
(2018) 05 CAL CK 0094
In the Calcutta High Court
Case No : W. P. 24160(W) of 2016

Bharat Coking Coal Limited	Vs	APPELLANT
Appellate Authority Under Payment Of Gratuity Act, 1972 And Deputy Chief Labour Commissioner (Central), Asansol And Others.		RESPONDENT

Date of Decision : 02-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 302

Citation : (2018) 05 CAL CK 0094

Hon'ble Judges : RAJASEKHAR MANTHA, J

Bench : Single Bench

Advocate : Soumya Majumder, Pradyot Kumar Das, Md. Sabir Ahmed, Piya Gupta, Hillol Saha Podder

Final Decision : Allowed

Judgement

In the instant writ petition, Bharat Coking Coal Limited challenges an order dated 16th August, 2016 passed by the Appellate Authority under the

Payment of Gratuity Act 1972. The appeal itself arose from an order passed by the controlling authority dated 11th December, 2014.

The facts of the case are, inter alia, that the deceased husband of the writ petitioner was an employee of the BCCL at its Bhojudih Coal Washery.

During his lifetime the deceased was charged with having assets disproportionate to his known source of income. Criminal proceedings on that score

were dropped for insufficient evidence. In another Criminal Proceeding however, the writ petitioner's deceased husband is stated to have been

convicted under Section 302 of the Indian Penal Code.

In the departmental proceedings on the charge of disproportionate assets the deceased employee was found to be guilty. A punishment of dismissal

from service was imposed on him vide dated 25th November, 2006. In the same order the gratuity was directed to be forfeited. Other employment

benefits except gratuity and as applicable to a dismissed employee were directed to be released and have been released.

The employee, Abdul Hayat Khan had died on 28th August, 2010. The writ petitioner as widow and legal heir of the deceased employee filed an

application before the controlling authority and Assistant Labour Commissioner, Asansol praying for gratuity on account of her husband's

employment with the writ petitioner. The said application was allowed and the writ petitioner was directed to pay gratuity to the said Ahemedi Naz, in

the authority's order dated 11th December, 2014.

To say the least, the said order of the controlling authority is bereft of any reasoning whatsoever and is not sustainable in law. The writ petitioner

preferred an appeal before the appellate authority under the Payment of Gratuity Act, 1972 i.e., before the Deputy Chief Labour

Commissioner (Central), Asansol, West Bengal. The order of the appellate authority is dated 16th August, 2016 whereby the appeal was dismissed.

A bare reading of the aforesaid order dated 16th August, 2016 shows that the same is perverse. The appellate authority chose to sit in appeal over the

order of dismissal passed by the writ petitioner dated 25th November, 2006 without any jurisdiction whatsoever. The appellate authority wholly failed

to appreciate that the authorities under the writ petitioner had negated gratuity to the deceased employee as they found moral turpitude in the conduct

of the said employee for which he was being enquired against. Once an employer comes to a conclusion that the charges in the nature of moral

turpitude have been proved in a lawful enquiry, there is according to me no need for further proceedings to determine again as to whether there has

been in fact any moral turpitude.

The appellate authority's order and reasons for upholding the order of the controlling authority are devoid of any reason whatsoever. The

purported reasons given at the 3rd page of the impugned order do not constitute reasons at all. The order of dismissal referred to hereinabove itself

constitutes an order forfeiting the gratuity of the deceased employee. The impugned order cannot be sustained. The orders of the appellate authority

dated 16th August, 2016 and the controlling authority dated 11th December,

2014 are hereby set aside. The authorities under the Payment of Gratuity

Act, 1972 shall retain the amount of gratuity deposited by the writ petitioner with them until the following occurs.

The appellate authority within the writ petitioner, seized off the appeal filed by the deceased employee against the order of dismissal dated 25th

November, 2006 being No.WM/BJ/Con/DA/06/445 shall dispose of the said appeal within a period of thirty days from the date of communication of

this order to them, if not already disposed of. The issue as regards whether any gratuity would be paid shall abide by the order that may be passed by

the said appellate authority.

After completion of thirty days however, the amount of gratuity lying in deposit with the authority under the Payment of Gratuity Act shall be paid to

the deceased employee's legal heir if no order is passed by the appellate authority as directed hereinabove. With the directions as aforesaid, W. P.

24160(W) of 2016 is hereby allowed. There will be no order as to costs. Urgent certified website copies of this order, if applied for, be made available

to the parties upon compliance with the requisite formalities.