

**(2017) 02 MP CK 0126**  
**In the Madhya Pradesh High Court**  
**Case No : 6066 of 2016**

Abdul Aziz Khan

APPELLANT

Vs

Smt.Khurshid Begam

RESPONDENT

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**Date of Decision :** 07-02-2017

**Acts Referred:**

[The Payment of Gratuity Act, 1972](#), Section 4, Section 6

**Citation :** (2017) 02 MP CK 0126

**Hon'ble Judges :** Subodh Abhyankar

**Bench :** Single Bench

**Advocate :** Manhar Dixit, Sharad Punj

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## Judgement

1. The petitioner before this Court is an employee of the Madhya Pradesh Power Generating Company Limited. The petitioner is aggrieved by the order dated 30.6.2014 issued by the Labour Commissioner and Appellate Authority in Gratuity Appeal Case No.331/2013 and Gratuity Appeal Case No.1/2010 dated 30.6.2014 whereby the petitioner's claim for gratuity has been declined on the ground that the petitioner had caused an accident which resulted into the death of a person and in the claim case arising out of the said case a sum of Rs.3,72,141.36 was also required to be paid by the respondent-company. The petitioner has submitted that he is entitled to the payment of gratuity after completing 38 years of service which comes to Rs.509808/-. It is further submitted by the petitioner that initially he was suspended but subsequently he was reinstated and retired on 30.9.2006 and there is no provision in the Payment of Gratuity Act, 1972 to withhold the gratuity of a person.

2. The respondents have denied the claim made by the petitioner on the ground that he is a delinquent employee and was found to have driven a vehicle under the state of intoxication, which resulted into the death of a person the compensation of which has already been given by the respondent.

3. Heard the learned counsel for the parties and perused the record.

4. The Dy. Labour Commissioner/Appellate Authority has held that the Controlling Authority has not actually dismissed the claim of gratuity but it is only stayed till the court case against the employee is concluded and if he is not found guilty, the amount shall be paid to him. It is further mentioned that the provisions of Section 4, 6(a) of the Gratuity Act is also in line of the aforesaid reasoning.

5. Sub section (6) of Section 4 contains a non obstante clause and the conditions are also provided in what circumstances the amount of gratuity is liable to be forfeited. Sub section (6) of Section 4 of the Payment of Gratuity Act, 1972 reads as under :-

"4. Payment of gratuity. - (1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) xxx xxx xxx

(6) Notwithstanding any contained in subsection (1), -

(a) the gratuity of an employee, whose services have been terminated for any act, wilful 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;

(b) the gratuity payable to an employee [may be wholly or partially forfeited]-

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

(emphasis supplied)

6. A bare perusal of the aforesaid section clearly reveals that an employer can certainly forfeit the amount of gratuity to the extent it has suffered loss or damage attributable to the employee but such forfeiture is subject to one condition i.e. that the employee's services are terminated. In the present case, after his suspension, the petitioner was again reinstated and has retired. Thus, the condition of the aforesaid section is not

satisfied in the present case and the withholding of gratuity is impermissible.

7. Learned counsel for the petitioner has relied upon the judgment of the Apex Court in the case of Jaswant Singh Gill vs. M/s Bharat Coking Coal Ltd., reported in (2007) 1 SCC 663. In that case, following observations have been made by

the Apex Court :

"12. 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, subsection (6) of Section 4 of the Act contains a non- obstante clause vis-a`-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.

Termination of services for any of the causes enumerated in Sub- section (6) of Section 4 of the Act, therefore, is imperative.

(emphasis supplied)

8. Learned counsel for the petitioner has also relied upon the judgment of this Court dated 26.11.2015 passed in Writ Petition No.2315/2015 and other connected petitions, which has no application in the resent case.

9. Learned counsel for the respondents have relied upon the judgment of Jharkhand High Court in the case of Bharat Coking Coal Ltd. Vs. Brajendra Kumar Choubey passed in L.P.A.No.344 of 2011 decided on 16.6.2014. The facts of this case are clearly distinguishable as in this case the employee was terminated after a departmental enquiry but in the case at hand the petitioner was not terminated.

10. Learned counsel for the respondents could not point out as to under which provision of law, the gratuity can be withheld when the case is pending against the employee.

11. The finding of the Appellate Authority has to be tested in the light of the aforesaid decisions., the finding is recorded in following words :

"VERNACULAR MATTER OMITTED"

12. A bare perusal of the aforesaid order clearly reveals that the Appellate Authority has considered the criminal case pending against the petitioner wherein the charge of negligence attributable to the petitioner is to be decided and as per the respondents, they were compelled to pay the claim of Rs.3,72,141.36 to the next of kin, but the fact that the petitioner was reinstated and subsequently retired in the year 2006 has not been considered by the appellate authority. As already discussed above, the petitioner was not terminated at all which is a condition sine qua non to bring his case under Sub-section (6) of Section 4 of the Payment of Gratuity Act, 1972.

13. In these circumstances, the impugned order is liable to

be quashed and is hereby quashed. it is directed that the amount of gratuity payable to the petitioner be immediately paid to the petitioner with the applicable interest rate from the date on which the first became entitled for the same. However, it is made clear that the respondents are at liberty to recover the amount from the petitioner, if the occasion so arises in accordance with law.

14. Resultantly, the petition is allowed and there shall be no order as to costs.