
(2015) 12 DEL CK 0173

In the Delhi High Court

Case No : LPA 1780/2006

B.R. Sharma

APPELLANT

Vs

Syndicate Bank and Others

RESPONDENT

Date of Decision : 11-12-2015

Acts Referred:

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

Citation : (2016) 148 FLR 575 : (2016) LLR 128

Hon'ble Judges : Pradeep Nandrajog and V. Kameswar Rao, JJ.

Bench : Division Bench

Advocate : Jagat Arora, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The appellant was served with a charge-sheet by the first respondent bank. The gravamen of the charge was while working in the Junior Management Cadre Scale-I, on October 25, 1978, along with 25 odd employees of the bank the appellant unauthorizedly assembled inside the premises of the Zonal Office, near the room of the Deputy General Manager, and with few others, the appellant forcibly entered the room of the Deputy General Manager and indulged in disorderly behaviour. The Deputy General Manager was threatened with violence and was prevented from leaving his room. Police had to be summoned to escort the Deputy General Manager to safety and at that time shouting slogans, intending to physically assault the Deputy General Manager, the appellant rushed towards the car in which the Deputy General Manager was being taken under police escort. The appellant abused the Deputy General Manager.

2. The charge-sheet terminated in an order dated August 23, 1998 being passed, levying penalty of compulsorily retirement upon the appellant. It was followed by an order dated October 23, 1998 forfeiting the gratuity payable to the appellant.

3. Vide order dated November 15, 2001 the controlling authority under the

payment of Gratuity Act, 1972 struck down the order dated October 23, 1998, on the ground that the appellant was denied an opportunity of hearing by the competent authority. It was directed that the appellant shall be paid gratuity. Appeal filed by the respondent bank was rejected by the appellate authority vide order dated May 06, 2002 and the respondent bank proceeded to this Court by way of WP(C) No. 3994/2002, which was disposed of vide order dated February 03, 2005. Noting that the victory of the appellant was on account of a procedural violation, the learned Single Judge directed that the competent authority should hear the appellant and pass an order afresh. Accordingly, on May 05, 2005 the competent authority served a notice upon the appellant, granting opportunity to be heard on the subject as to why gratuity be not forfeited. The appellant submitted a response and was heard. Vide order dated May 09, 2005 the competent authority, giving reasons, withheld the gratuity payable. The order highlights that the appellant had suffered the penalty on the misconduct of a riotous behaviour. Regulation 46(1)(e) of the Syndicate Bank Officers' Regulation 1979 was noted by the competent authority as also the language of Section 4(6) (b) of the Payment of Gratuity Act, 1972.

4. Briefly put the competent authority held that the Regulation in question read with the Section in question empowered the competent LPA authority to forfeit gratuity if the services of an employee of the bank were terminated on account of the misconduct of indulging in a riotous behaviour.

5. The said order has been upheld by the learned Single Judge vide impugned order dated July 25, 2006. WP(C) No. 3491/2006 filed by the appellant has been dismissed.

6. The discussion in appeal requires us to note Regulation 46 of the Syndicate Bank Officers' Service Regulation, 1979. It reads as under:--

"46.1 Every officer, shall be eligible for gratuity on:

"a) Retirement

b) Death

c) Disablement rendering him unfit for further service as certified by a Medical Officer approved by the Bank;

d) Registration after completing ten years of continuous service; or

e) Termination of service in any other way except by way of punishment after completion of 10 years of service.

2) The amount of gratuity payable to an Officer shall be one month's pay for every completed year of service, subject to a maximum of 15 months' pay.

Provided that where an officer has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years.

Provided further that pay for the purpose of Gratuity for an Officer who ceased to be in service during the period 1-7-1993 to 31-10-1994 shall be with regard to scale of pay as specified in Sub-Regulation (1) of Regulation 4."

7. We also need to note Sub-Section (6) of Section 4 of the Payment of Gratuity Act, 1972. It reads as under:--

"(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-

(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."

8. The first and the foremost issue which arises is: Whether an employee of the bank is entitled to be paid gratuity upon compulsory retirement notwithstanding the same being by way of a penalty. Regulation 46(1)(e) of the Syndicate Bank Officers' Regulation 1979 carves out the exception to the entitlement of the employees to receive gratuity by providing that if service is terminated by way of punishment the gratuity can be forfeited. A similar Regulation of United Commercial Bank was interpreted by a Full Bench of the Punjab & Haryana High Court in LPA No. 566/2012 UCO Bank & Ors. v. Anuj Mathur decided on March 07, 2013. We adopt the reasoning of the Full Bench which brings out that the Regulation empowers the competent authority to forfeit the gratuity if the employee is compulsorily retired by way of penalty. On the reasoning of the Full Bench we note and repel the argument advanced by the appellant that the Regulation in question contemplates service being terminated and not when the cession takes place by way of retirement. Compulsory retirement is a penalty and termination of service contemplated by the Regulation in question would embrace a cession of service by way of compulsory retirement.

9. On the second issue which arises, the answer would lie in sub-Section (6) of Section 4 of the Payment of Gratuity Act, 1972 contents whereof have been noted by us in paragraph 7 above.

10. As per the judgment of the Full Bench of the Punjab & Haryana High Court, reasoning whereof be treated as our reasoning, if the Regulations empower the competent authority to forfeit gratuity, the conditions upon which forfeiture can be made are as per sub-Section (6) of Section 4 of the Payment of Gratuity Act, 1972. As per clause (i) of para (b) of sub-Section (6) of Section 4 of Payment of

Gratuity Act, 1972 gratuity payable to an employee can be forfeited if service of such employee has been terminated for riotous or disorderly conduct or any other act of violence.

11. Suffice it to highlight that the penalty of compulsory retirement was levied upon the appellant for disorderly conduct bordering on riotousness. We note that challenge by the appellant to the penalty imposed has failed. The writ petition filed by him challenging the penalty imposed has been dismissed. We further note that for the incident in question which resulted in the penalty of compulsory retirement being inflicted upon the appellant the local police had registered an FIR. The appellant and other persons who had participated in the unfortunate incident were found guilty and were convicted. The conviction has attained finality.

12. Under the circumstances we concur with the view taken by the learned Single Judge that the order passed by the competent authority forfeiting gratuity payable to the appellant cannot be interfered with.

13. The appeal is dismissed.

14. No costs.