(2014) 04 DEL CK 0074

In the Delhi High Court

Case No : W.P. (C) 10641/2006

Central Bank of India APPELLANT

Vs

Smt. Sudershan Kapoor RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:
Payment of Gratuity Act, 1972 — Section 4, 4(6), 4(6)(a), 7(3A)

Citation : (2014) 04 DEL CK 0074

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Ashish Wad and Ms. Nidhi Renoo, Advocate for the Appellant; S.K. Das, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

V. Kameswar Rao, J.—The challenge in this writ petition is to the order dated May 09, 2006 passed by the Regional Labour Commissioner (Central), New Delhi in Appeal No. ND.36(4)/2006-P.A. whereby the Authority has upheld the decision of the Controlling Authority, who had directed payment of gratuity, amounting to Rs. 3.50 lakhs along with interest @ 10% to the respondent.

2. The brief facts are that, in the month of October 1999 when the respondent was working as a Branch Manager in the branch of petitioner-bank at Patel Nagar and also Manager, NBO, a charge sheet was issued to her for giving overdraft facility against fake/forged Kisan Vikas Patras, causing loss of Rs. 1.40 Crores to the petitioner-bank. The charge reads thus:

That Smt. Sudershan Kapoor in connivance with certain fraudulent persons known/introduced to her through her friends, circle, exposed the Bank to a probable massive loss of around Rs. 1.40 crores by getting an overdraft facility of like amount against Kisan Vikas Patras (KVSs) which turned out to be forged/ fake, sanctioned through Regional Officer "B", Delhi, recommending the proposal of Rs. 1.50 Crores without being satisfied herself first and then allowing disbursement recklessly.

3. The Inquiring Authority conducted an enquiry and submitted his findings on November 29, 2002 wherein he has proved the charge against the respondent. On the basis of the record of the inquiry, the Disciplinary Authority has imposed a penalty on the respondent of removal from bank service which shall not be a disqualification for future employment. The departmental appeal filed against the said order was also rejected.

4. Suffice to state that the respondent has not challenged the order of removal. On May 21, 2004, the respondent through her representation, demanded that gratuity be paid to her. The Assistant General Manager, in his intra-office memo to Incharge, NBO conveyed the direction of Competent Committee, whereby it was decided that the entire gratuity amount of Rs. 3.50 Lakhs payable to the respondent, be forfeited and appropriated towards the loss caused to the bank due to the proven act of misconduct on her part.

5. During the month of June 2004, the respondent filed a claim before the controlling Authority under the Payment of Gratuity Act, 1972 (Act, in short) for Rs. 3.50 lakhs.

6. The claim was allowed by the Controlling Authority vide order dated November 29, 2005. The relevant findings of the Controlling authority are as under:

After perusal of the documents, the Controlling Authority condones the delay in view of the satisfactory chronology of delay explained by the applicant.

This is vehemently denied that forfeiture of gratuity as per section 4(G) is automatic. If this be a fact then meritorious cases may take shelter under the guise of this discretion. The epitome of natural justice rests on affording suitable opportunity to the applicant to put forth his reaction to the forfeiture. Here we cite the case of High Court of Karnataka in the Bharat Gold Mine Ltd. Vs. Regional Labour Commissioner (C) 1987 (I) LLN 303 (Kant) (DB). Wherein it is stated that decision to forfeit the gratuity u/s 4(6) of the Act can only be taken after affording opportunity to employee concerned.

Regarding moving of application by the non-applicant to forfeit the gratuity at a stage when the complaint is pending before the Controlling Authority to avert the technicalities of forfeiture which apparently doesn''t satisfy the true spirit of the Act. Further as per the Act it is obligatory on the part of the non-applicant to make the full and final payment of gratuity within 30 days from the date gratuity became payable. As per rule 8 the employer on receipt of an application under Rule 7 shall issue a notice to the applicant in the prescribed form specifying the amount of gratuity payable or the reason of non-consideration of the claim for gratuity. In both the cases and intimation to the Controlling Authority is obligatory. The absence of same falls in the category of concealment of facts. As such the application at this stage cannot be considered.

Keeping in view the above, the Controlling Authority is of the view that the applicant is entitled for gratuity.

There was no difference of opinion between both the parties as far as the documents concerning the entitlement of gratuity in respect of the applicant. As such this Controlling Authority comes to the conclusion that the applicant is entitled for gratuity as under:-

(Subject top maximum Rs. 3,50,000/-)

The applicant has also prayed for interest on delayed payment of gratuity. As per Section 7(3A) of the Payment of Gratuity Act, if the gratuity payable under the aforesaid Section is not paid by the employer within the period specified the employer shall pay simple interest. In the aforesaid case there is delay.

7. The petitioner-bank filed an appeal before the Appellate Authority against the order dated November 29, 2005 of the Controlling Authority, which was dismissed by the Appellate Authority vide order dated May 09, 2006. It is this order which has been impugned by the petitioner-bank in these proceedings.

8. Mr. Ashish Wad, the learned counsel appearing for the petitioner-bank would submit that the charge against the respondent, inter alia, was that she though exposed the petitioner-bank to a probable massive loss of Rs. 1.40 Crores by giving an overdraft facility of like amount against Kisan Vikas Patras, which turned out to forged/fake. According to him, the charges framed against the respondent have been proved by the Inquiring authority. On such a finding, the Disciplinary Authority had imposed a penalty of removal from service. Even though, the respondent has filed a departmental appeal against the order of the Disciplinary Authority, which was dismissed, she has not challenged the penalty orders in any judicial forum. In other words, according to him, the conclusion of the Inquiring Authority and the order of penalty have attained finality. He has also drawn my attention to the stand of the bank that the bank has been able to recover against the total suffered loss of Rs. 137.01 lakhs, only an amount of Rs. 4.36 lakhs. He states that it is a proven case of loss caused to the bank and the bank was within its right to recover the loss. He relied upon the judgment of the Supreme Court titled as Ch. Cum Man. Director Mahanadi Coalfield Ltd. Vs. Rabindranath Choubey, Civil Appeal No. 9693/2013 [SLP (Civil) No. 31583 of 2013] decided on October 29, 2013 by referring to para 24 of the said judgment, wherein, according to him, the Supreme Court has held that for invoking clause (a) or (b) of Sub-Section (6) of Section 4, the necessary precondition is the termination of the services on the basis of the departmental enquiry or conviction in a criminal case. According to him, since the removal that has been effected of the respondent, the bank has rightly forfeited the gratuity payable to her.

9. On the other hand, Mr. S.K. Das, learned counsel appearing for the respondent would justify the order of the Controlling Authority and the Appellate Authority. According to him, the bank has not suffered any loss because of which the bank could have forfeited the amount of gratuity payable to the respondent. He has

drawn my attention to the letter dated March 02, 2012 written by the petitioner-bank to Mr. Dilbhajan Singh, the person in whose favour the overdraft facility was granted by the bank. According to him, in that letter, the bank has confirmed having received an amount of Rs. 90,11,537/- for full and final settlement of the account as per the terms of compromise approved by the bank. In other words, he would state that the bank, having recovered the amount from the persons to whom the overdraft facility was given, there was no occasion for the bank to forfeit the amount of gratuity, payable to the respondent. He would state that the matter be remanded back to the Controlling Authority for fresh consideration after taking on record subsequent facts which have been highlighted by him during the course of the submissions, demonstrating that the bank has not suffered any loss. He would rely upon the following judgments in support of his contention:

(i) Vijaya Bank and Others Vs. Sri Mohan Das Ramana Shetty, to contend that the forfeiture of gratuity u/s 4(6)(a) of the Act is not automatic inasmuch as the employer should afford an opportunity to the employee to the extent, why the amount of gratuity be not forfeited, which necessarily means that if no material is brought on record to show that the service of the employee was terminated for any act, wilful omission or negligence causing damage, loss or destruction of the employer''s property, and if the extent of such damage is not quantified, the provisions of Section 4(6)(a) of the Act do not come into operation.

(ii) D.V. Kapoor Vs. Union of India and others, to contend that the right of gratuity is a statutory right. The action of the petitioner-bank in not giving any opportunity to the respondent before forfeiting her gratuity, is illegal and devoid of jurisdiction.

(iii) Bank of India Vs. Kamlakar Vishwambhar Joshi and Another, in support of his contention.

10. Having considered the rival submissions of the parties, I am of the view that when the gratuity of the respondent was forfeited vide letter dated June 21, 2004, it was the understanding of the bank that since the bank has suffered the loss it was justified in forfeiting the amount. From the facts brought on record by the respondent, it is noted that the Bank has been able to recover the loan amount. How much the bank could able to recover, is a question of fact which necessarily, to be decided by the bank. I agree, that on a perusal of the provision of Section 4(6)(a) of the Payment of Gratuity Act and the judgment of the Karnataka High Court in Vijay Bank Case (supra) the Bank was required to issue a show cause notice before affecting the forfeiture of the gratuity. That apart, it is the case of the bank itself as is clear from the communication dated September 01, 2004 which is an intra-office communication from the Asstt. General Manager, Zonal Office, Delhi to the Asstt. Regional Manager, Regional Office-''A'', New Delhi wherein, the bank has agreed that a notice would be issued to the respondent thereby calling a response from the respondent on the proposed action if that be so, I am of the view the Controlling Authority could not

have passed an order which it has done in the present case, granting the claim of the respondent of Rs. 3.50 Lakhs with interest. The Controlling Authority should have send the matter back to the Authorities in the bank, calling upon them to take action by giving a show cause notice to the respondent as to why the bank may not forfeit the gratuity payable to her. Unfortunately, that has not been done in this case. In fact, even the Appellate Authority overlooked this pertinent aspect of the case and has dismissed the appeal filed by the Petitioner Bank.

11. Accordingly, I deem it fit to set aside the order dated May 09, 2006 passed by the Appellate Authority and also the order dated November 29, 2005 of the Controlling Authority and remand the matter back to the Competent Authority in the Bank, directing him to decide the matter afresh after giving the respondent a show cause notice proposing the forfeiture of the gratuity and after seeking a response, decide as to whether in the facts the gratuity as payable to her can be forfeited by passing a speaking and reasoned order.

12. Since the matter is an old one pertaining to the payment of gratuity, the exercise as directed to be taken shall be completed within six months from today. I find from the perusal of the stay application, at page 64-66 and the order of this court passed on July 07, 2006 in this writ petition, it is not clear whether the awarded amount has been disbursed to the respondent or it has been deposited with the Appellate Authority. If the amount has been disbursed to the respondent herein, it is made clear that the payment to her shall be subject to the outcome of the exercise directed to be taken by this order. In the eventuality, the issue is decided in her favour she may not return back the amount already received (which may be subject to any challenge by the bank). If in the eventuality it is decided against her she would return the complete amount to the bank within four weeks from the date of communication of the order by the bank.

13. The writ petition is disposed of in terms of the above.

14. No costs.

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15. In view of the order passed in the writ petition, the application is disposed of as infructuous.