IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5928 of 2017

***

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 Regional Labour Commissioner Central, Patna-cum-Appellate Authority under the Payment of Gratuity Act, 1972, Mauryalok Complex, 2nd Floor, Patna 800001
3. The Assistant Labour Commissioner Central-cum-Controlling Authority under the Payment of Gratuity Act, 1972, Mauryalok Complex, 2nd Floor, Patna 800 001
4. Shri Chandrika Ravidas, ex-AG-II Depot, Son of Late Bihari Ravidas, Village- Bidhipur, P.O.- Karauta, District- Patna.

... ... Respondent/s

***

Appearance :

For the Petitioner/s	:	M/s P.K.Verma, Sr. Advocate Dr. Mankeshwar Tiwari
For the Union of India	:	Mr. Arjun Kumar, CGC

***

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 31-07-2025

1. The petitioner has filed the instant application for the following relief(s):

> *"For quashing the order dated 10/17.06.2015 passed in Appeal case No. 36/8/2015/Appeal/RLC by the Appellate Authority under the Payment of Gratuity Act, 1972 and Regional Labour Commissioner (Central), Patna (Annexure- 11) whereby he has dismissed the appeal of the management of the Food Corporation of India (FCI)*

filed under Section 7 (7) of the Payment of Gratuity Act, 1972 read with Rule 18 of the Payment of Gratuity (Central) Rules, 1972 against the order dated 09/ 17.07.2014 of the cum Assistant Labour Commissioner (Central) Controlling Authority under the Payment of Gratuity Act, 1972.

ii. For quashing the order dated 09 / 17.07.2014 passed by the Assistant Labour Commissioner (Central), Patna cum -Controlling Authority under the Payment of Gratuity Act, 1972 in file No. 48/1(25)/2013/ALC-I, (Annexure- 9) whereby direction has been given to pay gratuity with interest amounting to Rs. 10,60,743/-(Rs.9,79,148/- +Rs.81,595/-) to the Respondent No.4, despite the fact that he was found guilty for charges of grave misconduct amounting to moral turpitude and causing loss to the Corporation in as many as three departmental proceedings were initiated against him while he was in service and wherein he was reduced to the lower post of AG-II (D) at the minimum of scale as on 31.07.2013, vide order dated 25.07.2014, and reduction of one increment with cumulative effect, vide order 06.09.2013, and token recovery of Rs 50,000/- (Rupees Fifty Thousand only), vide order *dated 24.09.2014. The admissible amount of gratuity, as per entitlement, was calculated to be of Rs. 3,78,062/- and duly deposited before the ALC / Controlling Authority while preferring the noted appeal before the RLC on 06.09.2014, however, the ALC returned the demand draft and, thereafter, the said demand draft of Rs. 3,78,062/- dated 30.08.2014 was deposited with the RLC (central), Patna on 22.09.2014."*

2. At the outset, the Learned Senior counsel appearing for the petitioner submitted that Writ petition, being **CWJC No. 11529 of 2019 (Food Corporation of India through General Manager Vs. Union of India & Ors.),** was earlier filed by the Writ petitioner herein, seeking similar relief, and the facts of the case were also similar to those in the present writ petition. The said Writ petition was allowed by a judgment dated 06.12.2022 passed by a Co-ordinate Bench of this Court in light of the judgment passed by the Hon'ble Apex Court in the case of **Chairman-cum-Managing Director, Mahanadi Coalfields Limited Vs. Sri Rabindranath Choubey**

reported in **2020(3) PLJR (SC) 438**.

3. Therefore, the Learned Senior counsel for the petitioner submitted that since this matter is squarely covered under the order passed in **Food Corporation of India through General Manager(supra)** by this Court, this Writ petition may also be disposed of on the same terms and conditions.

4. Heard the Learned Senior Counsel for the petitioner Mr. P.K.Verma as well as the Learned counsel for the respondents.

5. For better appreciation of the facts, the relevant part of the judgment passed in **Food Corporation of India through General Manager (supra) is quoted hereinbelow:**

> *"12. The moot question for consideration before this court is as to whether the payment of gratuity will be subject to the outcome of the Departmental Proceeding or the authority under Gratuity Act has rightly passed the order for payment of gratuity. The identical issue involved in the present writ application was pending consideration before the Hon'ble Supreme Court in Civil Appeal No. 9693 of 2013*

(Chairman-cum-Managing Director, Mahanadi Coalfields Limited Vs. Sri Rabindranath Choubey) and the three Judges Bench of the Hon'ble Supreme Court having considered the various aspect of the matter including the relevant provisions of the Payment and Gratuity Act, 1972 has been pleased to held that:

"The provisions of Section 4(6) of the Act of 1972 prevail over Section 4(1) as provisions of Section 4(6) contain non-obstante clause as to Section 4(1). It would prevail over the provisions made in Section 4(1) and gratuity would not become payable mandatorily as provided in Section 4(1). The provisions of Section 4(6) provide recovery or forfeiture where services of employee have been terminated for the reasons prescribed in Section 4(6)(a) and 4(6)(b). Section 4(6)(a) and (b) both provide for recovery of loss caused or forfeiture wholly or partially in the case of termination of services. In case after superannuation of employee there cannot be any dismissal i.e., termination of services as contemplated in Section 4(6), then there can be no recovery of pecuniary loss caused by employee or forfeiture of gratuity wholly or partially as that can only be done in the event of termination of services on charges found established. Such an interpretation would render continuance of enquiry otiose and

would defeat the public policy and the provisions of Act of 1972. The recovery of loss or forfeiture is one of the punishments which depends on exigency of termination by way of dismissal as mandated by Section 4(6). To give effect to the provisions of the Act, the punishment of dismissal can be imposed in view of Rule 34.2, otherwise it would defeat the intendment of provisions contained in Section 4(6)(a) and 4(6)(b) of the Act of 1972. "

13. This Court also thinks it apt and proper to quote paragraph nos. 38 and 39 of the aforesaid judgment in order to crystallize the matter in issue, which reads as follows:

"38. Taking note of the exposition of law which has been noticed and of the scheme of Rules, 1978, which indubitably has a binding force and are not a subject matter under challenge and are neither in derogation nor in contravention to the scheme of Payment of Gratuity Act, 1972. I have no hesitation in holding that the substantive penalties provided under the schedule of penalties referred to under Rule 27 could be inflicted on a delinquent employee while he is in service but in case where the delinquent employee stood retired or superannuated from service pending disciplinary inquiry, at least either of the substantive penalties

provided under Rule 27 are not available to the disciplinary authority to be inflicted with retrospective effect but at the same time punishment of forfeiture of gratuity if held guilty for misconduct or negligence to the extent damage or pecuniary loss has been caused to the employer can be inflicted upon the delinquent in terms of Rule 34.3 of Rules 1978 read with sub section (6) of Section 4 of the Act, 1972 and in case the delinquent employee stands exonerated he became entitled for gratuity for the delay in payment in terms of Sections 7(3) and 7(3A) of Act, 1972 and as a matter of caution, it should not be presupposed that where the disciplinary inquiry remain pending and could not be concluded while the delinquent employee was in service in due course of time, he shall be held guilty and punished under the scheme of Rules, 1978.

39. To sum up, my conclusion to the question is as under:

Que. 1 Whether it is permissible in law for the employer to withhold the payment of gratuity even after the employee has attained his superannuation from service because of the pendency of disciplinary proceedings against him?

Ans. I am in agreement with the view expressed by brother Justice Shah that in view of Rule 34.3 of the Rules, 1978, the *employer has a right to withhold gratuity during pendency of the disciplinary proceedings.*

Que. 2 Whether the penalty of dismissal could be imposed after the employee stood retired from service?

Ans. In my considered view, after conclusion of the disciplinary inquiry, if held guilty, indeed a penalty can be inflicted upon an employee/delinquent who stood retired from service and what should be the nature of penalty is always depend on the relevant scheme of Rules and on the facts and circumstances of each case, but either of the substantive penalties specified under Rule 27 of the Rules, 1978 including dismissal from service are not open to be inflicted on conclusion of the disciplinary proceedings and the punishment of forfeiture of gratuity commensurate with the nature of guilt may be inflicted upon a delinquent employee provided under Rule 34.3 of Rules, 1978 read with sub-section (6) of Section 4 of the Act, 1972."

14. Considering the aforesaid ratio laid down by the Hon'ble Apex Court in the case of Chairman-cum-Managing Director, Mahanadi Coalfields Limited Vs. Sri Rabindranath Choubey (supra) this court is of the opinion that before superannuation of an employee, who was departmentally *proceeded with and in terms of the regulation, inflicted with the punishment of compulsory retirement from the service of the Corporation with forfeiture of entire amount of gratuity the employee would only be entitled for payment of gratuity on the basis of outcome of the departmental proceeding which at present admittedly against the respondent no.4 and the matter between the parties is still pending before the Central Government Industrial Tribunal (CGIT), Dhanbad. Hence, the impugned order of the controlling authority dated 31.01.2018 as contained in Annexure-2 directing the petitioner to pay gratuity to the respondent no.4 as also the appellate order dated 30/31.01.2019 as contained in Annexure 1 to the writ petition upholding the order of the Controlling Authority are hereby set aside.*

15. It is needless to say that the payment of gratuity shall be subject to the final outcome of Complaint Case No.1 of 2013. This court hopes and trust that the Tribunal will make all possible endeavour to dispose of this case expeditiously.

16. In view of the aforesaid settled legal position, the writ application is hereby allowed. There shall be no order as to cost."

5. Having regard to the submissions

made by the Learned Senior counsel for the petitioner, the present writ petition stands disposed of in terms of the judgment passed in **Food Corporation of India through General Manager(supra)**

6.Accordingly, the writ petition stands allowed.

7. Interlocutory Application, if any, shall stands disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.08.2025
Transmission Date	