(2008) 07 JH CK 0177

In the Jharkhand High Court

Bharat Coking Coal Ltd. APPELLANT

Vs

The Regional Labour Commissioner (C) Dhanbad-cum-Appellate Authority under The payment of Gratuity Act, 1972 and Others RESPONDENT

Date of Decision : 11-07-2008

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4, 7

Citation : (2008) 4 JCR 122

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajit Kumar Sinha, J.—The present writ petition has been preferred to quash the appellate order dated 29.11.2002 passed by the Regional Labour Commissioner (C), Dhanbad in P.G. AppeaL/(48)/2002, whereby and whereunder, the appeal of the writ petitioner was dismissed. Petitioner has also prayed for quashing the findings of the Controlling authority dated 26.6.2002 under the Payment of Gratuity Act in Application No. 36/19/2001-E.6, whereby, a decision was issued to the petitioner-Management to pay the gratuity amounting to Rs. 3.50,000/- along with 10% interest with effect from 31.1.2001.

2. The fact, in brief, as submitted by the petitioner-Management, is set out as under. It is submitted that respondent No. 3 while posted as Deputy Chief Engineer committed misconduct of fraud and dishonesty during the period 1989-91, as a result of which investigation was carried out by the Central Bureau of Investigation and necessary follow up actions were taken against him. The petitioner-Management had issued charge sheet on 21.12.1992 and a departmental proceeding was initiated. However, the same was kept pending due to C.B.I, investigation and prosecution. During pendency of the charge memo/ departmental proceeding respondent No. 3, attained the age of superannuation and retired with effect from 1.2.2001. Respondent No. 3 is governed under the

Coal India Ltd. Conduct Discipline and Appeal Rules, 1978 being an Executive and it is submitted that as per paragraph 34.2 the departmental proceeding is deemed to continue even after retirement. Para 34.2 of the Rules is quoted as under:

34.2. Departmental proceeding, if instituted while the employee was in service whether before his retirement or during his reemployment, shall, after the final retirement of the employee, be deemed to be proceeding and shall be continued and concluded by the Authority by which it was commenced in the same manner as if the employee had continued in service.

Paras 27.0 and 27.1 of the Conduct Discipline and Appeal Rules, 1978 deal with both minor as well as major punishment.

3. As per charge memo respondent No. 3 had requisitioned three Air Conditioner Machines for installation in the U.H.F. Telecom room and after taking delivery through his representative vide Gate Pass No. 43709 on 12.1.1991 got the same transported through Truck No. BPW 2672. Out of the aforesaid three A.C. Machines, one he got it installed at his own residence and the other two A.C. Machines were traceless. causing loss to the Company of more than Rs. 52,000/-.

4. The main contention raised by the counsel for the petitioner is that in view of specific provision, governing an Executive under the Conduct, Discipline and Appeal Rules, 1978, the petitioner-Management was justified in law in continuing with the departmental proceedings after retirement even though initiated while the Executive was in service.

5. It appears that respondent No. 3 moved an application for payment of gratuity before the controlling authority and after the pleadings were completed, specific contention was raised that under the provisions of Section 4(6)(a) of the Payment of Gratuity Act, unless the services were terminated, there could not be any forfeiture of gratuity. The controlling authority, respondent No. 2 herein, without waiting for the disciplinary proceedings to be completed, gave a finding that in view of the specific provisions u/s 4(6)(a) of the payment of Gratuity Act, the withholding of gratuity amount of respondent No. 3 on account of investigation was not maintainable under the provisions of Payment of Gratuity Act and, accordingly, in view of the provisions of Section 7(3-A) of the Payment of Gratuity Act, 1972 apart from awarding gratuity of Rs. 3,50,000/- also issued direction for payment of interest at the rate of 10% per annum.

6. It appears that the petitioner preferred a statutory appeal under the provisions of Sub-section (7) of Section 7 of the Payment of Gratuity Act, 1972 after depositing the amount as awarded by the Controlling authority in accordance with the proviso of Sub-section (7) of Section 7 of the said Act. It is also the case of the petitioner that the disciplinary proceedings were concluded and vide order dated 1.10.2002 respondents No. 3 was found guilty of misconduct and was, accordingly, punished by reduction in the next lower post in the time scale for a period of two years. The said order was passed as if

respondent No. 3 has continued in service and it was given a notional effect as he had retired with effect from 31.1.2001. It is also the submission of the petitioner that the appeal was heard and vide order dated 29.11.2002 the same was dismissed with slight modification with regard to the period of payment of interest. Being aggrieved the present writ petition has been filed to quash the appellate order date 29.11.2002 and also for quashing the findings of the Controlling authority dated 26.6.2002.

7. I have considered the submission and the arguments and find that this issue is no more res-integra. In an identical case, reported in (2007) 1 SCC 663 (Jaswant Singh Gill v. Bharat Coking Coal Ltd.), the Hon''ble Supreme Court clearly held that the provisions of the Gratuity Act will prevail over the rules framed by the Coal India Limited, known as Coal India Executives Conduct, Discipline and Appeal Rules, 1978. The Hon''ble Supreme Court while interpreting Section 4(6)(a) of the Payment of Gratuity Act, which is quoted as under, finally held at paragraph Nos. 9 and 10 as under:

9. The rules framed by the Coal India Limited are not statutory rules. They have been made by the holding company of respondent No. 1.

10. The provisions of the Act, therefore, must prevail over the rules. Rule 27 of the Rules provides for recovery from gratuity only to the extent of loss caused to the Company by negligence or breach of orders or trust. Penalties, however, must be imposed so long an employee remains in service. Even if a disciplinary proceeding was initiated prior to the attaining of the age of superannuation, in the event the employee retires from service, the question of imposing a major penalty by removal or dismissal from service would not arise. Rule 34.2 no doubt provides for continuation of a disciplinary proceeding despite retirement of employee if the same was initiated before his retirement but the same would not mean that although he was permitted to retire and his services had not been extended for the said purpose, a major penalty in terms of Rule 27 can be imposed.

8. It was also held that the power to withhold penalty (gratuity) contained in Rule 34.3 of the Rules must be subject to the provisions of the Act. Gratuity becomes payable as soon as the employee retires. The only condition therefore is rendition of five years'' continuous service.

9. In the light of the aforesaid judgement, passed by the Hon''ble Supreme Court, considering the same identical issue, in which the petitioner herein Bharat Coking Coal Ltd. was respondent, this writ petition deserves to be dismissed being fully covered by the aforesaid Hon''ble Supreme Court judgment. However, the simple interest awarded at the rate of 10% is reduced to 6% per annum. There will be no order as to casts. Petition dismissed.