
(2015) 02 AHC CK 0073

In the Allahabad High Court

Case No : CM Delay Condonation Application No. 31381 of 2015 and Special Appeal Defective No. 101 of 2015

Bankey Bihari Chauhan

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-02-2015

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4, 4 (6), 7

Citation : (2015) 3 ADJ 305 : (2015) 3 ALJ 29 : (2015) 2 ESC 1169 : (2015) 145 FLR 250 : (2015) 2 LLJ 636 : (2015) 3 LLN 90 : (2015) LLR 866 : (2015) 2 UPLBEC 1241

Hon'ble Judges : D.Y. Chandrachud, C.J.;Suneet Kumar, J.

Bench : Division Bench

Advocate : G.C. Pant and Nitin Pant, for the Appellant; Ajit Kumar Singh, Advocates for the Respondent

Final Decision : Disposed off

Judgement

1. This special appeal has arisen from a judgment of the learned Single Judge dated 9 December 2014 dismissing a writ petition filed by the appellant.

2. The appellant was appointed as a Bus Conductor in the Uttar Pradesh State Road Transport Corporation¹ on 20 March 1978. His services are governed by the Uttar Pradesh State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981². Disciplinary proceedings were initiated against the appellant by the issuance of a charge sheet on 6 July 2002. The appellant submitted a reply to the charge sheet. His reply was not found satisfactory and a notice to show cause was issued to him on 15 December 2005, proposing to punish him for the loss stated to have been incurred by the Corporation in the amount of Rs. 2,99,848/-. After considering the reply of the appellant and the report of the Inquiry Officer, the competent authority found the appellant to be negligent in the performance of his duties, thereby causing a financial loss in the amount of Rs. 219,846/- and an order was passed on 27 June 2006 for the

recovery of the aforesaid amount by deducting Rs. 500/- per month from his salary until his retirement. The appellant filed a writ petition which was dismissed on 24 July 2006 with liberty to file an appeal. According to the respondents, the appeal was dismissed by the appellate authority on 9 April 2009. On the other hand, according to the appellant, the order of the appellate authority was never served on him. The appellant moved the prescribed authority under the Payment of Wages Act, 1936. The Commissioner, by an order dated 22 June 2009 allowed the application and set aside the deduction of Rs. 500/- with a direction, consequently, to refund an amount of Rs. 22,000/- to the appellant. That amount was admittedly refunded. The Corporation filed an appeal which was rejected by the appellate authority on 27 October 2010. A writ petition was filed by the Corporation in which, on 8 April 2011, the operation of the orders dated 22 June 2009 and 27 October 2010 was stayed. The stay order dated 8 April 2011 is stated to have been extended on 4 July 2011.

3. The cause of action for the appellant for filing the writ petition was the initiation of recovery proceedings by the Corporation represented in these proceedings by the second and third respondents. On 1 September 2014, an order was passed by the Regional Manager of the Corporation sanctioning the total gratuity amount of Rs. 2,50,945/- and adjusting it towards the balance amount of Rs. 2,89,250/- which was to be recovered. The entire amount of gratuity has thus been adjusted towards the recovery. Challenging the recovery action, the appellant moved writ proceedings which have been dismissed by the learned Single Judge by the impugned order dated 9 December 2014. What has weighed with the learned Single Judge is that the appellant did not challenge the order of punishment that was originally passed or the order passed in the departmental appeal and has now challenged only a consequential decision to recover the amount from the gratuity due and payable.

4. Regulation 39 of the Regulations provides as follows:

"39. Pension and other retirement benefit.--(1) (i) Subject to the provisions of clause (ii) of this sub-regulation, an employee of the Corporation shall not be entitled to pension, but he shall be entitled to the retirement benefits mentioned in sub-regulation (2).

(ii) A person, who was the employee of the State Government in the erstwhile U.P. Government Roadways and has opted for the service of the Corporation, shall be entitled to pension and other retirement benefits in terms of the G.O. No. 3414/302-170-N-72, dated July 5, 1972.

(2) Without prejudice to the provisions of sub-regulation (1) an employee (including an employee who was in the service of the State Government in the erstwhile U.P. Government Roadways Department), shall be entitled to the following retirement benefits:

(i) Employees Provident Fund or the General Provident Fund, as the case may be;

- (ii) Gratuity in accordance with the Payment of Gratuity Act, 1972 or the relevant Government Rules, as may be applicable;
- (iii) amount due under Group Insurance Scheme, 1972;
- (iv) one free family pass in a year for journey within the State;
- (v) a free family pass for his return to his home from the place of posting at the time of retirement in case he does not accept railway fare;
- (vi) any other benefit that may be allowed by the Corporation from time to time."

5. Hence, under Regulation 39 (2) (ii), an employee of the Corporation is entitled to gratuity in accordance with the Payment of Gratuity Act, 1972 or the relevant rules of the Government as may be applicable.

6. Section 4 (6) of the Act provides for the circumstances in which the gratuity of an employee, whose services have been terminated, can be forfeited. Section 4 (6) is in the following terms:

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

(6) Notwithstanding anything contained in Sub-section (1),--

(a) the 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 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."

7. In the decision of the Supreme Court in *Jaswant Singh Gill Vs. Bharat Coking Coal Ltd. and Others*, , it has been held that termination of services for any of the causes enumerated in sub-section (6) of Section 4 of the Act is imperative before the gratuity can be forfeited. The same principle has been followed in a more recent decision of the Supreme Court in *State of Jharkhand and Others Vs. Jitendra Kumar Srivastava and Another*, .

8. In the present case, it is not in dispute that the services of the appellant were never terminated. The appellant continued to be in service and retired on attaining the age of superannuation. In the circumstances, the basic pre-condition for the forfeiture of gratuity under Section 4 (6) of the Act was not fulfilled. We may also note that Regulation 63 of the Regulations provides for penalties and clause (4) thereof provides for the recovery from pay or deposit at

the credit of an employee of the whole or part of a pecuniary loss caused to the Corporation by negligence or breach of an order. The Regulations must necessarily be harmonized with the provisions of the Act and cannot override the express statutory provision. In any event, it is clear that even Regulation 63 contains no such provision of recovery from gratuity. In these circumstances, we are of the view that the action for recovery from gratuity was contrary to law and in the teeth of the express provision of the Act. The learned Single Judge, with great respect, was not justified in dismissing the petition on the ground that the appellant had not challenged the order of penalty or the appellate order. For the purposes of the present proceedings, it is not necessary for the Court to enquire into the grievance of the appellant that he was not served with the appellate order. Moreover, we may clarify that the learned counsel for the appellant has only confined himself to the payment of gratuity. Even if the order of penalty has attained finality, as is urged on behalf of the employer, any recovery or adjustment of the amount of gratuity has to be made by following the statutory provisions contained in the Act. Since the conditions set out in Section 4 (6) of the Act for forfeiture of the gratuity have not been fulfilled, the action of the employer was ultra vires.

9. We, accordingly, allow the special appeal and set aside the impugned judgment and order of the learned Single Judge dated 9 December 2014. In consequence, we allow the writ petition filed by the appellant and set aside the impugned directions of the Corporation contained in the orders dated 1 September 2014 and 10 January 2014 in regard to the recovery from the amount of gratuity. The gratuity which is admissible to the appellant shall be paid to him within a period of two months from the receipt of a certified copy of this order together with interest computed at the rate as applicable under sub-section (3A) of Section 7 of the Act with effect from the date on which the gratuity became payable to the appellant.

10. The special appeal is, accordingly, disposed of. There shall be no order as to costs.

11. The delay in filing the special appeal has satisfactorily been explained and is, hence, condoned.

12. The application stands allowed.

1Corporation 2Regulations 3Act