IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (L) No. 678 of 2022

Central Coalfields Limited having its office at Darbhanga House, P.O. G.P.O. Ranchi, P.S. Kotwali, District Ranchi through its General Manager, (Legal)- Shri Pratha Bhattacharjee, aged about 57 years, son of late P.C. Bhattacharjee, resident of 34, Pragati Enclave, Dibdih, Beside Bye-Pass Road, P.O. Doranda, P.S. Doranda, District Ranchi **… … Petitioner**

Versus

1.Deputy Chief Labour Commissioner (C), Dhanbad and Appellate Authority under Payment of Gratuity Act, having its office at Shram Bhawan, Jagjivan Nagar, P.O. Dhanbad, P.S. Dhanbad District Dhanbad

2. Assistant Labour Commissioner (C), Hazaribagh, having its office at Qr. No. F-5A and F-5C, D.V.C. Colony, Near D.V.C. Chowk, Hazaribagh, P.O. Sadar, P.S. Sadar, District Hazaribagh

3. Lal Mohan Ganjhu, son of Bhikan Ganjhu, resident of Topa Colliery, B-Type, P.O. Topa Colliery, P.S. Topa Colliery, District Ramgarh (Jharkhand) **… … Respondents**

CORAM :HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Amit Kumar Sinha, Advocate
For the Respondents : Mr. Manindra Kumar Sinha, Advocate
: Mr. Amit Kumar, Advocate

14/**04.12.2024** Heard the learned counsel appearing on behalf of the parties.

2. This writ petition has been filed for the following reliefs: -

"a. For issuance of an appropriate writ(s), order(s) or direction(s) for quashing of the order dated 25.02.2020 (Annexure-5) in P.G. Case No. 36(48) of 2017 passed by the Controlling Authority cum Assistant Labour Commissioner (C), Hazaribagh, under Payment of Gratuity Act, 1972, whereby and whereunder the Learned Labour Court has been pleased to held that forfeiture of Gratuity of respondent no.3 (applicant) by the Management of M/s Central Coalfields Limited is not justified and the applicant Shri Lal Mohan Ganjhu is entitled for gratuity amounting to Rs.10,00,000/-, the petitioner is directed to pay the same within 30 days from the receipt of this order;

AND

b. For further issuance of writ / order / direction for quashing the order dated 16.08.2021 (Annexure-7) by the Deputy Chief Labour

Commissioner (C), Dhanbad cum Appellate Authority under Payment of Gratuity Act, 1972, in P.G. Appeal No. (26)/2020A-7, whereby and whereunder the Learned Appellate Authority has disposed of the appeal preferred by the petitioner Central Coalfields Limited with a finding that the appeal preferred by the appellant is dismissed, the finding of the Controlling Authority are upheld, the respondent is entitled to receive the Gratuity amount of Rs. 10,00,000/-;

c. For any other relief or reliefs for which the petitioner is legally entitled in the facts and circumstances of the case,

d. For stay operation of order dated 25.02.2020 (Annexure-5) in P.G. Case No. 36(48) of 2017 passed by the Controlling Authority cum Assistant Labour Commissioner (C), Hazaribagh, under Payment of Gratuity Act, 1972, and order dated 16.08.2021 (Annexure-7) by the Deputy Chief Labour Commissioner (C), Dhanbad cum Appellate Authority under Payment of Gratuity Act, 1972, till disposal of present Writ Petition."

Arguments of the petitioner.

3. Learned counsel for the petitioner submits that the respondent no. 3 was appointed on 24.01.1982 as piece rated workman showing his date of birth as 22.01.1958 and was later promoted to mining Sirdar and then to overman grade-B and then to overman-grade-A. The respondent no. 3 submitted a matriculation certificate for promotion to the post of senior overman T & S Grade A-1 as the minimum qualification was matriculation. However, it was found that his date of birth in the service sheet varied with the matriculation certificate and upon enquiry from the competent authority it was found that the certificate was forged. A charge sheet dated 1.7.2016 was issued to the petitioner and as per the enquiry report it was found that he obtained employment on the basis of forged document and the order of dismissal was passed on 16.12.2017. It is the case of the petitioner that the gratuity was rightly forfeited by the management on the ground of 'moral turpitude' in terms of Section 4 (6) (b) of the Payment of Gratuity Act, 1972.

4. However, the respondent no. 3 approached the Controlling Authority cum Assistant Labour Commissioner (C) Hazaribag under payment of Gratuity Act who passed an order dated 25.02.2020 in PG Case No. 36(48) of 2017 and directed for payment of gratuity to the respondent no. 3. Aggrieved with an order dated 25.02.2020 (Annexure-5), the petitioner filed appeal. The Appellate Authority has also dismissed the appeal vide order dated 16.08.2021 (Annexure-7). The learned counsel submits that both the authorities have failed to consider that it was a clear case of 'moral turpitude' in as much as upon enquiry it was found that the document submitted by the respondent no. 3 was forged.

Arguments of the private respondent.

5. The learned counsel appearing on behalf of the private respondent while opposing the prayer has referred to the judgment passed by the Hon'ble Supreme Court in the case of ***Union Bank of India versus C.G. Ajay Babu*** reported in ***(2018) 9 SCC 529*** to submit that it has been held that no action on account of 'moral turpitude' under Section 4 (6) (b) (ii) of the Payment of Gratuity Act can be sustained unless the concerned person has been convicted. He submits that the term 'offence' has been defined under General Clauses Act, 1897 to mean 'any act or omission made punishable by the law of the time being in force' and under Section 2(n) of the Code of Criminal Procedure, 'offence' means any act or omission made punishable by any law for the time being in force and includes an act in respect of which a complaint may be made under Section 20 of Cattle Trespass Act 1871. The learned counsel submits that the impugned order has taken into consideration that there has been no conviction of the private respondent and therefore the impugned orders by which direction has been issued for payment of gratuity of Rs. 10 lacs do not call for any interference. Further, there is no quantification of any loss suffered by the petitioner on account of acts or omissions of the respondent no.3.

Findings of this court.

6. Section 4(6) of the Payment of Gratuity Act reads as under:-

> "***4(6). Notwithstanding anything contained in sub-section (1)-***
>
> ***(a) The gratuity of an employee, whose services have been terminated for any act, wilful 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]-***
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> ***(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 him in the course of his employment."***

7. The said of section 4(6) (b) (ii) was subject matter of interpretation by the Hon'ble Supreme Court in the case of ***Union Bank of India versus C.G. Ajay Babu (supra)*** and the Hon'ble Supreme Court observed by referring to the earlier judgement passed in the case of ***Jaswant Singh Gill versus Bharat Coking Coal Limited and others*** 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 the employee is convicted. In the said case, since there was no conviction, therefore the action of forfeiture of gratuity was held to be illegal. It has been held that ***Payment of Gratuity Act, 1972*** 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; Clause (*b*) of sub-section (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. In the said case Conditions laid down Clause (*b*) of sub-section (6) of Section 4 of the Act were not satisfied as there was no conviction of the respondent for the misconduct which according to the Bank was an offence involving moral turpitude. It has been held 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. Paragraph 16 to 19 of the said judgement is quoted as under: -

> ***"16.*** *"Offence" is defined, under the General Clauses Act, 1897, to mean "any act or omission made punishable by any law for the time being in force" [Section 3(38)].*
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> ***17.*** *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.*
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> ***18.*** *In Jaswant Singh Gill v. Bharat Coking Coal Ltd.5, 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 para 13:*
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> > ***"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 damage or loss caused to Respondent 1 was more than the amount of gratuity payable to the appellant. Clause (b) of sub-section (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."

19. *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 20-4-2004 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. This court finds that in the present case also no FIR or criminal case was instituted against the respondent no. 3 so as to convict him for allegation of any forgery and the Respondent no.3 was only subjected to departmental proceedings and order of punishment was imposed. The gratuity was not paid on account of allegation of 'moral turpitude'. In such circumstances, the forfeiture of gratuity under Section 4(6) (b) (ii) of the Act of 1972 cannot be justified in law and therefore the impugned orders which have dealt with aforesaid facts and circumstances and have directed for payment of gratuity by recording that there has been no conviction

of the respondent no. 3 so as to attract the ground of 'moral turpitude' to deny gratuity, does not call for any interference.

9. In view of the aforesaid findings, no ground has been made out to interfere with the impugned orders and accordingly, this writ petition is dismissed.

10. Pending I.A, if any is closed.

(Anubha Rawat Choudhary, J.)

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