

(2023) 04 PAT CK 0092

In the Patna High Court

Case No : Letters Patent Appeal No. 1452 Of 2018 In Civil Writ Jurisdiction Case No. 8223 Of 2014

Food Corporation Of India

APPELLANT

Vs

Kevla Devi

RESPONDENT

Date of Decision : 21-04-2023

Acts Referred:

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

Citation : (2023) 04 PAT CK 0092

Hon'ble Judges : Ashutosh Kumar, J; Harish Kumar, J

Bench : Division Bench

Advocate : Prabhakar Tekriwal, Minu Kumari, Alok Kumar

Final Decision : Dismissed

Judgement

We have heard Mr. Prabhakar Tekriwal, learned advocate for the appellant/Food Corporation of India and Ms. Minu Kumari for the respondents.

The respondent was dismissed from service and an order was passed for forfeiture of all the terminal benefits including gratuity.

The aforementioned order of dismissal was affirmed in appeal and the same was also sustained before the Reviewing Authority.

Three charges were raised against him during the period he was posted as Manager (Storage) in Food Corporation of India at Bhadurpur, Patna viz. (i) that he as a Member of the Committee did not submit any progress/interim/final report or intimate factual position even after lapse of more than two months, compelling the Area Manager of the Food Corporation of India to issue another order directing the Committee Members to conduct and do the same job as assigned to them earlier, which was an act of disobedience; (ii) two reports were submitted by the Committee of which the respondent was part, which were issued in a most casual and cavalier manner without supervising the delivery of paddy and its transportation, leading to an interference that the Committee was

hand in gloves with the In-charge Paddy Procurement Center, Dumraon and, therefore, the factual position was suppressed and lastly (iii) that without any justification, there was an inordinate delay in supervising the delivery as well as shifting of paddy by the Committee.

The Enquiry Officer, after conducting the enquiry, submitted his report with a finding that all the charges against the respondent were proved. On receipt of such enquiry report, the Disciplinary Authority issued a second show-cause notice to the respondent along with a copy of the enquiry report to which he had replied.

After consideration of the enquiry report as also the reply of the respondent, the penalty as noted above, was imposed on the respondent.

It was urged by the respondent before the writ court that the findings of the Enquiry Officer were totally beyond the records. In fact, the documents relied upon by the Enquiry Officer clearly disclosed that the charges against the respondent were not proved. Some of the documents demanded by the respondent were also not provided to him. It was also argued that an employee after his superannuation ought not to be visited with the punishment of dismissal; saddling the respondent with the aforementioned penalty displayed complete lack of application of mind.

On these grounds, it was urged that the penalty imposed on the respondent was not in consonance with the law and facts.

The writ Court, found that there was no specific charge of causing any pecuniary loss to the Corporation and only by inference, such penalty ought not to have been imposed specially forfeiture of gratuity and all terminal benefits and that also without assessment of the quantum of losses suffered by the Corporation because of the acts of omission or negligence of the respondent.

The learned counsel for the appellant/ Corporation has submitted that the learned Single Judge erred in point of law in holding that the gratuity could not have been withheld and that there was no question of non-application of mind in the event of punishment of dismissal having been saddled upon the respondent after his retirement.

Though there was no specific charge with respect to having caused losses to the Corporation but, there was a clear inference and deduction that such omission on the part of the Committee of which the respondent was a Member, there was delay in procurement/shifting/delivery of paddy which could have resulted in losses to the Corporation for sure.

Mr. Tekriwal has further submitted that if an employee, during the pendency of the departmental proceeding, superannuates but the authority finds that he was guilty, the Disciplinary Authority could withhold payment of gratuity and could have ordered for recovery from gratuity of whole or part of any pecuniary loss caused to the Corporation.

Regulation 60 (A)(3) of the FCI (Staff) Regulations, 1971 provides that during the pendency of the disciplinary proceedings, gratuity could be withheld for covering the pecuniary losses suffered by the Corporation if the concerned employee is found to be guilty of the offence of misconduct. Even in accordance with the Payment of Gratuity Act, 1972, there could be forfeiture of gratuity but only to the extent of the losses suffered by the Corporation because of the conduct of the delinquent employee.

While dealing with Rule 60(A) of the Regulation referred above, the Supreme Court in *State Bank of India Vs. Ram Lal Bhaskar & Anr.*, 2011 (10) SCC 249 and in *UCO Bank & Anr. v. Rajinder Lal Capoor*, 2007 (6) SCC 694 has held that an employer is empowered to pass an order of dismissal/removal if regulation permits continuation of departmental proceedings even after the retirement.

In case of the respondent, the order of dismissal would not have visited him with any adverse effect except when it was forfeiture of gratuity and other terminal benefits along with the order of removal or dismissal. The employees of the Food Corporation of India are paid gratuity under the provisions of the Payment of Gratuity Act, 1972. Section 4 (6)(a) of the Payment of Gratuity Act, 1972 provides that the gratuity of an employee, whose services are 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; sub-Clause (b) thereof further provides that the gratuity payable to an employee may be wholly or partially forfeited, 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 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.

We find from the facts of the case of the respondent that the three charges said to have been proved against him are only relatable to sending a report to the head office in a casual manner after a delay and that also after a reminder by the Corporation to do the needful. It may have occasioned losses for the Corporation but, during the departmental proceeding, no effort was made to assess the quantum of damage nor was the respondent ever confronted with the issue viz. the losses suffered because of his misconduct or omission to perform an obligation put on him by the employer/Corporation.

Even Rule 60(a) referred to above clearly delineates the powers of the Disciplinary Authority in matters of recovering the pecuniary losses sustained by the Corporation from any charge-sheeted employee. A separate charge has to be framed against the employee of causing losses to the Corporation by any misconduct or negligence. The total quantum of loss also has to be assessed not only for the purposes of confronting the employee before recovering the same for his terminal benefits but also for the purposes of apportioning it amongst employee who would be responsible for the said loss to the extent of their

responsibilities and the obligations. It is only after the charge of causing pecuniary loss is proved that such an order could have been passed by the Corporation in its Disciplinary Authority to recover such losses through the retiral benefits/gratuity of the employees.

From the records of this case, we find that no such charge was framed nor any effort was made by the Corporation to assess the damages arising out of the willful misconduct of the respondent thereby, entitling the Corporation to recover such losses from the employee/respondent.

The reference of Mr. Tekriwal to the decision of the Supreme Court in *Chairman-cum-Managing Director, Mahanadi Coalfields Ltd. Vs. Sri Rabindranath Choubey*, 2020 (18) SCC 71 is of no avail to the Corporation. In the aforementioned judgment of the Supreme Court, the issue raised was whether it was permissible in law for an employer to withhold the payment of gratuity of the employee even after his superannuation from service because of the pendency of the disciplinary proceedings against him and where the departmental inquiry has been instituted against an employee while he was in service and continued after he attains the age of superannuation whether the punishment of dismissal could be imposed on being found guilty of misconduct in view of the provisions in CDA Rules of 1978. After examining the CDA Rules of 1978 and referring to various cases viz. *Jaswant Singh Gill vs. Bharat Coking Coal Limited*, (2007) 1 SCC 663, *State Bank of India vs. Ram Lal Bhaskar & Ors.*, (2011) 10 SCC 249, *D.B. Kapoor vs. Union of India*, (1990) 4 SCC 314 and *State Bank of Patiala v. Ram Niwas Bansal*, (2014) 12 SCC 106, it was held that major punishment of dismissal could be inflicted on the employee and in order to recover the pecuniary losses to the organization, gratuity also could be forfeited wholly or partially.

In the aforementioned judgment, the right of an employer to withhold gratuity during the pendency of the disciplinary proceedings and the power to impose the penalty of dismissal upon an employee even after attaining the age of superannuation was affirmed.

There is no denying of the power of the Corporation to subject an employee to the major punishment of dismissal even after his superannuation and recovering the losses incurred provided such is the charge viz. that because of the misconduct, loss was suffered and after the quantum of such loss is assessed. A blanket order of complete forfeiture of gratuity is highly unjustified, uncalled for as it depicts complete lack of application of mind.

For the aforementioned reasons, we have not been persuaded by the appellant/Corporation to interfere with the judgment of the learned Single Judge.

The appeal stands dismissed.

The parties to bear their own costs.