IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 19.06.2024

Delivered on: 24.07.2024

CORAM :

THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE P.DHANABAL

W.A.No.1293 of 2022

S.Sundaram
Assistant General Manager (QC) Retd.
No.28/8, Sowripalayam Housing Unit
Peelamedu,Coimbatore 641 004. ...Petitioner

Vs

1. The Area Manager,
   Food Corporation of India
   District Office, No.1, Bharathi Road,
   Cuddalore.
2. The General Manager,
   Food Corporation of India
   Regional Office, No.8, Mayor Sathyamurthy Road,
   Chetpet, Chennai 600 031.
3. The Executive Director
   Food Corporation of India
   Zonal Office, No.3, Haddows Road,
   Chennai 600 006.
4. The Appellate Authority
   Under the Payment of Gratuity Act and
   Deputy Chief Labour Commissioner (Central)
   No.26, Haddows Road, Shastri Bhavan,Chennai 600 006
5. The Assistant Labour Commissioner (Central)
   DA2, BSNL Staff Quarters, Jaya Nagar,
   Reddiar Palayam (PO), Puducherry 605 010. .... Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patents to set aside the order dated 27.08.2019 in W.P.No.37816 of 2015 as illegal, arbitrary and contrary to law and consequently direct the Respondent Corporation to pay the forfeited Gratuity of Rs.5,00,000/- along with interest at the rate of 10% per annum and award costs.

For Petitioner : Mr.Balan Haridas

For Respondents (1to 3) : Mr. Imthias

JUDGMENT

(Judgement of the Court was made by J.NISHA BANU, J. and P.DHANABAL.J.)

This Writ Appeal has been preferred by the employee as against the order passed in W.P.No.37816 of 2015, whereby the Writ Court quashed the order of the Assistant Labour Commissoner (Central) dated 17.12.2014 and consequently the order dated 04.11.2015 made in Gratuity Appeal No.56 of 2014, in and by which the Statutory Authorities directed the respondents 1 to 3 -Food Corporation of India (Employer) to pay Rs.5,00,000/- gratuity amount with interest at 10% per annum.

2. The facts of the case in nutshell is as follows:-

(2.1.) The appellant was employed as Assistant General Manager (Quality Control) in the respondent Food Corporation of India. Five days before his retirement, a charge sheet was issued under Regulation 58 of Food Corporation of India (Staff) Regulations, 1971 [hereinafter called as "Rules"]. Charges framed against the employee is that while he was working as Area Manager, FCI, Cuddalore, in the physical verification by a squad, it was found that there was shortage of food grains bags valued to the tune of Rs.91,96,140/-.

(2.2) Appellant submitted his explanation to the charge memo. As the explanation was not satisfactory, an inquiry was held. In the Inquiry report, it was held that charges framed against the employee are proved on account of ineffective supervision over depot personnel and its operations leading to misappropriation and thereby caused huge loss to the Management.

(2.3) On serving of the inquiry report, employee denied that there was no shortage of bags. The Disciplinary Authority, on perusing the findings of the inquiry report, imposed penalty of compulsory retirement along with forfeiture of 50% of gratuity payable to the employee-appellant herein.

(2.4) Aggrieved by the deprivation of 50% gratuity, employee preferred Gratuity Application No.56/2014 before the 5th respondent herein [Controlling Authority]. The Controlling Authority, held that the employee is entitled to payment of Rs.5,00,000/- as per the provisions of the Act and interest thereon at 10% per annum on the said gratuity.

(2.5) The FCI-Employer preferred appeal in Gratuity Appeal No.113 of 2015 before the 4th respondent herein [Appellate Authority]. The Appellate Authority confirmed the order of the Controlling Authority.

(2.6) Aggrieved by the order of the Appellate Authority, the Employer filed W.P.No.37816 of 2015. The Writ court, held that it is a case of 'punishment', hence, forfeiture of Gratuity is permissible. Thereby, the Writ Court quashed the orders of Controlling and Appellate Authorities and directed the Controlling Authority to refund Rs.6,28,613/- together with accrued interest to the Management within 45 days from the date of receipt of the order.

(2.7) Feeling dissatisfied with the order of the learned Single Judge, this writ appeal is filed by the employee.

3. Mr.Balan Haridas, learned counsel for the appellant-employee would contend that under Regulation 54(vii), compulsory retirement is a punishment contemplated; under Regulation 54(viii) and (ix), punishment of dismissal and

removal from service is contemplated. As such there is no punishment of compulsory retirement with forfeiture of gratuity. Therefore, there was no justification for imposing punishment of compulsory retirement and forfeiture of gratuity amount by the Disciplinary Authority. The appellant is covered by Food Corporation of India (Staff) Regulations,1971. Even as per the Payment of Gratuity Act, for the punishment of removal from service, the gratuity amount can be forfeited, but the amount liable to be forfeited would be only to the extent of loss caused. The learned counsel would submit that in the case on hand, the disciplinary authority has not quantified the loss. The 5th respondent (Controlling Authority) has passed a reasoned order after referring the concerned Rules and directed the respondents 1 to 3 (FCI), to release the gratuity amount of Rs.5 Lakhs. The 4th respondent (Appellate Authority), after taking into consideration the facts of the case, dismissed the appeal preferred by the Management FCI and confirmed the order of the Controlling Authority. The learned counsel would further contend that the Writ Court erroneously gave a finding that compulsory retirement is also cessation of service and therefore, there could be forfeiture.

4. The learned counsel for the appellant while inviting the attention of this court to Section 4(6) of Payment of Gratuity Act, 1972, submits that when

there is no loss quantified by the disciplinary authority, punishment of compulsory retirement cannot be equated with punishment of termination from service. Section 4(6) of the Act reads as under:-

> ***"the gratuity of an employee, whose services have been terminated for any act, willful 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".***

To support his contention, the learned counsel for the appellant relied on the following judgements:

i) Jaswant Singh Gill Vs. Bharat Coking Coal Ltd And Others (**2007(1) SCC 663**)

ii) Vinay Singh Vs. State of U.P and Others (**2012 (5) SCC 242**)

iii) D.Kalaichelvan Vs. Union of India and another (**W.P.No.27311 dt 25.07.2012)**

iv) P.Raja Subramaniam Vs. Indian Overseas Bank and Others **(2014 SCC Online Mad 1262)**

5. The learned counsel for the respondents-FCI would contend that the appellant has not challenged the award of punishment of the Disciplinary Authority before the Appellate Authority under the FCI Regulation, 1971. As

far as forfeiture of 50% of the gratuity amount by the FCI Management, the disciplinary authority assigned untenable reasons. The Writ Court elaborately dealt with the matter and came to a fair conclusion that awarding of compulsory retirement itself is a major penalty; awarding punishment of compulsory retirement is synonymous to compulsory retirement and in this regard, both the Controlling and Appellate authorities without properly considering the Regulations, directed the Management to pay the forfeited 50% of Gratuity Amount along with interest and the Writ Court finding that the said reasonings are perverse, quashed the orders of the Appellate Authority and consequently Controlling Authority and directed the Controlling Authority to refund the sum of Rs.6,28,613/- with accrued interest to the Management of FCI. The learned counsel for the respondent-FCI would submit that the order passed by the Writ Court is in order and the present Writ Appeal is liable to be dismissed. The learned counsel, to support his contention, relied on the following judgments:

i) Uco Bank and Others Vs. Anju Mathur **(LPA No.566 of 2012)**

ii) General Manager (Region) Food Corporation of India Vs. Ramdayal Meena & Others (**Civil A.No.6478 of 2019 in S.L.P.No.5607 of 2017)**

iii) Food Corporation of India Vs. Malkiat Sigh (deceased) Through Lrs

(LPA No.1888 of 2013) and S.L.P.No.17 of 2021 dated 29.01.2021

6. Heard both sides and perused the records.

7. The main contention of the appellant is that, when the appellant was found guilty of charges relating to shortage of food grains bags and that the appellant failed to have effective supervision of the depot operation, punishment of compulsory retirement with forfeiture of 50% of gratuity amount was awarded by the disciplinary authority. As per the Regulations, the disciplinary authority is not justified in awarding punishment of compulsory retirement and forfeiture of gratuity amount as there is no such provision under the Food Corporation of India (Staff Regulations, 1971). As per Section 4 of Payment of Gratuity Act, the gratuity amount can be forfeited only if there is any loss caused to the department.

8. Section 5 of Discipline and Appeal Regulations, reads as follows:

54. Penalties:
Notwithstanding anything contained in any other regulation, and without prejudice to such action to which an employee may become liable under any other regulation or law for the time being in force, the following penalties may (for good and sufficient reasons and as hereinafter provided) be imposed on any employee of the Corporation.

Minor Penalties:

(i) censure,

(ii) withholding of his promotion;

(iii) recovery from; his pay of the whole or part of any pecuniary loss caused by him to the Corporation by negligence or breach of orders;

$(iii) (a) Reduction to a lower stage in the time scale of pay for a period not exceeding 3years without cumulative effect and not adversely affecting his pension.

(iv) withholding of increments of pay.

Major Penalties:

(v) $$ save as provided for in Regulation (iii)(a) above, reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the employee of the Corporation will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(vi) reduction to a lower time-scale of pay or post which shall ordinarily be a bar to the promotion of the employee to the time-scale of pay or post from which he was reduced, with or without further directions regarding conditions of restoration to the post from which the employee of the Corporation was reduced and his seniority and pay on such restoration to that post;

(vii) compulsory retirement;

(viii) removal from service which shall not be disqualification for future employment under the Corporation;

A careful perusal of the above said regulations would go to show that there is no provision for forfeiture of gratuity amount. Therefore, the disciplinary authority cannot go beyond the rules and regulations where specific punishments is provided under “Penalties”. The Disciplinary Authority passed the award of compulsory retirement as punishment against the employee and not termination of service.

9. The Hon'ble Supreme Court of India in **Jaswant Singh Gill Vs Bharat Coking Coal Ltd and Others** reported in **2007(1) SCC 663,** held as follows:

> *13. The Act provides for a closely neat 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-`-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, willful 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 No. 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.*
>
> *14. Termination of services for any of the causes enumerated in Sub- section (6) of Section 4 of the Act, therefore, is*

imperative

The principles enunciated in the above decision would make it clear that termination of service or any of the causes enumerated in Sub- section (6) of Section 4 of the Act, is imperative for awarding punishment of forfeiture of gratuity amount. In the case on hand, the punishment awarded is neither removal from service nor dismissal from service. The punishment is only compulsory retirement. Therefore, it will not come under the purview of Sub-section (6) of Section 4 of the Act.

10. The Hon'ble Supreme Court of India **in Vijay Singh Vs. State of Uttar Pradesh and Others** in **2012 (5) SCC 242,** in para 21, held as follows:

> *21. Undoubtedly, in a civilised society governed by the Rule of Law, the punishment not prescribed under the statutory rules cannot be imposed. Principle enshrined in criminal jurisprudence to this effect is prescribed in the legal maxim nulla poena sine lege which means that a person should not be made to suffer penalty except for a clear breach of existing law.*

The above decision would clearly show that, the punishment not prescribed under the statutory rules, cannot be imposed. In the present case, it is an admitted fact that the disciplinary proceedings has been initiated by following the Food Corporation of India (Staff) Regulations, 1971 and in such an event, the Rules does not provide for forfeiture of 50% gratuity amount, therefore, there is no justification for the forfeiture of gratuity as penalty.

11. In **D.Kalaichelvan Vs. Union of India** and another reported in **W.P.No.27311 of 2010 and M.P.No.01 of 2010,** in para 26, 27 and 28, this court held as follows:

> *26. Reliance by the learned counsel for the respondents on the gratuity act is also misplaced. Section 4(6A) of Gratuity Act also stipulates denial of gratuity to an employee who is terminated for any act of wilful omission or negligence, causing damage or loss or destruction of the property belonging to the employer and does not cover compulsory retirement.*
>
> *27. As already observed above, the petitioner was not terminated but imposed a punishment of compulsory retirement, therefore section 4 (6A) of Gratuity Act also has no application.*
>
> *28. For the reasons stated hereinabove, while finding no force in the contention of the learned counsel for the petitioner in challenging the order of compulsory retirement, it is held that the petitioner is entitled to encashment or accumulated privilge leave and gratuity under regulation.*

The above decision would also make it clear that as per Section 4 (6A) of Gratuity Act, termination of service is necessary to deny the gratuity. It is also held that "compulsory retirement" is not punishment of "termination from service". In respect of of punishment of compulsory retirement, Section 4(6)(a) of Gratuity Act, has no application.

12. In **P.Raja Subramaniam Vs. Indian Overseas Bank and Others,** reported in **2014 SCC Online Mad 1262,** this court held as follows:

> *8. It is relevant to point out at this juncture that the difference between terminated officer and compulsorily retired officer must be given a meaning. It is a settled proposition of law that the terminated officer will not be eligible for any terminal benefits and the officer who is compulsorily retired will normally get terminal benefits.*

In the above decision, it is held that there is a difference between terminated officer and compulsorily retired officer. The terminated officer will not be eligible for any terminal benefits and the officer who is compulsorily retired will normally get terminal benefits. The appellant herein was awarded compulsory retirement and thereby he would get terminal benefits and he also got all the terminal benefits except 50% of gratuity amount.

13. In the above cited cases, it is categorically held that the disciplinary authority cannot award any punishment beyond the disciplinary rules and the compulsory retirement cannot be equated as termination of service.

14. While considering the contentions raised by the learned counsel appearing for the respondents 1 to 3 who relied on the judgment of **Full Bench**

of the Punjab and Haryana High Court in the case of **UCO Bank and Others Vs. Anju Mathur in L.P.A.No.566 of 2012**, wherein, it is held that whenever compulsory retirement is imposed as punishment after holding a regular enquiry, then it will lead to termination, having regard to the Ruling of the Hon'ble Supreme Court in ***Jaswant Singh Gill case*** and ***Vijay Singh*** Case, wherein, it is clearly held that the punishment not prescribed under the statutory rules cannot be imposed, forfeiting the 50% gratuity amount, which is not prescribed as punishment under the Regulation is not justified. Therefore, the judgments relied on by the learned counsel for the respondents 1 to 3 in withholding gratuity, cannot be sustained.

15. In the case on hand, it is a clear case that there is no termination order passed by the disciplinary authority. Therefore, the judgements relied by the learned counsel for the respondents are not applicable to the case on hand. Per contra, the judgements relied on by the learned counsel for the appellant is squarely applicable to the case.

16. At the risk of repetition, we hold that when the Regulations does not provide for forfeiture of gratuity amount under penalty for a charge, the Disciplinary authority cannot impose such punishment. Further, compulsory

retirement cannot be equated as termination from service. The appellant filed appeal before the Controlling Authority seeking his forfeited gratuity amount and the said authority allowed his appeal. The Appellate Authority also confirmed the said order. Therefore, this Court is only concerned about the forfeiture of 50% of gratuity amount which is a penalty awarded as punishment along with compulsory retirement. It is true that the appellant has not filed appeal as against the award of punishment of compulsory retirement imposed by the disciplinary authority but only challenged the forfeiture of 50% gratuity amount under Payment of Gratuity Act. Since forfeiture of gratuity has not been prescribed as one of the punishment in the Regulations, the appellant need not challenge the same by way of appeal.

17. As far as appeals before the Gratuity Authorities are concerned, the same were decided in favour of the appellant. The disciplinary authority has not quantified the amount of loss. As already discussed above, under Section 4(6) of Payment of Gratuity Act, conditions contained therein must be scrupulously followed. In the present case, the loss caused by the appellant is not quantified. Even taking into account the act of the appellant involves moral turpitude that is required for forfeiture of gratuity and that compulsory retirement is equated to termination from service, forfeiture of only 50% of

gratuity amount is nothing but the authority taken recourse to its own Rules and Regulations.

18. The argument of the learned counsel for respondents 1 to 3 that forfeiture of 50% of gratuity is awarded based on the gravity of charges, cannot be accepted by this court. Therefore, the findings of the Writ Court in treating synonymously termination from service and compulsory retirement and holding that the compulsory retirement is one of the punishment of termination from service therefore, gratuity can be withheld, cannot be sustained.

19. For the reasons aforementioned, the impugned judgment passed by the Writ Court is unsustainable, which is set aside accordingly. The Writ Appeal is allowed. The order of the Controlling Authority and Appellate Authority is restored. The Management viz., Respondents 1 to 3 are directed to pay the gratuity amount as ordered by the Controlling Authority along with accrued interest to the appellant within three months from the date of receipt of a copy of this order. No costs.

Internet:Yes/No **(J.N.B.J.) (P.D.B.J)**
Neutral Citation:Yes/No 24.07.2024

Sma/nvsri

To

1. The Area Manager,
   Food Corporation of India
   District Office, No.1, Bharathi Road,
   Cuddalore.

2. The General Manager,
   Food Corporation of India
   Regional Office, No.8, Mayor Sathyamurthy Road,
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and
P.DHANABAL,J.

Sma/nvsri

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W.A.No.1293 of 2022

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