

(2016) 11 BOM CK 0072
In the Bombay High Court
Case No : Writ Petition No. 9096 of 2016

Divisional Controller

APPELLANT

Vs

Govind Sambhaji Hanumante

RESPONDENT

Date of Decision : 23-11-2016

Acts Referred:

Payment of Gratuity (Central) Rules, 1972 — Rule 7(2)(b)

Citation : (2017) 3 AIRBomR 614 : (2017) 3 ALLMR 39 : (2017) 2 BCR 177 :
(2017) 153 FLR 250 : (2017) MCR 550 : (2017) 2 MhLJ 49

Hon'ble Judges : Ravindra V. Ghuge, J.

Bench : Single Bench

Advocate : Shri U.B. Shriram h/f Shri Bagul D.S., Advocates, for the Petitioner;
Shri Shinde Prakash M., Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Ravindra V. Ghuge, J. (Oral) :- Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner/ MSRTC is aggrieved by the judgment of the Industrial Court, Jalna dated 11.06.2015 by which the Petitioner is directed to pay gratuity of Rs.1,18,982/to the Respondent/ Employee This Order is modified/corrected by Speaking to Minutes Order dated 30/11/2016 with interest at the rate of 9% per annum from 02.05.2012.

3. I have heard the learned Advocates for the respective sides at length.

4. There is no dispute that the Respondent herein has been dismissed from service for having committed misappropriation. The Respondent had joined the Petitioner/ MSRTC as a Bus Conductor. In 1968, he was dismissed from service for having committed acts of misappropriation. He was issued with a fresh appointment order in 1979. He was once again dismissed from service in 1982 for similar misconduct amounting to misappropriation. Thereafter, he was again given an opportunity with reappointment in service. Again in 2003, he was

dismissed from service by order dated 16.04.2003 after the charges of allowing passengers to travel ticketless, issuing tickets of less denomination and collecting ticket fare and not issuing tickets, were proved against him. He was not paid his gratuity considering the reasons for his dismissal.

5. The Respondent/ Employee had challenged his dismissal in Complaint (ULP) No.70/2003 which was dismissed by the Labour Court vide judgment dated 04.07.2005. He filed Revision (ULP) No.31/2005 This Order is modified/corrected by Speaking to Minutes Order dated 30/11/2016 which was dismissed by the Industrial Court on 20.07.2006.

6. The Respondent/ Employee filed his Application (PGA) No.12/2012 for payment of gratuity on 11.06.2012 which is after 09 years from the date of his dismissal from service. By the judgment dated 15.07.2013, the Labour Court dismissed his claim after concluding that his dismissal was on account of acts which amount to moral turpitude and hence, he would not have any right to claim gratuity.

7. He preferred Appeal (PGA) No.2/2013 before the Industrial Court. By the impugned judgment dated 11.06.2015, the Industrial Court has allowed the appeal and directed the Petitioner/ MSRTC to pay gratuity to the Respondent along with interest at the rate of 9% per annum from 02.05.2012. The Industrial Court has allowed the appeal solely on the ground that the circular dated 23.04.2008 issued by the Petitioner/ MSRTC requires a hearing on the matter before passing the order of forfeiture of gratuity. Since such notice of hearing was not issued to the Respondent, the Industrial Court has allowed the appeal and has granted interest on the amount of gratuity.

8. Shri Shinde, learned Advocate for the Respondent/ Employee, has strenuously defended the impugned judgment. The contention is that This Order is modified/corrected by Speaking to Minutes Order dated 30/11/2016 the Honourable Supreme Court, in the matter of Jaswant Singh Gill v. Bharat Coking Coal Ltd. and others, 2007(1) LLJ 795, has concluded that if an opportunity of hearing on forfeiture is not given, the gratuity will have to be paid to the employee. Reliance is also placed upon the judgment of this Court in the matter of Vinod s/o Vinayak Jinturkar v. State of Maharashtra, 2011(1) Mh.L.J. 843. He, therefore, submits that the gratuity could not have been forfeited without any hearing.

9. Shri Shinde further submits that a specific charge of moral turpitude was not levelled upon the Respondent. Without the said charge being proved, no order of forfeiture of gratuity could have been passed. Unless the conduct of the employee is proved to be an act amounting to moral turpitude, there can be no forfeiture of gratuity.

10. On the point of issuance of notice, when this Court called upon Shri Shinde to make his submissions as to whether, the acts of the Respondent/ Employee would amount to moral turpitude, Shri Shinde has vehemently submits that unless there is a charge of moral turpitude, there can be no conclusion that he is

guilty of moral turpitude. He submits that a specific charge has to be proved by conducting a departmental enquiry and in the absence of which, there can be no conclusion that he is guilty of moral turpitude.

11. Insofar as the past record of the Respondent/ Employee is concerned, I find that there is no dispute about his dismissal in 1968 and in 1982. There is no dispute that his earlier dismissals including the last dismissal in 2003 were on account of charges of misappropriation/ corruption. It is equally undisputed that the claim for gratuity has been raised after 09 years.

12. The term "moral turpitude", as per the Black's Law Dictionary, Eighth Edition, means a conduct that is contrary to justice, honesty or morality. In the area of legal ethics, offences involving moral turpitude such as fraud or breach of trust, traditionally make a person unfit to practise law.

13. In the matter of Sushil Kumar Singhal v. Regional Manager, Punjab National Bank, 2010(8) SCC 573, the Honourable Supreme Court has concluded that moral turpitude implies anything that is contrary to honesty, modesty or good moral or that a person indulges in a shameful act.

14. There can be no debate that an act committed by the Bus Conductor of collecting fare and issuing used tickets or not issuing tickets This Order is modified/corrected by Speaking to Minutes Order dated 30/11/2016 or issuing tickets of less denomination, would all amount to an act of dishonesty, fraud and misappropriation. The term "moral turpitude" can be said to be applicable to an employee if the total effect of his acts amounts to dishonesty, fraud or misappropriation. If the act committed by the employee is morally unsustainable, fraudulent and shameful, it would amount to "moral turpitude".

15. As such, I am not convinced that unless a specific charge of moral turpitude is levelled upon an employee, all acts or omissions committed by him would not amount to "moral turpitude". The Standing Orders may or may not contain a specific clause of "moral turpitude", but the conduct of the employee can be inferred to be an act amounting to "moral turpitude" by considering the nature of the misconducts committed by him.

16. Insofar as the judgment in Jaswant Singh Gill case (supra) is concerned, the Honourable Supreme Court was dealing with the case of damage or loss caused to the employer. It, therefore, concluded that unless that loss or damage is quantified, gratuity cannot be forfeited without an opportunity of hearing to the employee since he would have a right to say as regards quantification of loss or damage.

17. In the instant case, the Respondent would be covered by Rule 7(2)(b) of the Payment of Gratuity (Central) Rules, 1972 which reads as under :

"7. Forfeiture of gratuity.

(1)

(2) The gratuity payable to an employee shall be wholly forfeited(

a)

(b) 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."

18. Since the Respondent has been held guilty of serious misconducts as discussed above, the Labour Court as well as the Industrial Court have come to the conclusion that his act amounts to moral turpitude. The Industrial Court has interfered with the forfeiture of gratuity only because the Petitioner/ MSRTC did not issue the notice of hearing to the Respondent so as to give him an opportunity to explain as to why his gratuity should not be forfeited.

19. While deciding this petition, I have extended this opportunity to the Respondent to explain as to why his gratuity does not deserve to be forfeited. Considering his reply as recorded above and the misconducts proved for which he has been dismissed, I do not find that he would be entitled to gratuity. Though failure on the part of the Petitioner/ MSRTC in This Order is modified/ corrected by Speaking to Minutes Order dated 30/11/2016 issuing the show cause notice to the Respondent cannot be countenanced, it is apparent that neither did the Petitioner pay the gratuity to the Respondent nor did the Respondent raise any issue about his gratuity for almost 09 years.

20. Considering the peculiarity of the facts of this case, even if an opportunity of hearing would have been extended to the Respondent, I do not find that the Petitioner/ MSRTC would have arrived at any different conclusion other than forfeiting his gratuity. So also, it cannot be ignored that after the Respondent was dismissed from service for the similar misconduct in 1968, no such issue was raised. After his reinstatement in 1979, he was again dismissed from service in 1982 for the similar misconduct. Thereafter, when he was again offered a fresh employment, he has committed the same misconduct in 2002 for which he has been dismissed from service in 2003.

21. In the peculiar facts of this case, I find that though the Petitioner/ MSRTC has failed to abide by it's circular, the Respondent/ Employee cannot be rewarded by payment of gratuity when he has committed the acts amounting to moral turpitude and for which he has been dismissed from service. Nevertheless, it needs mention that the Petitioner/ MSRTC is obliged to follow it's circular before forfeiting This Order is modified/corrected by Speaking to Minutes Order dated 30/11/2016 gratuity and is, therefore, expected to hear the employee before arriving at such conclusion.

22. In the light of the above, this Writ Petition is allowed. The impugned judgment of the Industrial Court dated 11.06.2015 is quashed and set aside. Appeal (PGA) No.02/2013 stands dismissed and the judgment of the Labour Court dated 15.07.2013 stands restored.

23. Rule is made absolute.