

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15331 of 2019

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The General Manager (Region), Food Corporation of India, Regional Office,
Arunachal Building, Exhibition Road, Patna-800001.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Labour and Employment, New Delhi.
2. The Deputy Chief Labour Commissioner (Central), Patna-cum-Appellate Authority under the Payment of Gratuity Act, 1972, Maurya Lok Complex, 2nd Floor, Patna 800001.
3. The Assistant Labour Commissioner (Central) -cum-Controlling Authority under the Payment of Gratuity Act, 1972. Maurya Lok Complex, 2nd Floor, Patna-800001.
4. Sri Ganesh Ram, aged about ... Male, Resident of Village and P.O.-Sisahani, Via Pakari Dayal, District-East Champaran, Pin-845428 (Bihar).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Saket Tiwary, Adv.
For the State	:	Mr. S.D. Sanjay (ADSG).
For the Respondent No 4:		Mr. Nirmal Kumar, Adv.
For the UOI	:	Mr. Kumar Priya Ranjan, CGC with Mr. Sandeep Kumar, Adv. Mr. Vibhuti Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

23 30-01-2024 Heard learned counsel for the parties.

2. The present Writ Petition has been filled for the
following reliefs:-

*“(i) To set aside order dated
29.04.2019 passed by the Deputy Chief
Labour Commissioner (Central), Patna
by which the Deputy Chief Labour
Commissioner (Central), Patna has
upheld the order dated 03/04.12.2013*



passed by the Assistant Labour Commissioner (Central) Patna-cum-Controlling Authority under the Payment of Gratuity Act, 1972 in file No. 48/17/2013/ALC.II whereby the petitioner has been directed for making the payment of gratuity with interest amounting to Rs. 09,96,000/- (Rs. 8,91,894/- + Rs. 01,04,106/-) to the Respondent No. 4.

(ii) To set aside the order dated 03/04.12.2013 passed by the Assistant Labour Commissioner (Central) Patna-cum-Controlling Authority under the Payment of Gratuity Act, 1972 in file No. 48/17/2013/ALC.II whereby the petitioner has been directed for making the payment of gratuity with interest amounting to Rs. 09,96,000/- (Rs. 8,91,894/- + Rs. 01,04,106/-) to the Respondent No. 4.

(iii) During pendency of this writ application stay the operation of the impugned orders and the respondent authorities may be restrained from releasing the deposited amount.”

3. Learned counsel appearing on behalf of the petitioner has stated that the authority while taking disciplinary action against the petitioner has passed the following order:-

“2. Shri Ganesh Ram, AG-I (D)... A penalty of compulsory retirement from services of the Corporation with token recovery of Rs. 10 (Ten) lacs in lump sum from admissible terminal dues including gratuity to recoup part of the losses suffered by the Corporation.”



4. Learned counsel has stated that thereafter, the petitioner has preferred an appeal before the Executive Director and the Executive Director has modified the order passed against the Respondent No. 4 herein to the following effect:-

“Now, Therefore, due to technical issues, the undersigned, being the Appellate Authority, in exercise of the powers conferred under Regulation 72 [2] of FCI (Staff) Regulations, 1971 hereby modifies the earlier order of Penalty of “Compulsory Retirement from the services of the Corporation with a token recovery of Rs. 10.00 Lakhs [Rupees Ten Lakhs] only in lump sum from admissible terminal dues including gratuity” to that extent of “Compulsory Retirement from the services of the Corporation with forfeiture of entire amount of Gratuity”, in respect of Sri Ganesh Ram, Ex-AG-I [D].”

5. Thereafter, the Respondent No. 4 has approached the competent authority under the Payment of Gratuity Act, 1972 for payment of gratuity and the said authority has passed the following order:-

“Now, therefore, I hereby direct you to pay the said sum of Rs. 09,96,000/- to Sri Ganesh Ram within thirty days of the receipt of this notice with an intimation thereof to me.”

6. Learned counsel has stated that aggrieved by the



above order passed by the Controlling Authority under the Payment of Gratuity Act, the petitioner has preferred a statutory appeal before the Appellate Authority. However, the appellate authority has passed an order on 29th April, 2019 dismissing the appeal filed by the petitioner and upholding the order passed by the Controlling Authority dated 03/04.12.2013. Learned counsel has stated that once the disciplinary authority has enhanced the punishment imposed on the Respondent No. 4 and forfeited the gratuity payable to the petitioner. The question of the Controlling Authority directing the petitioner to pay the gratuity amount is legally not tenable and without jurisdiction. Moreover, the order passed by the Executive Authority forfeiting the gratuity has already become final as the Respondent No. 4 has not challenged the same. Learned counsel has stated that the Respondent No. 4 has not preferred any appeal, review or writ petition challenging the order dated 28.01.2016 passed by the Executive Director and the same has become final.

7. Therefore, the impugned order passed by both the Appellate as well as the Controlling Authority under the Payment of Gratuity Act is bad, illegal, arbitrary and the same is liable to be set aside. Learned counsel has prayed for allowing



the present writ petition by setting aside the impugned orders passed by the Appellate as well as the Controlling Authority under the Payment of Gratuity Act impugned in the present CWJC.

8. When queried by this Court, the learned counsel appearing on behalf of the Respondent No. 4 has orally stated that the Respondent No. 4 has preferred an appeal against the order of the Executive Authority. However, there is no proof of filing any such appeal by the Respondent No. 4. At this stage the learned counsel has prayed that the Respondent No. 4 may be granted liberty to approach the Executive Director and seeks review of the said order or take some other remedial measure against the order dated 28.01.2016 passed by the Executive Director.

9. Having regard to the above made submissions, this Court is of the opinion that ends of justice would be served if the present writ petition is disposed off granting liberty to the Respondent No. 4 to file review/appeal against the orders of the Executive Director dated 28.01.2016. If any such review/appeal is filed, the same shall be considered on its own merits and orders passed accordingly.

10. Having regard to the above mentioned facts and



circumstances, the order dated 29.04.2019 passed by the Appellate Authority as well as the order dated 03/04.12.213 passed by the Controlling Authority under the Payment of Gratuity Act are set aside. It is made clear that this Court has not made observations with regard to the merits or demerits of the order passed by either the Disciplinary Authority or that of the Executive Director. If any review is filed, the Executive Director shall decide the same on its own merits.

11. With the above directions, the present writ petition stands allowed to the extent indicated above.

(A. Abhishek Reddy , J)

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