
(2012) 06 AP CK 0076
In the Andhra Pradesh High Court
Case No : W.P.No. 253 of 2003

APSRTC and Another

APPELLANT

Vs

Amjad Ali Khan and Another

RESPONDENT

Date of Decision : 29-06-2012

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4, 4(1)

Citation : (2012) 6 ALT 206

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : K. Harinath, for the Appellant;

Final Decision : Dismissed

Judgement

Nooty Ramamohana Rao

1. This Writ Petition is preferred by the Andhra Pradesh State Road Transport Corporation, assailing the validity of the orders passed by the Authority under Payment of Gratuity Act-cum-Assistant Commissioner of Labour, Ranga Reddy District, directing them to pay an amount of Rs. 77,884/- towards gratuity payable to the 1st respondent employee of the Corporation. The most relevant facts for our inquiry are:

2. The 1st respondent workman was initially appointed as an apprentice driver with the Corporation with effect from 27.12.1968 and he was subsequently, appointed as a regular driver with effect from 02.11.1970. He was promoted as an Assistant Depot Clerk and as a Depot Clerk. Ultimately, by an order passed on 27.03.1998, his services have been terminated for a proven misconduct of misappropriating certain amount of the Corporation. However, on the ground that the workman has not been paid his gratuity, he approached the competent authority under the Payment of Gratuity Act and the competent authority has passed orders on 18.10.2002, which is under challenge in this Writ Petition.

3. The case of the Corporation is that the respondent employee has

misappropriated the money belonging to the Corporation which was entrusted to him for disbursement towards payment of wages to various other staff members and contractual employees. The 1st respondent workman has only disbursed a portion of the money entrusted to him and did not disburse the rest of the money nor did he refund the said amount to the Corporation. He has neither accounted for the money entrusted to him nor did he report to duty after the irregularities committed by him on 03.09.1997 have been detected. He therefore, abandoned the employment. For the acts of misconduct committed by him, he was subjected to domestic enquiry and based upon the findings recorded at the domestic enquiry, final orders were passed removing him from service.

4. The questions that should have been adverted to and decided by the competent authority was, whether the 1st respondent workman was entitled to be paid gratuity and if so, how much amount and as to whether the APSRTC could have forfeited the whole of the said amount of gratuity or only a portion thereof. Instead of advertent to and deciding any of these questions, the competent authority has proceeded mechanically and determined the issue and quantified the amount of gratuity payable to the 1st respondent workman. No reasons are assigned as to why it has arrived at the conclusion. It is important to bear in mind that reasons are the live links between the mind of the decision-maker which manifest in his order. Sans reasons an order passed by a quasi-judicial authority would only reflect the mechanical attitude. Every adjudicatory body, either judicial or quasi-judicial, must assign reasons, which lend support to the conclusions drawn by them. Reasons will make the orders as well as the exercise carried out not only transparent but also convey the lines on which the mind of the quasi-judicial authority has been applied. It would also disclose as to whether any irrelevant considerations have weighed with him or not, while, at the same time, it would ensure that he has not missed out the relevant material.

5. Section 4(1) of the Payment of Gratuity Act, 1972 creates a right in the hands of an employee to receive gratuity on termination of his employment after he has rendered continuous service for not less than five years. There is no doubt that the 1st respondent workman has put in more than five years of service with the Corporation. Sub-section (6) of Section 4, which starts with a non-abstante clause, makes it clear that gratuity of an employee, whose services have been terminated for any act, willful omission or negligence, causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of damage or loss so caused. Thus sub-section (6) of Section 4 has got to be read conjointly with sub-section (1) of the same Section. When so read, it becomes clear that gratuity becomes payable to an employee whose services have been terminated for any act or willful omission or negligence on his part. The employer can also forfeit the gratuity payable to an employee wholly or partially, but however, such forfeiture must have a direct correlation to the damage or loss caused by such an employee to the employer. However, only in cases where the services of an employee have been terminated, for his riotous or disorderly conduct or any act of violence on his part or where his services have

been terminated for any act, which constitutes an offence involving moral turpitude provided that such offence is committed by him during the course of his employment, the gratuity amount can be wholly or partly forfeited. In the later event, as to how much of the quantity of gratuity should be forfeited is left to be determined by the employer properly using his discretion in that regard. Whereas, the exercise of discretion with regard to the quantum of gratuity amount that should be forfeited, in the earlier circumstances, has been regulated by the statute itself. The quantum of amount of gratuity which is sought to be forfeited must bear a direct proportion to the loss or damage caused to the employer by the employee. Only in the event that the loss or damage caused to the employer by the employee is either equal or exceeds the quantum of gratuity otherwise payable to him, whole of the gratuity becomes liable to be forfeited. On the other hand, the loss or damage caused was less than the quantum of gratuity that becomes payable, only to that extent of loss or damage, the gratuity amount can be forfeited and rest of the amount has got to be paid to the employer.

6. Unfortunately, not one of these aspects have been taken note of by the competent authority. Misappropriation of the revenue or funds of the Corporation which were entrusted by it to the 1st respondent workman amounts to causing loss to the Corporation/employer. Therefore, the 2nd respondent competent authority is under an obligation to determine the extent of loss caused by the workman to the APSRTC and then authorize forfeiture of amount of gratuity payable to that extent and thereafter, release the balance amount.

7. I therefore, consider it appropriate to set aside the order passed on 18.10.2002 by the 2nd respondent competent authority, and remand the matter back to him for re-determination of amount of gratuity payable to the 1st respondent workman. It is needless for me to observe that the competent authority will provide a fair and reasonable opportunity of hearing while determining the quantum of gratuity payable. Let this exercise be completed within a maximum period of four months from the date of receipt of a copy of this order.

8. The Writ Petition stands allowed to the extent indicated supra. No costs. Consequently, the miscellaneous applications, if any shall stand dismissed.