Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 3828 of 2020

Food Corporation of India
Versus
Union of India & Ors.

For the petitioner	:	Mr. Kamal Kumar Chattopadhyay
For the respondent no. 4.	:	Mr. Avirup Chatterjee Mr. Rishov Das
Heard on	:	18th December, 2023
Judgment on	:	**18th December, 2023.**

Raja Basu Chowdhury, J:

1. The instant writ petition has been filed, *inter alia*, challenging the orders dated 19th November, 2018 and 3rd October, 2019 passed by the Controlling Authority and the Appellate Authority respectively, under the Payment of Gratuity Act, 1972 (hereinafter referred to as the "said Act').
2. Shorn off unnecessary details the facts are that the respondent no.4 was an employee of the petitioner and was lastly posted as Technical Assistant Grade-I of Food Corporation of India, Divisional

Office, Birbhum, Suri, and had retired from service on 31st September, 2014.

3. At the time of his superannuation, a departmental proceeding was pending against him. The said departmental proceeding ultimately culminated in the order dated 30th December, 2014, whereby the Executive Director of the petitioner, as the Disciplinary Authority of the respondent no.4, had imposed a penalty of reduction to the lower rank of Technical Assistant Grade-I at the initial time scale of pay, effecting from 12th August, 2011 by, *inter alia,* observing as follows:-

> *"NOW THEREFORE, the Undersigned, being Disciplinary Authority, in exercise of the powers conferred under Reg. 56 of the FCI (Staff) Regulations, 1971 impose the penalty of [1] reduction to the lower rank of Tech. Asst. Gr. I at the initial time scale of pay effecting from 12.08.2011 upon Shri Dipak Banerjee, Manager (QC) now retired [2] reduction to the initial time scale of pay to the post of Asst. Gr. II [Movt] upon Shri Amit Chakraborty, Asst. Gr-II [Movt.] [3] reduction tot he inicial time scale of pay to the post of Asst. Gr.-II [D] upon Shri Mohan Mishra, AG-III [D],[4] reduction to the initial time scale of pay to the post of Asst. Gr. –III [D] upon Shri Pranab Kumar Roy, AG-III [D] and [5] dismissal from service with forfeiture of gratuity and other terminal benefits upon Shri Wakil Ahmed, AG-III [d] [now retired] to meet the ends of justice.*
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> *In case the above-named COs are aggrieved with the above decision, a statutory Appeal shall lie with the*

> *Managing Director, FCI, within a period of 45 [forty-five] days from the date of delivery of the Order*".

4. Although, the respondent no.4 had preferred a statutory appeal from the said order, the same was dismissed.
5. Being aggrieved, a writ petition was filed before this Hon'ble Court, which was registered as WP 3170 (W) of 2016. By an order dated 15th March, 2016 a Coordinate Bench of this Hon'ble Court was, inter alia, pleased to dismiss the said writ petition.
6. Being aggrieved, the respondent no.4 had filed an Intra-Court Appeal which was registered as FMA 2136 of 2016. By a judgment and order dated 20th September, 2016, the said Intra-Court Appeal was dismissed.
7. In the interregnum, the petitioner had disbursed a sum of Rs.4,96,149/- to the respondent no.4 on account of gratuity. Since, according to the respondent no.4, the petitioner had made short-payment of the gratuity amount, an application was filed in 'Form N' before the Controlling Authority, inter alia, praying for determination of the amount of gratuity payable to the said respondent.
8. On contest, by an order dated 19th November, 2018, the Controlling Authority, upon examining all the records and proceeding on the premise that last drawn salary of the respondent no.4 constituted the actual last drawn salary payable to him, by ignoring the penalty imposed on the petitioner vide order dated 30th December, 2014,

had determined a sum of Rs.5,03,851/- to be due and payable to the respondent no.4 by the petitioner. Accordingly, a notice in Form 'R' was also issued calling upon the petitioner to make payment of the aforesaid sum.

9. Being aggrieved, the petitioner had filed a statutory appeal and while preferring the same, had deposited, as statutorily required, the aforesaid sum of Rs.5,03,851/- with the Assistant Labour Commissioner (Central) Raniganj, Durgapur by a Demand Draft No.879241 dated 12th February, 2019. Such fact would corroborate from the acknowledgement issued by the Assistant Labour Commissioner (Central) Raniganj addressed to the Area Manager, Food Corporation of India. It appears that by an order dated 3rd October, 2019 the Appellate Authority was, inter alia, pleased to dismiss the said appeal.

10. Being aggrieved, the petitioner had preferred the instant writ petition. After exchange of affidavits, the instant writ petition has come up for final hearing.

11. Mr. Chattopadhyay, learned advocate representing the petitioner by placing reliance on the order dated 30th December, 2014, submits that on the basis of a disciplinary proceeding initiated against the respondent no.4, the petitioner inflicted the penalty. In terms of the aforesaid order, the scale of pay of the respondent no.4 was revised as he was reduced to the lower rank at the initial time scale of pay effecting from 12th August, 2011. Consequent

thereupon, his terminal benefits were recomputed on the basis of the aforesaid punishment and accordingly a sum of Rs.4,96,149/- was determined as gratuity due and payable to the petitioner and the same was also disbursed in his favour. In the interregnum, however, the respondent no.4 had applied before the Controlling Authority. According to Mr. Chattopadhyay, the Controlling Authority had mechanically determined the gratuity payable to the respondent no.4 by treating his last drawn salary to be Rs.54865/- by ignoring penalty inflicted on the respondent no.4. Although, an appeal was carried from the said order, the Appellate Authority refused to interfere. According to Mr. Chattopadhyay, the aforesaid orders are bad in law and cannot be sustained.

12. *Per contra*, Mr. Chatterjee learned advocate representing the respondent no.4 submits that the respondent no.4 was superannuated as a Manager QC. In terms of the Payment of Gratuity Act, gratuity is computed on the basis of last drawn salary. Admittedly, the last drawn salary of the respondent no.4 was 54865/-. Since, the petitioner did not disburse the gratuity on the basis of the aforesaid last drawn salary and since, there was a short payment, the respondent no.4 had applied before the Controlling Authority. The Controlling Authority by interpreting the provisions of the said Act and by treating the actual last drawn pay of the respondent no.4 to be Rs.54,865/-, had determined the gratuity payable to the respondent no.4. There is no irregularity in the

orders passed either by the Controlling Authority or by the Appellate Authority. Independent to the above, it is submitted that the order of punishment did not identify any end date and is not in accordance with the Circular dated 11th May, 2010. He, however, candidly submits that the order of punishment has not been interfered with either by any Superior Authority or by a Co-ordinate Bench or by the Division Bench of this Hon'ble Court.

13. Heard the learned advocates appearing for the respective parties and considered the materials on record. The question that falls for consideration in this writ petition is the amount that would be treated to be the last drawn pay of the respondent no.4. Admittedly, at the time of superannuation the last drawn pay of the respondent no.4 was Rs.54,865/-. It is also admitted that a disciplinary proceeding was pending against the respondent no.4 at the time of his superannuation which was subsequently concluded. On the basis of the final order passed in disciplinary proceeding, the respondent no.4 was awarded a punishment whereby, his rank was reduced to that of Technical Assistant, Gr.-I at the initial time scale of pay effecting from 12th August, 2011. The aforesaid punishment had not been interfered with even by the Division Bench of this Hon'ble Court. Having regard thereto, the last drawn pay of the respondent no.4 was obviously recomputed by the petitioner for the purpose of disbursal of the terminal benefits of the respondent no.4. If the petitioner has recomputed the terminal benefit of the respondent

no.4 by taking into consideration the aforesaid order of punishment, the petitioner cannot be faulted therefor. The orders passed by the Controlling Authority and the Appellate Authority appear to have been mechanically passed. Section 4(2) of the said Act has to be applied in consonance with the punishment inflicted on the respondent no.4. The finding of the Appellate Authority that the respondent no.4 had normally superannuated as Manager (QC) and is entitled to gratuity on the basis of the last drawn pay is perverse. The superannuation was subject to the pending disciplinary proceeding, the outcome whereof had not been interfered with by the Hon'ble High Court. As such, both the aforesaid orders, which are impugned, cannot be sustained. The same are accordingly set aside and quashed.

14. The petitioner shall, however, provide the respondent no.4 with a computation sheet showing recomputed salary on the basis of the punishment inflicted on the respondent no.4 vide order dated 30th December, 2014, including the gratuity calculations. Let such computation be made available to the respondent no.4 within a period of four weeks from date.

15. At this stage, Mr. Chattopadhyay, learned advocate representing the petitioner submits that on the basis of the order dated 19th November, 2018 passed by the Controlling Authority, the petitioner had deposited the determinate sum with the Controlling Authority for the purpose of maintaining the appeal

under Section 7(7) of the said Act. Unfortunately for the petitioner the respondent no.4 has already realised the aforesaid amount during the pendency of the present writ petition. He prays for leave to make appropriate application for recovery of the aforesaid amount from the respondent no.4.

16. Since, the aforesaid order dated 19th November, 2018 passed by the Controlling Authority and the order passed by the Appellate Authority dated 3rd October, 2019 have already been set aside, the petitioner shall be at liberty to seek recovery of the aforesaid amount from the respondent no.4, in accordance with law, if otherwise entitled to.

17. With the above observations and directions the writ petition is allowed and accordingly disposed of.

18. There shall, however, be no order as to costs.

19. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

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