

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7796 of 2016

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Harshit Narayan Singh s/o Late Ram Bhaju Singh r/o Dumrawan,p/s-
Ashawan,District-Nalada at present r/o Mohalla- Jay Prakash Nagar,south of
canal p/s-Rajiv Nagar District-Patna

... .. Petitioner/s

Versus

1. The Food Corporation Of India through the Managing Director, 16-20 Barakhamba Lane, New Delhi.
2. The Executive Director, East Food corporation of India,10-A Middleton Road, Kolkatta-71.
3. The General Manager Food corporation of India,Arunachal Bhawan, Exhibition Road,Patna.
4. The Area Manager,Food Corporation of India,Gaya.
5. The Manager,District Office,Food Corporation of India,Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anant Kumar Bhaskar
For the FCI	:	Mr. P.K. Verma, Sr. Adv.
		Mr. Dr. Anand Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 29-04-2025

Heard learned counsel for the petitioner and learned senior counsel for the Food Corporation of India.

2. Learned counsel for the petitioner submits that the present writ petition has been filed for the issuance of a writ directing the competent respondent to grant full gratuity to the petitioner with interest, amounting to Rs. 10,00,000/- (Rupees Ten Lakhs), based on the last drawn salary by him, instead of Rs. 4,23,294/- (Rupees Four Lakh Twenty-Three Thousand Two Hundred Ninety-Four), which was calculated on the basis of the



punishment order contained in reference letter No. 690 dated 19.01.2015, a copy of which was served upon the petitioner on 11.02.2015.

3. Learned counsel for the petitioner submits that the petitioner was appointed in the Food Corporation of India in the year 1973, and with the span of time, he was promoted initially to Assistant Grade II, and subsequently to Assistant Grade III. Counsel further submits that during his service, a departmental proceeding was conducted against the petitioner, in which the petitioner was imposed a punishment vide order No. 683 dated 19.01.2015, with punishment of, “ A penalty of reduction to the initial pay in the time scale pay of AG II (D) till retirement along with the recovery of Rs. 1.50 Lakhs (Rupees One Lakh Fifty Thousand) only from terminal benefits, excluding gratuity. Counsel further submits that the gratuity of the employee is used to be paid according to the special law, namely, the Payment of Gratuity Act, 1974 (hereinafter referred to as the Act of 1974). Counsel further submits that according to Section 4 of the Act of 1974, the total work period of the petitioner in FCI is 38 years (37 years, 11 months, and 2 days), from the date of his initial appointment in the FCI, i.e., 23.02.1977 and his date of retirement is 31.01.2015.



4. Counsel further submits that the pay scale issued to the petitioner, which is annexed as Annexure-9, indicates that his last drawn salary was Rs. 57,465/- (Rupees Fifty-Seven Thousand Four Hundred Sixty-Five), and as per the calculation under Section 4(2) of the Act of 1974, the gratuity amount comes to Rs. 12,59,809.61/- (Rupees Twelve Lakh Fifty-Nine Thousand Eight Hundred Nine and Sixty-One Paise). However, since the upper ceiling for gratuity payment is Rs. 10,00,000/- (Rupees Ten Lakh), he submits that the petitioner is entitled to receive the full admissible amount of Rs. 10,00,000/- as gratuity. Despite this, the Food Corporation of India has paid only Rs. 4,23,294/- (Rupees Four Lakh Twenty-Three Thousand Two Hundred Ninety-Four) to the petitioner. Counsel further submits that the petitioner is entitled to the balance amount of gratuity along with 18% compound interest. He also submits that the petitioner filed a detailed representation before the respondent on 09.11.2015, but no action has been taken till date. Therefore, the petitioner has filed the present writ petition before this Court.

5. Learned senior counsel for the Food Corporation of India submits that the petitioner had challenged the punishment order dated 19.01.2015 before this Hon'ble Court in CWJC No.



15984 of 2015, and after the disposal of the said writ petition, he filed a Civil Review bearing No. 290 of 2023, which is still pending. Counsel further submits that here punishment order is not challenged, therefore, what is to be decided it has to be decided in the light of decision dated 19.01.2015. He submits that the affect of the punishment order, the petitioner's last drawn salary has deducted, and accordingly, the gratuity amount was automatically deducted, when calculated under Section 4(2) of the Act of 1974. Counsel submits that the punishment order shall prevail upon the petitioner and only due to this reason the gratuity of the petitioner has deducted.

6. Learned senior Counsel relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Chairman-cum-Managing Director, Mahanadi Coalfields Limited v. Rabindranath Choubey***, reported in ***AIR 2020 SC 2978***, and submits that it is well within the power of the disciplinary authority to withhold the gratuity. The employer can withhold the payment of gratuity to the employee even after his superannuation from service, in light of the pendency of disciplinary proceedings against him. Counsel further submits that in the present case, the disciplinary proceeding was pending against the petitioner for a long period during his employment,



and a specific order was passed regarding the deduction of the pay scale, which definitely affect his entitlement to gratuity. However, the gratuity was calculated in accordance with the provisions of the Act of 1974. Counsel further submits that the petitioner's gratuity has been duly calculated after the final order was passed and has been paid as per Annexure-A of the supplementary counter-affidavit filed by the respondent.

7. After hearing the parties and upon perusal of the order dated 19.01.2015, it transpires to this Court that the only dispute between the parties is the determination of the amount of gratuity. Section 7(2) of the Act of 1974 clearly provides that it is the Controlling Authority who is competent under law to determine the amount of gratuity payable. The petitioner has submitted a representation before the authority, which is annexed as Annexure-10, however, it transpires to this Court that no response has been made by the employer. Instead, the gratuity has been calculated solely in light of the punishment order dated 19.01.2015. The petitioner is aggrieved by this decision and submits that the petitioner is not entitled to only Rs. 4,23,294/- (Rupees Four Lakh Twenty-Three Thousand Two Hundred Ninety-Four) but rather to the full admissible amount of gratuity, i.e., Rs. 10,00,000/- (Rupees Ten Lakh).



8. In this background, the writ petition stands disposed of with a direction to the petitioner to file an application before the Controlling Authority under the Act of 1974 within 30 days from the date of receipt or production of this order. The Controlling Authority, upon issuance of notice to both the employer and the employee, shall determine the amount of gratuity payable in accordance with law. Thereafter, the petitioner shall be at liberty to pursue any legal remedy available to him under the provisions of the Act of 1974.

(Dr. Anshuman, J.)

Aman Kumar/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	06.05.2025
Transmission Date	NA

