in the course of his employment.

None of these conditions caused when the appellant retired from service on 31st July, 2009 on attaining the age of superannuation.

The disciplinary proceedings was pending with regard to his act which did not relate to condition mentioned in Section 4(6) of the Act of 1972. In such circumstances, the employee becomes entitled to payment of gratuity immediately on his retirement. The contention of the learned counsel for the first respondent is that as per Section 30(4) (c) of the Conduct Rules of the first respondent/employer, the first respondent can withhold the amount of gratuity when disciplinary proceedings pending against the employee and the first respondent is not liable to pay the interest as gratuity was paid within 30 days from the date of conclusion of the disciplinary proceedings, cannot be accepted. Section 14 of the Act of 1972 overrides any instrument or contract, which is inconsistent with the conditions of the Act of 1972. The reliance placed by the learned counsel for the first respondent on the Rules of the first respondent / employer company is inconsistent to Section 4(6) of the Act of 1972. In view of Section 14 of the Act of 1972, it is not open to the first respondent to rely on the rules of the employer to deny payment of gratuity from the date of retirement. It is to be taken note that is only minor punishment of censure is imposed on the appellant. No charges was leveled against the appellant that he caused loss to the employer or behaved in a riotous manner or he was terminated due to the offence involving moral turpitude in the course of his employment. The authorities have considered the provisions of the Act of

1972 properly and directed to pay the gratuity with interest from the date of retirement. The learned Single Judge failed to consider Section 4(6) and Section 14 of the Act of 1972 and erroneously held that the appellant is not entitled to interest.

For the above reasons, the order of the learned Single Judge is set aside. The order of the Controlling Authority/third respondent and the Appellate Authority/second respondent are restored. The appellant is entitled to both principal and interest.

In the result the appeal is allowed. The first respondent is directed to pay interest amount from the date of retirement till the date of payment to the appellant within a period of four weeks from the date of receipt of the copy of this order.

(V. M. Velumani, J.)

(Rai Chattopadhyay, J.)