
(2012) 12 MP CK 0048
In the Madhya Pradesh High Court
Case No : Writ Petition No. 7181 of 2010

General Manager

APPELLANT

Vs

Deendayal Gaud

RESPONDENT

Date of Decision : 13-12-2012

Acts Referred:

Constitution of India, 1950 — Article 227
Payment of Gratuity Act, 1972 — Section 4, 4(6)

Citation : (2013) 138 FLR 750 : (2013) ILR (MP) 584 : (2013) LLR 418 : (2013) 1 MPHT 346 : (2013) 1 MPLJ 300

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Vivek Jain, for the Appellant; Raghavendra Dixit, for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—The employer has decided to test the order dated 12-1-2007 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (Gratuity Act) and the Appellate Order dated 12-5-2009 (Annexure P-1) in this petition filed under Article 227 of the Constitution of India. The respondent-employee retired on attaining the age of superannuation on 31-12-2000. When gratuity was not paid to him, he preferred application before the Controlling Authority under the Gratuity Act and in Case No. 28/03 the said authority passed an order dated 12-1-2007. By applying the statutory formula to determine the gratuity, the said authority came to the conclusion that the employer is responsible to pay Rs. 1,86,840/- as gratuity amount to the employee. Interestingly, this amount so arrived at by the Controlling Authority matches with the amount of gratuity quantified by the employer by communication dated 22-5-2003 (Annexure P-4). The case of the petitioner-employer is that from the gratuity amount so quantified as Rs. 1,86,840/-, it was found that the employee is liable to pay the following amount:

Thus, it was directed that the aforesaid amount be deducted from the gratuity

and remaining be paid to the employee.

2. Shri Vivek Jain, learned Counsel for the petitioner submits that a bare perusal of Annexure P-4 shows that the amount was directed to be withheld/deducted from the gratuity because of misconduct of the petitioner and, therefore, the employer is well within its right to withheld the said amount under the provisions of Gratuity Act. In addition, he submits that the authority under the Gratuity Act had no authority to adjudicate about the other amounts which are related with other heads than gratuity. The employer can very well deduct this amount under the provisions of Gratuity Act. Thus, in nutshell, the order of Controlling and Appellate Authority are challenged on two counts:-

(1) The said authorities have failed to see that the amount from the gratuity was decided to be deducted because of the misconduct of the employee and it is permissible under the law.

(2) Even assuming that the gratuity amount could not have been withheld, the amount which does not fall within the head of Gratuity Act can very well be deducted from gratuity and for the said amount, the Controlling Authority had no competence to adjudicate and direct release of gratuity.

3. He relied on the judgment of Punjab and Haryana High Court reported in Punjab and Sind Bank Vs. Labour Commissioner and Others, and submits that as per this judgment, the loan and tax etc. can very well be deducted from the gratuity.

4. Per contra, Shri Raghavendra Dixit, learned Counsel for the respondent-employee supported the orders (Annexures P-1 and P-2) and submits that Annexure P-4, dated 22-5-2003 was never served on the employee and it was for the first time filed before the Controlling Authority. No opportunity of any nature was ever given to the respondent-employee and without showing any break up, the amount is directed to be adjusted/recovered from the gratuity which is not permissible under the provisions of Gratuity Act. He submits that as per Statutory Rules governing service conditions of employees in the case of misconduct, there has to be full-fledged domestic enquiry and only when employee is found to be guilty in the said enquiry and punished with a punishment of termination, then only gratuity can be withheld u/s 46 (1) (6) of the Gratuity Act. He further submits that no amount can be adjusted from gratuity and the employer cannot be permitted to adjust or recover the aforesaid amount from gratuity and if at all any such amount is due, they are at liberty to take recourse of law but this cannot be done under the Gratuity Act. He also relied on Lakshmi Narayan Mukhopadhyay Vs. Union of India (UOI) and Others,

5. I have heard the learned Counsel for the parties and perused the record.

6. Dealing with the first contention of the employer, i.e., whether action of withholding the gratuity on the allegations of misconduct is justified, in the considered opinion of this Court, the action of the employer is to be judged on

the anvil of the provisions of the Gratuity Act. Section 4 (6) deal with this aspect which reads as under:-

4. Payment of gratuity.-

(1) ***

(2) ***

(3) ***

(4) ***

(5) ***

(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 service 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.

7. A careful reading of this provision shows that the gratuity should be withheld or forfeited when an employee is punished for misconduct. Mere allegations of pendency of enquiry will not give any power to the employer to withheld the gratuity.

8. The Apex Court in Jaswant Singh Gill Vs. Bharat Coking Coal Ltd. and Others, , opined as under:-

Section 4 (6) (b) of the Act also provides for forfeiture of the whole amount of gratuity or part in the event his services had been terminated for his riotous or disorderly conduct or any other act of violence on his part or if he has been convicted for an offence involving moral turpitude. Termination of services for any of the causes enumerated in sub-section (6) of Section 4, therefore, is imperative. Thus, conditions laid down therein are also not satisfied.

9. In the present case, admittedly, no departmental enquiry is conducted and petitioner's services have not been terminated because of any misconduct. Accordingly, there is no enabling provision by which the employer can withheld the gratuity only on the basis of allegations against the petitioner. Thus, I am unable to hold that the employer was right in withholding or forfeiting the gratuity of the petitioner. The authorities below have not committed any error in

applying the provisions of the Gratuity Act.

10. Dealing with the second contention whereby it is argued that the amount of other heads mentioned in Para 2 above can be recovered from gratuity, I am of the considered opinion that this stand of the employer is also not justified. In *Chief Officer Vs. Champaklal Lallubhai Kewat*, 2007 (1) LLJ 307, the Gujarat High Court opined that when no enquiry was held and no opportunity is provided to the petitioner, the gratuity cannot be withheld and order of Controlling Authority is not open to challenge. Similarly, in *Panchmahal Dist. Co-op. Bank Ltd. Vs. Harjivandas Purshottamdas Prajapati*, the Gujarat High Court opined that the gratuity can be withheld u/s 4 (6) of the Gratuity Act in the circumstances and eventualities contemplated in Section 4 (6) of the Gratuity Act. The same view is taken by Kerala High Court in *State Farms Corporation of India Vs. Mathai*,). Thus, there is consistent view by various High Courts that gratuity can be withheld only if it can be done as per the enabling provision under the Gratuity Act. In the present case, the employee has not been given any opportunity. The amount shown in Para 2 above is quantified without providing any break up and behind his back and the said amount cannot be recovered u/s 4 of the Gratuity Act.

11. As per consistent view on this aspect by various High Courts, I find no reason to deviate from the same. The Punjab and Haryana High Court in *Punjab and Sind Bank's case* (supra), has passed the judgment in the peculiar facts and circumstances of the said case. In the light of consistent view taken by various High Courts, I am of the view that the Controlling and Appellate Authorities have not committed any error of law. Other amounts mentioned in Para 2 cannot be recovered from gratuity. Consequently, petition is dismissed. However, employer is at liberty to recover the aforesaid amounts mentioned in Para 2 from the employee in accordance with law.