



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

LPA-1954-2019 (O&M)
Date of Decision:18.11.2025

FOOD CORPORATION OF INDIA AND OTHERSAPPELLANT(S)

VERSUS

GIRDHARI LAL

....RESPONDENT(S)

**CORAM:- HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE ROHIT KAPOOR**

Present: Mr. Krishan Kumar Gupta, Advocate
for the appellants.

Mr. Rajiv Sharma, Advocate
for the respondent.

ASHWANI KUMAR MISHRA, J. (ORAL)

1. This appeal arises out of an order passed by the learned Single Judge dated 19.08.2019, whereby, the writ petition filed by the respondent has been allowed with a direction issued to the appellants to release the amount of gratuity due and payable to the respondent along with interest. Learned Single Judge has also set aside the punishment order insofar as a direction was issued for withholding of gratuity payable to the respondent/writ petitioner. So far as challenge to the order of compulsory retirement is concerned, learned Single Judge has observed that the challenge has been rendered infructuous on account of efflux of time.

2. Certain facts would require notice in order to appreciate the

controversy.

3. The respondent came to be employed in the Food Corporation of India (for short, 'FCI') and attained the age of superannuation on 30.04.2007. It appears that a disciplinary inquiry was pending against him in which the inquiry report was served upon the respondent just a day prior to his superannuation i.e. 28.04.2007 at 05:30 pm. Comments were invited from the respondent in respect of the inquiry report. It transpires that on 30.04.2007, order of punishment was passed on the office file against the respondent. This order of punishment, imposing compulsory retirement on the respondent and directing recovery from his gratuity, was actually issued on 1st/3rd May, 2007 and was dispatched by registered post thereafter. It is, thus, clear that the dispatch of the order of punishment is on 03.05.2007, which is after the superannuation of the writ petitioner. In this regard, it would be relevant to refer to Regulation 22 of the Food Corporation of India (Staff) Regulations, 1971 (for short, '*Regulations of 1971*') which provides for superannuation and retirement. Regulation 22(1) reads as under:-

"22. Superannuation and retirement:

(1) Every employee appointed to the service of the Corporation shall retire on the afternoon of the last day of the month in which he/she attains the age of 60 years. However, employees whose date of birth is the first of the month shall retire from service on the afternoon of the last date of the preceding month on attaining the age of 60 years."

4. We have been taken through the applicable service

regulations which does not contain any provision permitting the employer to extend the period of employment in order to facilitate conduct of disciplinary inquiry. A provision in that regard has subsequently been introduced *vide* Regulation 60-A of the Regulations of 1971 on 15.05.2007. It is, therefore, clear that on the date when the respondent attained the age of superannuation *i.e.* 30.04.2007, the contract of employment of respondent came to an end. Neither the rules permitted extension of employment nor any such order was passed. By virtue of Regulation 22 of the Regulations of 1971, the employee-employer relationship between FCI and the respondent ceased to exist. In the absence of there being any enabling provision in the Rules permitting the employment to continue or any actual order passed in that regard, by the employer referable to such a provision, the contract of employment cannot be treated to have continued beyond 30.04.2007. The order of punishment dated 1st/3rd May, 2007 could not have been passed against the respondent.

5. In somewhat similar facts and circumstances, an issue arose before the Supreme Court in ***Dev Prakash Tewari v. U. P., Cooperative Institutional Service Board, Lucknow and Others, Civil Appeal No.5848-49/2014*** decided on 30.06.2014. The issue before the Supreme Court was as to whether disciplinary proceedings could have been continued beyond the age of superannuation of the employee concerned. The Supreme Court observed as under in paragraph No.9 of the judgment:-

“9. Once the appellant had retired from service on 31.3.2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits.”

6. Once the writ petitioner had superannuated on 30.04.2007, no order could have been passed against him on 1st/3rd May, 2007 for withholding any part of the gratuity payable to him on the ground of alleged losses caused to employer. The withholding of gratuity, otherwise, was a part of the punishment order which, in itself, came to be passed after the superannuation of the employee concerned. We are of the considered view that once the contract of employment had come to an end and no valid orders were passed holding the respondent/petitioner guilty of causing any losses, during the course of employment, it would not be open for the employer to pass any such order holding him liable for recovery of losses after his superannuation or to deduct such amount from the gratuity. This will be so as no enabling provision has been shown to us whereunder such an order could have been passed.

7. Learned counsel for the appellant has placed reliance upon Full Bench judgment of this Court in ***Food Corporation of India and others v. Malkiat Singh (deceased) through LRs: Jatinder Singh and others, LPA-1883-2013*** decided on 06.12.2019. Our attention has been invited to the observations of the Court contained at page 9 and 10 of the

judgment which recognizes the fact that the losses caused to the employer can be recovered from the gratuity payable to the employee.

8. We may observe that the judgment passed by the Full Bench in *Malkiat Singh (supra)* would not be of much avail inasmuch as the withholding of gratuity is pursuant to the order of punishment passed against the employee on 1st/3rd May, 2007, and once we hold that such order could not have been passed after the superannuation of the employee concerned, the consequential order, to hold the respondent liable for causing losses or to direct any consequential recovery, would be impermissible in law.

9. Learned counsel for the appellants states that the order of punishment was, in fact, passed on 30.04.2007. This submission cannot be accepted as the appellants have issued the order only on 1st/3rd May, 2007 and mere passing of the order in the office file without its actual issuance to the employee would not be of any consequence.

10. In such view of the matter, the present appeal filed by the appellant lacks merit and is accordingly dismissed.

11. It is made clear that dismissal of this appeal will not preclude the appellants from instituting appropriate civil proceedings for holding the respondent liable for the losses caused and to recover it in accordance with law. The gratuity therefore cannot be withheld and the same shall be paid to the respondent within a period of four weeks from the date of receipt of certified copy of this order along with admissible interest in terms of the Scheme/Act.

12. Pending application(s), if any, stand(s) disposed of.

[ASHWANI KUMAR MISHRA]
JUDGE

[ROHIT KAPOOR]
JUDGE

NOVEMBER 18, 2025
Rahul Joshi

1. Whether Speaking/reasoned	Yes/No
2. Whether Reportable	Yes/No