

(1986) 07 KAR CK 0028
In the Karnataka High Court
Case No : Writ Appeal No. 461 of 1983

Bharath Gold Mines Ltd.

APPELLANT

Vs

Reg. Labour Commissioner (Central) and Others

RESPONDENT

Date of Decision : 04-07-1986

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4 (6) (b) (ii)
Penal Code, 1860 (IPC) — Section 378

Citation : (1994) 3 LLJ 54

Hon'ble Judges : M. Ramakrishna, J; M. Rama Jois, J

Bench : Division Bench

Advocate : K. J. Shetty, for the Appellant; B.V. Acharya, for the Respondent

Final Decision : Allowed

Judgement

1. M. Rama Jois, J : In this writ appeal, the following question of law arises for consideration:

"Whether theft is an offence involving moral turpitude and if so, if the services of an employee had been terminated on the charge of theft committed in the course of his employment, the gratuity payable to him under the provisions of the Payment of Gratuity Act 1972 (the Act" for short) stands wholly forfeited in view of Section 4(6)(b)(ii) of the Act."

2. The facts of the case, in brief, are as follows: The third respondent was a workman in the service of the appellant at Bharath Gold Mines, Kolar. Disciplinary proceedings were instituted against him on the charge that he had committed theft of gold of the value of Rs. 155.61 in the course of his employment in the Gold Mines. In the inquiry he was found guilty of the charge. The Disciplinary Authority accepted the findings and imposed the penalty of dismissal from service against the third respondent with effect from 18th August, 1981 forfeiting all rights and privileges accrued to him from his past service. The order of dismissal has not been challenged by the third respondent in any proceeding and

consequently it has become final. The third respondent, however, made an application before the second respondent-the Assistant Labour Commissioner, praying for a direction to the appellant to pay him the amount of gratuity for 26 years of service which he had put in before the date of termination of his service. Before the second respondent, the appellant contended that as the third respondent was dismissed from service after finding him guilty of theft which constituted an offence involving moral turpitude, the gratuity payable to him stood wholly forfeited in view of Section 4(6)(b)(ii) of the Act. The second respondent held that as no show cause notice was issued to the third respondent, the forfeiting of the gratuity amount was wrong and accordingly allowed the application and directed the appellant to pay an amount of Rs. 6,930 to the third respondent. Aggrieved by the said order, the appellant preferred an appeal before the first respondent-the appellate authority under the Act. The appellate authority dismissed the appeal relying on the judgment of a learned single Judge of this Court in the case of Sri Panchali v. Bharath Gold Mines Ltd. KGF (W.P. No. 13303/1978), in which the learned Judge held that the offence of theft did not involve moral turpitude and, therefore, Section 4(6)(b)(ii) of the Act was not attracted. Aggrieved by the said order, the appellant presented the writ petition. The writ petition was rejected without issuing "Rule Nisi" on the ground that the appellate authority had relied upon the order of this Court made in W.P. No. 13303/1978. Aggrieved by the said order, the appellant has presented this appeal.

3. As respondent No. 3 workman, remained unrepresented, we nominated Sri B.V. Acharya, learned counsel, to appear as amicus curiae in the case.

4. Sri K. Jagannatha Shetty, learned counsel for the appellant, and Sri B.V. Acharya, amicus curiae, have made their submissions with reference to the question arising for consideration in this appeal.

5. The submissions made by Sri. K. Jagannatha Shetty may be summarised thus. The charge framed against the third respondent in the disciplinary proceedings instituted by the appellant was that he committed theft of gold of the value of Rs. 155.61 in the course of his employment. He was found guilty of the charge and the punishment of dismissal from service with effect from 18th August, 1981, was imposed against him. Section 4(6)(b)(ii) of the Act, as it stood then, read as under:

"4(b) Notwithstanding anything contained in Sub-section (1)-

(b) the gratuity payable to an employee shall be wholly 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."

The above provision is clear. The appellant was entitled to forfeit the whole of the

gratuity due to respondent No. 3 as the offence of theft involved moral turpitude as is evident from Section 378 of the Indian Penal Code. Section 378 of the Indian Penal Code reads:

"378. Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking is said to commit theft."

The very fact that the offence of theft means dishonest removal of movable property belonging to another without his consent shows that it is an offence involving moral turpitude. Therefore, the view taken by the learned single Judge in writ Petition No. 13303 of 1978 to the effect that the offence of the theft did not involve moral turpitude was erroneous.

6. Learned counsel for the appellant also submitted that for imposing penalty on an employee for committing theft of the property of the employer, which constitutes an offence u/s 378 of the Indian Penal Code, it is not necessary that the employee concerned should have been prosecuted and punished for the offence of theft before a competent criminal court, and, further, even if an employee had been prosecuted and acquitted in a court of law, the employer would be within his right in holding disciplinary proceedings on a charge of theft committed in the course of employment under him and if in the inquiry held in accordance with the rules governing conditions of service and rules of natural justice, the employee is found to be guilty of such theft, punishment of his removal or dismissal from service could be imposed against him, as held by the Supreme Court in the case of *J.K. Cotton Spinning and Weaving Company Ltd. v. Its Workmen* (1964) II LLJ 153. Learned counsel pointed out that in the said case the workman concerned was charged for theft of company's property and he was found guilty of that charge in a domestic inquiry held by the management and that though the employee had been acquitted by the criminal court, as the domestic inquiry was found to be fair and proper, the order of the Industrial Tribunal which set aside the order of dismissal, was set aside by the Supreme Court. He further submitted that once an employee was dismissed for a misconduct and that misconduct amounts to an offence under the law of the land and further such an offence involves moral turpitude, the clear effect of Section 4(6)(b)(ii) was that the gratuity payable under the provisions of the Act stands wholly forfeited.

7. Sri B.V. Acharya, learned counsel, invited our attention to the relevant passage in *Words and Phrases*, Permanent Edition, Volume 27A, at page 186. They read:

"Moral turpitude" is anything done contrary to justice, honesty, modesty or good morals. *In re William* 167 p. 1149, 1152, 64 CKL 316.

"Moral turpitude" includes all acts done contrary to justice, honesty, modesty or good morals. *Neibling v. Terry*, 117 S.W. 2d 502, 503, 352 Mo. 396, 152. A.L.R. 249."

Learned counsel submitted that the court should decide as to whether an offence involved moral turpitude or not, in the light of the meaning given to those words as above.

8. From the above passage, it is clear that anything done contrary to justice, honesty, modesty or good morals involves moral turpitude. Dishonesty is one of the essential ingredients of the offence of theft. If there is no dishonesty in removing or taking a property belonging to another, it constitutes no offence of theft. Therefore, it is clear that when a person is found guilty of the charge of theft, it means, he has acted dishonestly and from this it follows that he has committed an offence involving moral turpitude.

9. The relevant portion of the judgment of the learned single Judge in W.P. No. 13303 of 1978, on which the appellate authority relied, reads:

"9.....Mere dishonesty as in this case will not make the misconduct an offence involving moral turpitude. Suppose a taxpayer is found to have dishonestly evaded tax to the tune of Rs. 4,000 in a particular year and has suffered an order of penalty for such evasion, has he committed any offence involving moral turpitude? A peon on the last day of his retirement from service, helps himself to certain items of stationery from his master's locker. He has committed an act of dishonesty or theft, but does it amount to an offence involving moral turpitude so as to deny him the gratuity that he had earned over 30 years blemishless service. In my view, certainly not. The offence of theft or an offence of adultery may be a heinous offence in some countries under their personal laws and persons guilty of such offences would either be maimed for life or stoned to death or beheaded. But, in our jurisprudence, where justice is tempered with mercy these are treated as not serious offences against the society. It is well settled that an occasional or chance lapse from a chaste life or path of rectitude does not amount to adulterous conduct and does not disentitle the wife from claiming maintenance (See Section 125 of the Cr. P.C.) Further, u/s 3 of the Probation of Offenders Act, 1958, a person found guilty of theft could be released on probation of good conduct after due admonition having regard to the circumstances of the case. This only shows that the society has given the accused a chance to turn over a new leaf. Hence, it cannot be said that the termination of Aru-mugam's services was on account of an act which was an offence involving moral turpitude incurring the wrath or displeasure of the society or his fellowmen. The misconduct proved against him was an act of dishonesty in connection with the first respondent's property and dishonesty per se could not be characterised as an offence involving moral turpitude. It may be seen from the order of the learned single Judge, extracted above, that he held that mere dishonesty will not make a misconduct one involving moral turpitude. With great respect to the learned Judge, we are unable to agree with the above view. In fact, it is universally accepted that any offence committed contrary to honesty is an offence which involves moral turpitude and our jurisprudence makes no exception. As the very definition of the word theft in Section 378 of the I.P.C.

indicates that it is an act of dishonest removal of property belonging to another without his consent, it is not consistent to say that the offence of theft might be dishonest but is not an offence involving moral turpitude. The provisions of the Probation of Offenders Act, which provide for exempting an accused from undergoing the sentence after conviction for an offence constitutes no basis to say that the offence committed, if it involved moral turpitude, did not involve moral turpitude. We, therefore, respectfully disagree with the view taken by the learned single Judge in Writ Petition No. 13303 of 1978 and hereby overrule the said decision."

10. Accordingly, we answer the question set out first as follows:

"Theft is an offence involving moral turpitude and consequently if the services of an employee had been terminated for committing theft in the course of his employment, the gratuity payable to him under the provisions of the Act stands wholly forfeited in view of Section 4(6)(b)(ii) of the Payment of Gratuity Act, 1972."

11. In order that Section 4(6)(b)(ii) of the Act applies to a given case, the following conditions must exist:

(i) The misconduct which constituted the basis for the determination of the tenure of an employee, must be an offence under the law, and

(ii) the misconduct which is an offence under the law must involve moral turpitude. Both these conditions exist in the present case. Hence, the appellant was right in taking the view that the gratuity payable to the third respondent stood wholly forfeited in view of Section 4(6)(b)(ii) of the Act.

12. Sri B.V. Acharya, learned counsel, submitted that the appellant might pay a portion of gratuity to respondent No. 3 on purely compassionate grounds. We asked learned counsel for the appellant to consider the said submission with sympathy. Learned counsel, after taking time, submitted that the appellant was agreeable to pay a sum of Rs. 3,000 to respondent No. 3 on compassionate grounds and in defence to the submission made by Sri B.V. Acharya and the suggestion made by the Court. We make it clear that the above submission cannot be regarded as admission of any liability to pay in this case or in any other case.

13. We place on record our appreciation to the free legal aid given by Sri B.V. Acharya to the poor respondent No. 3.

14. Before concluding, it is necessary to observe that though complying with rules of natural justice was unnecessary, for forfeiting gratuity u/s 4(6)(b) of the Act, as it stood when the decision was taken by the appellant, as it provided that the gratuity shall stand wholly forfeited under circumstances specified in clauses (i) and (ii), the position has since changed in view of the amendment of Section 4(6)(b)(ii) of the Act with effect from 1st July, 1984. After the amendment, it reads thus:

"4(6) Notwithstanding anything contained in Sub-section (1)"-

(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."

The change brought about is underlined. In view of the significant change it appears to us that an employer has to take an independent decision after the termination of service of an employee as to whether the gratuity payable should at all be forfeited in cases which fall under Sub-clause (i) or (ii), and if so, to what extent. The decision must necessarily depend on the facts and circumstances of the case, such as, the length and past record of service, extent and magnitude of the offence and other relevant considerations. Therefore, it follows that the decision has to be taken after giving notice of the proposal to the employee concerned and after due consideration of the reply furnished, if any.

15. In the result, we make the following order:

(i) The writ appeal is allowed.

(ii) In reversal of the order made by the learned single Judge, Writ petition No. 2398 of 1983 is allowed and the orders of the first and second respondents (annexures B and A respectively) are set aside.

(iii) The appellant is directed to pay the amount of Rs. 3,000 to respondent No. 3 within two months from today.

(iv) Post the case in the first week of September, 1986, for reporting payment.