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W.P.No.16593 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 18.07.2023

DELIVERED ON : 26.07.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.16593 of 2014
and M.P.No.2 of 2014

Shri Nehru Maha Vidhyalaya College
of Arts and Science,
represented by its Secretary A.Ashok Lunia
No.28, Robertson Road,
R.S.Puram,
Coimbatore-641002.

... Petitioner

-Vs-

1. The Appellate Authority/The Joint Commissioner of Labour,
Under the Payment of Gratuity Act, 1972,
Coimbatore-18.
2. The Controlling Authority/The Assistant Commissioner of
Labour under the Payment of Gratuity Act, 1972,
Coimbatore-18.

3. C.Sudevan

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for issuance of Writ of Certiorari, calling for the records of the first respondent comprised in his impugned order in A.G.A.No.61 of 2012 dated 20.02.2014, conforming the order dated 26.12.2011 passed by the second respondent in G.A.No.41 of 2010 and quash the same.



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For Petitioner : Mr.Rahul Balaji
For Respondents
R1 and R2 : No appearance
R3 : Ms.V.Karthiga Priya
for Mr.B.Niduchezhiyan

ORDER

This Writ Petition has been filed challenging the order passed by the first respondent in A.G.A.No.61 of 2012 dated 20.02.2014, confirming the order passed by the second respondent in G.A.No.41 of 2010 dated 26.12.2011,

2. Heard the learned counsel for the petitioner and the learned counsel for the third respondent and perused the materials available on record.

3. The third respondent was employed as a Vehicle Supervisor in the transport section of the petitioner in the year 2002. While being so, on 28.02.2008 at about 5 p.m, the Principal of the Petitioner received a phone call from the public informing that two of the petitioner's bus crew was quarreling with the public at Malumichampattimedu. Further it was informed that the persons, who were in the bus, were in a drunken state. Therefore, the Principal of the petitioner along with two persons went to the spot and found that the college bus was parked at the road side and they found that the third respondent and another person were doing some repair work in the bus along



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with the conductor. On enquiry, the third respondent replied that the bus had stopped due to non availability of fuel. Further it was admitted that they consumed liquor before taking the bus to college. Further, while proceeding to college at Malumichampatti, it was stopped due to non availability of diesel in the middle of the road. Therefore, the public who were behind the bus asked them to move the bus aside and the third respondent quarreled with them. It was reported to the management and the third respondent was suspended from service on 03.03.2008. After serving show cause notice, domestic enquiry was conducted. During the enquiry, he admitted the charges levelled against him and after issuance of final show cause notice, the third respondent was terminated from service on 28.02.2008. Thereafter, the third respondent issued legal notice, thereby calling upon the petitioner to pay the gratuity due to him. Thereafter, the third respondent had filed an application in G.A.No.41 of 2010 under Rule 10 (1) of the Tamil Nadu Payment of Gratuity Rules in Form-N the controlling authority under the payment of Gratuity Act cum Assistant Commissioner of Labour, Coimbatore.

4. By an order dated 26.12.2011, the second respondent directed the petitioner to pay the gratuity to the tune of Rs.22,327/- with simple interest at the rate of 10% from the date on which the gratuity payable, within 30 days to



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the third respondent. Aggrieved by the same, the petitioner preferred an appeal before the first respondent and the same was dismissed, confirming the order passed by the second respondent. Therefore, this petition.

5. The learned counsel for the petitioner would submit that the third respondent admitted his guilt that he had driven the vehicle by consuming liquor in the course of employment which is an offence involving moral turpitude and as such he was terminated due to the misconduct i.e., drunken drive. When the third respondent was terminated from service, the gratuity payable to him is wholly forfeited. As per Section 4(6) of the Payment of Gratuity Act, 1972, it excludes the payment of gratuity in the event of employee's termination for the offence involving moral turpitude.

6. In support of his contention, the learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court of India reported in **1973 2 SCC 502** in the case of ***The Management of Tournamulla Estate Vs Workmen***, wherein the Hon'ble Supreme Court of India held by citing the Judgment in the case of ***Delhi Cloth and General Mills Co.Ltd Vs Workmen and others***, that the object of having a gratuity scheme is to provide a retirement benefit to workmen who have rendered long and unblemished service



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to the employer and thereby contributed to the prosperity of the employer, and

it is therefore not correct to say that any misconduct however grave, may not be visited with forfeiture of gratuity. Misconduct could be of three kinds, (1) technical misconduct which leaves no trail of indiscipline, (2) misconduct resulting in damage to the employer's property which might be compensated by, forfeiture of gratuity or part thereof, and (3) serious misconduct such as acts of violence against the management or other employees or riotous or disorderly behaviour in or near the place of employment, which, though not directly causing damage, is conducive to grave indiscipline. The first should involve no forfeiture, the second may involve forfeiture of the amount equal to the loss directly suffered by the employer in consequence of the misconduct and the third will entail forfeiture of gratuity due to the workman. In other words, according to this decision, if a workman is guilty of a serious misconduct of the third category, then, his gratuity can be forfeited in its entirety.

7. The learned counsel for the third respondent relied upon the Judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.8251 of 2018*** in the case of ***Union Bank of India and others Vs. C.G.Ajay Babu and another***, wherein the Hon'ble Supreme Court of India held as follows:-



“ 17. ‘Offence’ is defined, under The General Clause Act, 1897, to mean “any act or omission made punishable by any law for the time being in force”.

18. Though the learned Counsel for the appellant-Bank has contended that the conduct of the respondent-employee, which leads to the framing of charges in the departmental proceedings involves moral turpitude, we are afraid the contention cannot be appreciated. It is not the conduct of a person involving moral turpitude that is required for forfeiture of gratuity but the conduct or the act should constitute an offence involving moral turpitude. To be an offence, the act should be made punishable under law. That is absolutely in the realm of criminal law. It is not for the Bank to decide whether an offence has been committed. It is for the court. Apart from the disciplinary proceedings initiated by the appellant Bank, the Bank has not set the criminal law in motion either by registering an FIR or by filing a criminal complaint so as to establish that the misconduct leading to dismissal is an offence involving moral turpitude. Under sub-Section (6)(b)(ii) of the Act, forfeiture of gratuity is permissible only if the termination of an employee is for any misconduct which constitutes an offence involving moral turpitude, and convicted accordingly by a court of competent jurisdiction.

19. In *Jaswant Singh Gill v. Bharat Coking Coal Limited and others*³, it has been held by this Court that forfeiture of gratuity either wholly or partially is permissible under sub-Section (6)(b)(ii) only in the event that the termination is on account of riotous or disorderly conduct or any other act of violence or on account of an act constituting an offence involving moral turpitude when he is convicted. To quote paragraph-13:

“13. The Act provides for a close-knit scheme providing for payment of gratuity. It is a complete code containing detailed provisions covering the essential provisions of a scheme for a gratuity. It not only creates a right to payment of gratuity but also lays down the principles for quantification thereof as also the conditions on which he may be denied therefrom. As noticed hereinbefore, sub-section (6) of Section 4 of the Act contains a non obstante clause vis-à-vis sub-section (1) thereof. As by reason thereof, an accrued or vested right is sought to be taken away, the conditions laid down thereunder must be fulfilled. The provisions contained therein must, therefore, be scrupulously observed. Clause (a) of sub-section (6) of Section 4 of the Act speaks of termination of service of an employee for any act, wilful omission or negligence causing any damage. However, the amount liable to be forfeited would



be only to the extent of damage or loss caused. The disciplinary authority has not quantified the loss or damage. It was not found that the damages or loss caused to Respondent 1 was more than the amount of gratuity payable to the appellant. Clause (b) of subsection (6) of Section 4 of the Act also provides for forfeiture of the whole amount of gratuity or part in the event his services had been terminated for his riotous or disorderly conduct or any other act of violence on his part or if he has been convicted for an offence involving moral turpitude. Conditions laid down therein are also not satisfied.”

20. In the present case, there is no conviction of the respondent for the misconduct which according to the Bank is an offence involving moral turpitude. Hence, there is no justification for the forfeiture of gratuity on the ground stated in the order dated 20.04.2004 that the “misconduct proved against you amounts to acts involving moral turpitude”. At the risk of redundancy, we may state that the requirement of the statute is not the proof of misconduct of acts involving moral turpitude but the acts should constitute an offence involving moral turpitude and such offence should be duly established in a court of law.”

8. Thus, it is clear that when the employee was terminated from service for any misconduct which constitutes an offence involving moral turpitude must be convicted by a Court of competent jurisdiction. Admittedly, though the third respondent was terminated from his service, for his disorderly conduct, he was not convicted for the offence involving moral turpitude by the criminal Court.

9. In view of the above, this Court does not find any reason to interfere with the order passed by the respondents 1 and 2 herein and this writ petition is devoid of merits and is liable to be dismissed. Accordingly, this writ petition stands dismissed. Consequently, connected Miscellaneous petition is closed. No



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Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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