**(2008) 03 P&H CK 0139**

**In the Punjab And Haryana At Chandigarh**

Devinder Singh APPELLANT

Vs

Food Corporation of India and Others RESPONDENT

**Date of Decision :** 28-03-2008

**Acts Referred:**

Payment of Gratuity Act, 1972 — Section 4

**Citation :** (2008) 118 FLR 208 : (2008) 3 LLJ 30 : (2008) 2 PLR 570 : (2008) 2 RCR(Civil) 434

**Hon'ble Judges :** Mohinder Pal, J;Hemant Gupta, J

**Bench :** Division Bench

**Final Decision :** Dismissed

## Judgement

Hemant Gupta, J.—The petitioner has invoked the writ jurisdiction of this Court for the issuance of a writ of mandamus so as to direct the respondents to award full amount towards Death-cum-Retirement Gratuity; the cash equivalent to earned leave and refund of the amount deducted from the salary of the petitioner.

2. The petitioner retired on 31.7.2007 as Assistant General Manager (General) from the office of FCI, Regional Office, Punjab, Chandigarh, it is pointed out that a sum of Rs. 3,50,000/- was payable to the petitioner as gratuity in addition to the cash equivalent to unutilised earned leave and 1/3rd salary from the pay of July, 2006. In reply to the legal notice served, the petitioner was informed that a sum of Rs. 7.5 lacs was due against the petitioner on account of different penalties and the entire amount of earned leave of 157 days'' rounded to Rs. 97,000/-, Rs. 5,000/- for salary has been adjusted against the alleged recovery and the amount of Rs. 6.48 lacs is yet recoverable from the petitioner.

3. Learned Counsel for the petitioner has relied upon Section 4 of the Payment of the Gratuity, 1972 (for short ''the Act'') and the Circular issued by the FCI, Headquarters on 3/7.6.2006, to contend that the gratuity of an employee whose services have been terminated can be forfeited to the extent of damage or loss so caused but it is necessary to make a specific mention of the same in the penalty order of dismissal or removal or compulsory retirement. Therefore, it is

 

argued that since in the order of penalty, there is no specific order of forfeiture of the gratuity amount to the extent of loss suffered, therefore, withholding the amount of gratuity is not justified.

4. Learned Counsel for the petitioner has relied upon Clause (4) of the said instructions to submit that since there is no specific order forfeiture of gratuity in the penalty order of dismissal from service, the order of forfeiture of gratuity is not tenable. Clause (4) of the aforesaid instructions reads as under: @Z_PARA = "It is necessary to make specific mention in the penalty order of dismissal or removal from service or compulsory retirement for forfeiture of gratuity wholly or partially according to the amount of loss ordered to be recovered by the Disciplinary Authority."

5. In reply, it has been pointed out that the petitioner was subjected to the disciplinary proceedings because of grave misconduct on his part which caused huge loss to the Food Corporation of India. The penalty orders have been passed on proof of the charges and an amount of Rs. 7.50 lacs in the three cases were ordered to be recovered from the petitioner. The orders passed in the three disciplinary proceedings are annexed with the reply as Annexures R.1 to R.3. It has been further pleaded that since the petitioner was on the verge of retirement, therefore, a lenient view was taken and only a partial loss; suffered out of the huge loss suffered was ordered to be recovered by the Food Corporation of India.

6. Learned Counsel for the respondents has pointed out that the orders of punishment Annexures R.1 to R.3, have been considered by the Board of Directors of the Food Corporation of India and the order passed by the Disciplinary Authority has been maintained vide order dated 29.1.2008.

7. It was also argued that in the circular Annexure P-4, the matter was considered by the respondent - Corporation keeping in view the provisions of the Act; Discipline and Appeal Regulations of FCI (Staff) Regulations, 1971 as well as opinion/views of Panel Advocates. It was communicated that as per Section 4(6)(a) of the Act, the gratuity of an employee whose services have been terminated for any act, wilful omission or negligence causing any damage or loss or destruction of property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused. It is contended that on account of loss suffered, the amount of gratuity to the extent of loss, can be recovered without any specific mention in the punishment order.

8. Having heard learned Counsel for the parties at some length, we do not find any merit in the present petition. The orders of punishment are Annexures R.1 to R.3. The relevant extracts from the order (Annexure R.1) read as under:

Sh. Devinder Singh is due to retire on superannuation on 31.7.2006. Therefore, taking his submission as made out in his reply dated 19.6.06, as his written statement of defence, the undersigned feels that minor penalty may be imposed on him. In view of the Joss being to the tune of Rs. 1.26 crores and that too on the basis of cost as applicable for crop year 1997-98, a token penalty of Rs. 3,00,000/- (Rupees three lacs only) to partially offset a small percentage of the colossal loss is imposed upon him.

The relevant extracts from the order Annexure R.2, read as under: @Z_PARA = "Now therefore, the undersigned in exercise of the power conferred under Regulation 56 of Staff Regulations 1971 hereby orders imposition of a penalty of Rs. 2,00,000/- (Rupees two lacs only) upon said Shri Devinder Singh, AGM in this case."

9. Similarly, the relevant extracts from the order Annexure R.3, read as under:

Now therefore, the undersigned in exercise of the powers conferred under Regulation 56 of FCI (Staff) Regulations, 1971 hereby orders imposition of penalty of recovery of Rs. 2.5 lakhs (Rs. Two Lakhs Fifty Thousand Only) upon the said Shri Devinder Singh, AGM (Genl.) in this case.

10. No doubt, there is no specific order of forfeiture of gratuity in the order of dismissal passed against the petitioner, but the fact remains that the competent authority has, considered the fact that charges have been proved against the petitioner and financial loss has been suffered by the Corporation. Therefore, it is apparent that lack of supervisory control by the petitioner has led to financial loss to the respondent Corporation. The relevant provisions of the Act, reads as under:

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

(a) the gratuity of an employee, whose services have been terminated for any act, wilful 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 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.

11. A perusal of Clause (a) of Section 4(6) of the Act, would show that a gratuity of an employee shall be forfeited to the extent of damage or financial loss caused by his act, wilful omission or negligence. The orders of punishment appended as R-1 to R-3 with the written statement, as confirmed by the Appellate Authority on 29.1.2008, would show that the punishment of recovery of loss has been imposed upon the petitioner. Therefore, such recovery of loss is mandatorily required to be effected from the amount of gratuity in terms of Clause (a) of Section 4(6) of the Act. The forfeiture of gratuity under Clause (a) of Section 4(6) of the Act is mandatory to the extent of loss caused, but in respect of a

 

forfeiture within the ambit of Sub-clause (b), the competent authority is required to pass an order of forfeiture of gratuity wholly or partly. Since the order of punishment has imposed the penalty of recovery of the loss, therefore, the amount of gratuity is required to be forfeited in terms of Section 4(6)(a) of the Act. The circular issued by the Corporation has to be read in consonance with the statutory provisions of the Act and, therefore, in terms of the interpretation of the statutory provisions it cannot be held that the gratuity cannot be forfeited without any specific order even if the penalty imposed is on account of loss suffered by the Corporation. Similar view was taken by this Court in C.W.P. No. 3291 of 2006 (D.S. Chauhan v. The Food Corporation of India and Ors.) vide order dated 23.1.2008.

12. Consequently, we do not find any patent illegality or irregularity in the impugned order, which may warrant interference by this Court in exercise of its writ jurisdiction. Hence, the present petition is dismissed.

Sd/- Mohinder Pal, J.