

CWP-4684-2016

- 1 -

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

224

**CWP-4684-2016
Decided on: January 18, 2024**

National Insurance Company Limited

...Petitioner

Versus

**The Controlling Authority under Payment of Gratuity Act, 1972, and
another**

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Piyush Khanna, Advocate, for the petitioner.

Mr. Raman Sharma, Advocate, for respondent No. 2.

SANJAY VASHISTH, J.

1. Present writ petition has been directed by the National Insurance Company Limited, for seeking quashing of order dated 25.06.2015 (Annexure P-6), passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (hereafter referred to as, 'the Controlling Authority'), whereby respondent No. 2 – Parduman Kumar Sharma, has been held entitled for the amount of gratuity, which had been withheld by the petitioner Company.

2. Respondent No. 2 filed his claim application No. 48(06)/2014-ACH, before the Controlling Authority, under Sections 4 and 7 of the Payment of Gratuity Act, 1972 (for brevity, 'the 1972 Act'), who was compulsorily retired from service from the post of Development Officer Grade-II, for directing National Insurance Company Limited, to pay the amount of gratuity alongwith interest, for the service rendered by him.

3. In short, respondent No. 2 approached the Controlling Authority

by claiming that he joined the service with the petitioner establishment on 08.01.1979. However, he was compulsorily retired by the management by way of imposing penalty, after a departmental inquiry. Undisputedly, respondent No. 2 rendered continuous service of 33 years, but no gratuity was paid to him.

4. Refuting the claim of respondent No. 2, petitioner-Company took the stand before the Controlling Authority that conduct of the employee amounted to criminal offence involving moral turpitude, and also caused financial loss to the petitioner-company. Thus, the whole gratuity is liable to be forfeited by rejecting the claim of the employee (respondent No. 2).

5. Learned Controlling Authority while dealing with the claim of respondent No. 2, observed that in accordance with several judgements, employee is found to be entitled to receive a sum of Rs. 3,81,858/- with simple interest @ 10% per annum, as per sub-section (3-A) of Section 7 of the 1972 Act, from the date of gratuity became payable i.e. 02.01.2012 (date of compulsory retirement).

6. Learned counsel for the petitioner – Company argues that on account of gross misconduct committed by respondent No. 2, petitioner suffered grave financial loss. Further, the act and conduct of respondent No.2 involved moral turpitude, which amounted to committing of criminal offence.

7. In response to the submissions addressed by learned counsel for the petitioner-Company, and defending the impugned order passed by the Controlling Authority, learned counsel for respondent No. 2 relies upon the

provisions of Section 4 of the 1972 Act. While citing the conditions enumerated under Section 4, for the purpose of making payment of gratuity, learned counsel submits that respondent No. 2 completes all the requirements and, thus, entitled for payment of gratuity amount.

8. Learned counsel for respondent No. 2 refers in specific subsection (6) of Section 4 of the 1972 Act, wherein parameters have been defined under which an employee can be debarred from giving the benefit of gratuity. He submits that for applicability of said provision of law, employee is required to be terminated from service due to any of his act, wilful omission or negligence causing any damage or loss or destruction of property belonging to the employer. However, there is nothing to point out with the petitioner-Company that any kind of loss or damage has been suffered by it because of the act of respondent No. 2. Even, termination is required to be followed by two reasons, which are enumerated under Section 4(6)(b) of the 1972 Act. Learned counsel, thus, submits that in the absence of any of the parameters required for forfeiting the payment of gratuity, respondent No. 2 cannot be deprived of his lawful right of payment of gratuity, which has been withheld by the petitioner-Company in an erroneous and illegal manner.

9. While going through the impugned order, this Court has also noticed that specific findings have been recorded by the Controlling Authority, to the effect that -

- (i) no actual financial loss has been caused to the employer and only probable further loss has been estimated; and
- (ii) principles of natural justice has not been followed and

fair opportunity to the employee has not been accorded before forfeiting his gratuity.

10. Even during course of hearing before this Court, petitioner-Company has been asked to show if any notice was ever issued to respondent No. 2 in regard to the alleged financial loss suffered by it due to his act and misconduct, at any point of time. But nothing has been shown or brought on record to that effect.

Furthermore, petitioner-Company admits that no specific order with regard to forfeiture of gratuity of respondent No. 2, has ever been passed, except of the stand taken before the Controlling Authority. Therefore, the stand taken by the petitioner-Company is without any basis/ground. Undoubtedly, respondent No. 2 has been compulsorily retired from service but not on account of any financial loss caused to the petitioner-Company.

11. After going through the facts discussed in the impugned order and the submissions addressed by respective counsel for the parties before this Court, I do not find out any substantial reason to disturb the well reasoned findings given by learned Controlling Authority while passing impugned order dated 25.06.2015 (Annexure P-6). Accordingly, while upholding the same, present writ petition is dismissed.

(SANJAY VASHISTH)
JUDGE

January 18, 2024
Pkapoor

Whether speaking/reasoned?	✓Yes/ No
Whether reportable?	✓Yes/ No