(1995) 06 KAR CK 0016

In the Karnataka High Court

Case No : Writ Petition No. 21791 of 1995

Gopalakrishna APPELLANT

Vs

Karnataka Soaps and Detergents Ltd. RESPONDENT

Date of Decision : 16-06-1995

Acts Referred:

Constitution of India, 1950 — Article 14
Payment of Gratuity Act, 1972 — Section 4 (1), 4 (6), 4 (i)

Citation : (1995) ILR (Kar) 2929

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Judgement

Tirath S. Thakur, J.—The petitioner was working as a Senior Manger (Materials) in the respondent-Bank. During the period 15th May 1991 to 20th September 1991, he is alleged to have made irregular purchases for a sum of more than Rs. One Crore and forty five lakhs. Consequently, a charge sheet proposing disciplinary action against the petitioner for making such purchases, has been served upon him on 31st May 1995 as per Annexure ''B'' to the Writ Petition. The petitioner, in the meantime, superannuated and was relieved in terms of Annexure ''F'' to the Writ Petition subject to the provisions of Rule 19(ii) of KS & DL Conduct and Disciplinary Action Rules 1984. Before his retirement, the petitioner appears to have made an application for the payment of the gratuity amount due to him. In response, the respondent issued an endorsement stating that since an enquiry is pending against him, the gratuity amount shall have to be withheld in terms of Rule 19(ii) of K. S. & D. L. Conduct and Disciplinary Action Rules 1984 pending the finalisation of the enquiry proceedings.

2. Aggrieved, the petitioner has come up to this Court in the present writ petition for a mandamus declaring Rule 19(ii) of the aforesaid Rules as ineffective, inoperative and violative of Article 14 of the Constitution of India.

3. I have hard the learned counsel appearing for the petitioner, who strenuously argued that Rule 19(ii) of the Rules aforesaid was opposed to Section 14 of the

Payment of Gratuity Act; and was therefore liable to be ignored if not declared ultravires. He urged that Section 14 of the Act gave over-riding effect to the provisions of the Act and any Rule or Regulation which came in conflict with the obligation to pay gratuity under the Act was unenforceable and illegal. He further contended that the withholding of the gratuity was permissible only under the Act and not under a provision unrelated to the same which made the respondents'' refusal patently illegal and improper.

4. The obligation to pay gratuity is created by Section 4(i) of the Act which provides that, gratuity shall be payable to an employee on the termination of his employment after he has rendered service for not less than 5 years, on his superannuation or on his retirement or resignation, death of disablement due to accident or disease. Sub-section 6 to Section 4 starts with a non-obstinate clause and provides that 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. It further provides that gratuity payable to an employee shall be wholly forfeited if the service of such employee has been terminated for his riotous or disorderly conduct or any other act of violence on his part.

5. A conjoint reading of sub-sections (1) & (6) of Section 4 shows that the same themselves provide for forfeiture of gratuity, in case the employee concerned is found to have caused damage or loss or destruction of the property belonging to the employer.

6. Rule 19(ii) of KS & DL Conduct and Disciplinary Action Rules provides that the domestic enquiry proceedings if instituted against an employee in service shall be continued and concluded by the authority by which they are commenced in the same manner as if the employee had continued in the services of the Company. It further provides that no gratuity shall be paid to the employee until the conclusion of such proceedings and the issue of final orders. The Rule reads thus :

"19(ii) :- The Domestic Enquiry proceedings, if instituted against the employee/ employees was/were in service whether before his/her or their retirement or during his/her/their re-employment, shall after the final retirement of the employee/employees be deemed to be proceeding under this rule an shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee/employees had continued in the services of the company. No gratuity shall be paid to him/her/them until conclusion of such proceedings and issue of final orders."

7. The Rule, it is obvious, is meant to take care of a situation where an employee is found to be guilty of misconduct causing loss to the employer, after his retirement. In any such case, of the amount of gratuity is paid in anticipation of the conclusion of the enquiry proceedings, the employer would be left with

nothing to forfeit in terms of Section 4(6) of the Payment of Gratuity Act. The power to forfeit the amount of gratuity to the extent of the amount of loss caused by the employee, would be incapable of a meaningful exercise, unless the same is understood to carry with it the power to withhold the payment of the amount claimed pending the finalisation of the enquiry proceedings instituted against the delinquent employee. Seen in that light, all that Rule 19 of the KS & DL Conduct & Disciplinary Action Rules does is to give expression to what can even otherwise be said to be implicit in the provisions of Section 4(6) of the Act. There is therefore no conflict between Rule 19 of the Conduct Rules (supra) and Section 4 of the Act so as to render the former illegal or unenforceable. Reliance upon Section 14 of the Act is in that view misplaced. Section 14 reads thus :

"The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."

8. It is obvious that the provisions of Section 14 only provide for an over-riding effect of the act over all other provisions statutory or otherwise to the contrary. Unless, therefore, Rule 19 can be shown to be in any way opposed to Section 4, the same cannot be declared to be illegal or unenforceable simply because the provisions of Section 14 (supra) give an over-riding effect. There is no such conflict between Rule 19 and Section 4 of the Act, as the former only acts in aid of the power reserved to the employer by the later to forfeit the amount of gratuity to the extent of the loss proved against the employee. Upon a harmonious construction, the two provisions viz., Section 4(1)(6) and Rule 19 of the KS & DL Conduct & Disciplinary Action Rules, can co-exist. That being so, there is no reason for this Court to interfere with the view taken by the respondent in deferring the payment of the gratuity till such time the Disciplinary Proceedings against the petitioner are concluded and it be finally determined as to whether or not any part of the petitioner''s gratuity would be liable to be forfeited in terms of Section 4(6) of the Act.

9. The petitioner fails and is accordingly dismissed.

