

(2003) 09 JH CK 0078
In the Jharkhand High Court
Case No : L.P.A. No. 309 of 2002

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 : 26-09-2003

Acts Referred:

Conduct, Discipline and Appeal Rules, 1978 — Rule 27(1), 34.2
Payment of Gratuity Act, 1972 — Section 7(4), 7(7)

Citation : (2004) 3 LLJ 837 : (2004) 102 FLR 531 : (2004) 2 JCR 610

Hon'ble Judges : Lakshman Uraon, J; Gurusharan Sharma, J

Bench : Division Bench

Advocate : Anoop Kumar Mehta, for the Appellant; P.D. Agrawal, Addl. SCCG for Respondents 1 and 2 and V. Shivnath and M.B. Lal, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : Bhogpur Co-op Sugar Mills Ltd. Vs. Harmesh Kumar, AIR 2007 SC 288 : (2006) 111 FLR 1202 : (2006) 11 SCALE 631 : (2006) 8 SCR 1021 Supp

1. This appeal is directed against the order dated 13.12.2001, passed by the learned Single Judge in W.P. (C) No. 5957 of 2001.

2. Sri Jaswant Singh Gill, the respondent No. 3 was posted as the Chief General Manager, Lodna area of M/s. Bharat Coking Coal Limited. On the basis of the charge-sheet dated 24.2.1997, relating to coal stock shortage, a departmental proceeding was initiated against him, wherein enquiry report was submitted on 18.8.1999 showing the charge to have been proved. In the meantime on 30.4.1998, the respondent No. 3 retired from service. However, in terms of Rule 34.2 of the Conduct, Discipline and Appeal Rules, 1978 (hereinafter to be referred to as "the Rules"), applicable to the executives of the Coal India Limited, the enquiry on the aforesaid charge was continued, even after his

retirement and on the basis of the said enquiry report, in terms of Rule 27.1(i) (d) he was punished on 5.7.2000 and the amount of gratuity payable to him was forfeited.

3. On 4.1.2000, the respondent No. 3 filed an application in Form "N" before the Assistant Labour Commissioner (C), Dhanbad-I-cum-Controlling Authority, under the Payment of Gratuity Act, 1972 (hereinafter to be referred to as "the Act"), the respondent No. 2, for payment of gratuity amounting to Rs. 2,79,620.70 and interest thereon. which was registered as P.G. Application No. 36(4), of 2000. The appellant filed show cause in the said proceeding on 6.4.2001 making reference of the punishment awarded to the respondent No. 3 on 5.7.2000.

4. By order dated 11.4.2001 (Annexure-4), the controlling authority under the Act directed the appellant to pay to the respondent No. 3 the gratuity amount of Rs. 3,09,771.00 including interest. The appellant filed appeal before the appellate authority, the respondent No. 1 which was dismissed by order dated 11.10.2001 (Annexure-6). The appellant deposited Rs. 3,09,771.00 under the second proviso to Section 7(7) of the Act, by cheque dated 5.5.2001 in the name of the respondent No. 2.

5. The appellant challenged those order dated 11.4.2001 and 10.10.2001 in this Court vide W.P. (C) No. 5957 of 2001, which was dismissed by the learned Single Judge by the impugned order dated 13.12.2001. Hence, the present appeal.

6. Under Rule 34.2 of the Rules, a departmental proceeding, if instituted, while the employee was in service whether before his retirement or during his re-employment, shall, after 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 is continued in service and under Rule 27.1(i)(d), on the charge of misconduct, proved against the employee a penalty of recovery from pay or gratuity of the whole or part of any pecuniary loss caused to the Company by negligence or breach of orders or trust could have been awarded.

7. The respondent No. 3 did not prefer any appeal against the order of punishment inflicted on him on 5.7.2000; rather pending the departmental proceeding, he had approached the controlling authority under the Act, purporting to be u/s 7(4)(b) of the Act, for payment of the gratuity amount.

8. During the service period of respondent No. 3 in respect of charge-sheet dated 24.2.1997, regarding the shortage of coal as on 1.4.1996, the explanation of the respondent No. 3 was not found satisfactory and a departmental enquiry was ordered. Sri S.D. Pandey, Executive Director (Personnel) South Eastern Coal Fields Ltd. was appointed as Enquiry Officer.

9. The respondent No. 3 was also alleged to have committed irregularities in awarding contract to M/s. Mittal Engineering as well as in the purchase of H.E.M.M. Spares from the local parties. He did not submit any representation on

the report of the enquiry dated 18.8.1999.

10. All the materials relating to the enquiry, which were subject matter of the charge-sheet were placed before the Chairman, Coal India Limited, who was the Disciplinary Authority. After considering the entire matter and all the documents in the case file, the Disciplinary Authority found that the respondent No. 3 had a major role in causing shortage of coal stock in connivance with the measurement team. He concealed the shortage at the time of annual measurement.

11. Considering the seriousness of the offence committed by the respondent No. 3, the disciplinary authority imposed the punishment of dismissal from service upon him, but as he had already retired by then, the said punishment could not have been imposed and accordingly the order dated 5.7.2000 was issued for forfeiture of his gratuity amount.

12. In the application in Form "N" dated 4.1.2000, the respondent No. 3 did not refer to the aforesaid departmental proceeding going on against him in terms of Rule 34.2.

13. So long the Departmental proceeding was not completed and the assessment of damages caused by the respondent No. 3 was not made, in our opinion the gratuity amount payable to the respondent No. 3 was rightly withheld by the appellant, so that in case so needed, the quantum of damages caused could have been adjusted against the said gratuity amount.

14. The application in Form "N" filed by the respondent No. 3 before the controlling authority under the Act was pre-mature, in view of the pendency of Departmental proceeding against him. It was not a case of non-payment of gratuity amount in terms of Section 7(4)(b) of the Act. No enquiry at that stage, when in Departmental proceeding was pending against the respondent No. 3, the controlling authority under the Act was requiring to make in terms of Section 7(4) (c) and direct the appellant to pay the gratuity amount.

15. Further, on 5.7.2000 the Departmental proceeding against the respondent No. 3 also concluded and the Disciplinary Authority inflicted punishment of forfeiture of his gratuity in terms of Section 271(i)(d) of the Rules and thereafter unless and until the said punishment was set aside by the appellate and/or the competent authority in accordance with law, in our opinion, there was no occasion for the controlling authority under the Act to pass the order dated 11.4.2001, directing the appellant to pay the gratuity amount to the respondent No. 3.

16. It appears that the controlling authority under the Act observed that as per Section 4(6) (a) and (b) of the Act, gratuity can be forfeited partially or fully when the services of the employee is terminated for any act which constitutes an offence involving moral turpitude, provided that such offence was committed by him in course of the employment. In the instant case services of respondent No. 3 has not been terminated for the offence mentioned u/s 4(6) (a) or (b).

Therefore, the order of forfeiture of his gratuity issued by the CMD-cum-the Disciplinary Authority of Coal India Limited is not tenable and the basic requirement of termination of services for any of the misconduct as enumerated u/s 4(6) (a) and (b) has not been fulfilled before issuance of the order of forfeiture of the gratuity amount. The respondent No. 3 was, therefore, held to be entitled for payment of gratuity and the appellant was directed to pay the same.

17. The appellate authority also committed the same mistake and observed that by the punishment order the services of the respondent No. 3 have not been terminated; rather could not have been terminated and the said order dated 5.7.2000 also did not indicate the extent of damage or loss caused to the appellant. Since neither the services was terminated nor there is anything about the extent/quantification of damage or loss in the punishment order, the question of forfeiture of gratuity did not arise as per Section 4(6) of the Act.

18. In our opinion, the controlling authority under the Act being not the appellate or the competent authority against the order dated 5.7.2000 passed by the CMD-cum-Disciplinary Authority inflicting punishment of forfeiture of gratuity against the respondent No. 3, the comments on the said order as well as interference therewith either by him or the appellate authority u/s 7(7) of the Act is unwarranted and without jurisdiction.

19. We, therefore, set aside the orders passed by the controlling authority dated 11.4.2001, the appellate authority dated 11.10.2001 and the learned Single Judge dated 13.12.2001.

20. In the result, the appeal is allowed, but without costs.