

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO. 3790 OF 2018

1. Maharashtra State Road Transport Corporation, through Divisional Controller, Yavatmal Division Office Yavatmal, Tq. and Dist. Yavatmal.

.... Petitioner(s)

// VERSUS //

1. Shahanaj Begam Mohamad Hanif
Aged : 51 yrs. Occu. Nil R/o. Near
Railway Station Wani, Tah. Wani, Dist.
Yavatmal.

... Respondent(s)

Shri A.D. Sonak, Advocate for the Petitioner
Shri B.M. Khan, Advocate for the respondent-sole.

CORAM : ANIL S. KILOR, J.
DATED : 20.03.2023

ORAL JUDGMENT :

1. Heard.
2. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.
3. In this writ petition, a challenge is raised to the Judgment and order dated 06.04.2017 passed by the Appellate Authority under

the Payment of Gratuity Act 1972 (for short “the Act of 1972”) in Appeal (PGA) No.1 of 2017, dismissing the appeal and confirming the award of the Controlling Authority dated 15.06.2016, directing the petitioner-corporation to pay the amount of gratuity to the tune of Rs.78,576/- w.e.f. 05.07.2001 along with simple interest at the rate of 10 % p.a.

4. The respondent was appointed on the post of clerk on 20.02.1982. Thereafter, the petitioner was served with the charge-sheet, alleging that false leaving certificate and mark-list of 10th standard were submitted at the time of obtaining employment and thereby, committed fraud. Thereafter, a departmental inquiry was conducted and the respondent was dismissed from the services on 05.06.2001. The order of dismissal was upheld by the Labour Court and maintained by the learned Industrial Court.

5. Thereafter, the respondent moved an application before the Controlling Authority under the Act of 1972, which was allowed and thereby, the Controlling Authority directed the petitioner to

pay the gratuity Rs.78,576/- @ 10 % simple interest from 05.07.2001.

6. The petitioner carried an appeal against the said order which came to be dismissed by the impugned judgment and order dated 06.04.2017, the same is the subject matter in the present petition.

7. The learned counsel for the petitioner submits that Section 4(6)(b)(ii) of the Act of 1972 permits forfeiture of gratuity amount, 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.

8. It is submitted that the act of submitting false and fabricated certificates for obtaining employment constitutes an offence of moral turpitude and therefore, both the authorities below have committed error in directing the petitioner to pay the amount of gratuity.

9. It is submitted that after departmental inquiry and on the charges proved the respondent was terminated. The said order was maintained before the Labour Court and the Industrial Court.

10. He therefore, submits that once the charges were proved and the termination was upheld, the respondent is not entitled for gratuity, particularly, when the charges constitute an offence of moral turpitude. For this purpose, he has placed reliance on the judgment of the Co-ordinate Bench of this Court in the case of *Nanubhai Vs. Deputy G.M., Uco Bank*¹ and the judgment in the case of *the Sub-area Manager Vs. Shri Narayan Karu Dahekar* in Writ Petition No.7016 of 2016 dated 10.01.2020.

11. On the other hand, the learned counsel for the respondent supports the impugned orders and submits that no notice was issued to the respondent for forfeiture of gratuity amount and thereby, no opportunity of being heard was granted to the respondent.

1 2017(4) Mh.L.J. 271

12. It is submitted that under “the Discipline and Appeal Procedure for employees of the Maharashtra State Road Transport Corporation” in Schedule ‘A’, Acts of Misconduct are enumerated and the misconduct relates to moral turpitude, is given under clause (18).

13. It is submitted that despite this, no charge was framed under clause (18) of the Scheduled-A, in the departmental inquiry held against the respondent.

14. It is submitted that the charge was under clause 29(b) i.e. obtaining employment in the corporation by false representation or by suppressing any relevant information to be given in the matter of employment or continuation of employment. He therefore, submits that when a specific charge about moral turpitude is provided under the Discipline and Appeal Procedure, no such charge was framed or proved, therefore, subsequently, if the employer wants to forfeit the gratuity, on the ground of moral turpitude, notice is mandatory.

15. In the light of the rival contentions, I have perused the record and the impugned order.

16. At this juncture, it is appropriate and relevant to refer to Section 4(6)(b)(ii) of the Act of 1972, which is invoked by the petitioner in this case for forfeiture of the gratuity, which reads thus:

“Section: 4 Payment of gratuity.

(1) to (5) ...

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

(a) ...

(b) the gratuity payable to an employee [may be wholly or partially forfeited] -

(i) ...

(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.”

17. It is evident from the above referred provision that the gratuity may be forfeited wholly or partially, if the services of the employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him/her in the course of his/her employment.

18. The learned counsel for the petitioner is harping upon the above referred provision to canvass that the charges on which the departmental inquiry was conducted and the charges which were proved against the respondent, constitute the offence involving moral turpitude.

19. Though the charges on which the inquiry was conducted and the respondent was terminated, may constitute an offence of moral turpitude, however, it cannot be ignored that though under the Discipline and Appeal Procedure, a misconduct as regards moral turpitude is specifically provided, no such charge was framed against the respondent and the inquiry was conducted only on the charge of obtaining employment by false representation or by suppressing relevant information to be given in the matter of employment and continuation of employment.

20. The Co-ordinate Bench of this Court in the case of ***Nanubhai*** (supra) has observed thus:

“7. Forfeiture of gratuity is a serious consequence and any order providing for such forfeiture can only be termed as a quasi judicial order. Such order, it goes without saying, must be passed

after following principles of natural justice which call for an impartial and fair inquiry after giving adequate notice and affording sufficient opportunity to show cause to the delinquent employee. The High Court of Gujarat, in Laxman Popatbhai Solanki vs. State of Gujarat, 1976 (II) LLJ 208, the M.P. High Court in Permali Wallance Ltd. vs. State of M.P., 1996 (72) FLR 748 and Madras High Court in the case of Management of Bharat Motors N.R. Pvt. Ltd. vs. Presiding Officer, Labour Court, Tirunelveli, 1998(I) LLJ 907 have held that even if a dismissal or other disciplinary order is found to be justified, before forfeiture of gratuity an adequate opportunity must still be given to the delinquent employee and principles of natural justice have to be duly complied with. This, however, does not mean that in every case, the employer must give a separate notice even after a duly conducted inquiry and finding against the delinquent employee concerning his conduct or acts of commission or omission for the purpose of service related disciplinary action. Otherwise, the principles of natural justice may be stripped of their essential content, leaving instead a mere oppressive dogma. It is important to remember in this behalf the following eloquent words of the Supreme Court in Board of Mining Examination vs. Ramjee, AIR 1977 SC 965 :

“..... Natural justice is no unruly horse, no lurking land mine, nor a judicial cureall. If fairness is shown by the decisionmaker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditions by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical or fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt that is the conscience of the matter.” (emphasis supplied)

21. In the present case, because a specific charge of moral turpitude is provided under clause (18) of Scheduled A of the Discipline and Appeal Procedure and no inquiry was conducted for the said charge, it is evident that, the dismissal of the respondent was not on the charge of misconduct constituting an offence of moral turpitude. Thus, it cannot be said that, in this case fairness is shown by the petitioner in forfeiting the amount of gratuity of the respondent, on the ground of moral turpitude basing its decision on the report of inquiry committee.

22. In the above referred backdrop, if it is the case of the petitioner that the charges which were proved in the inquiry, constitute an offence of moral turpitude, a notice of forfeiture of gratuity on the said ground, ought to have been given by the petitioner to the respondent in compliance of the principles of natural justice, which admittedly, not done by the petitioner, in this case.

23. In that view of the matter, I do not find any perversity in the order passed by the Appellate Authority under the Gratuity Act,

directing the petitioner-corporation to pay gratuity to the respondent. Accordingly, the petition is **dismissed**.

Rule is discharged. No costs.

[ANIL S. KILOR, J.]