
(2012) 03 P&H CK 0487
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 17746 of 2010

Haryana Financial Corporation	Vs	APPELLANT
Sh. D.R. Sharma and another		RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Payment of Gratuity Act, 1972 — Section 14, 4, 4(5), 4(6), 4(6)
Working Journalists and Other Newspaper Employees (Conditions of Service) and
Miscellaneous Provisions Act, 1955 — Section 5, 5(1)(a)(I)

Citation : (2012) 134 FLR 269 : (2012) 4 LLJ 426 : (2012) 166 PLR 794

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Rajesh Hooda, for the Appellant; Vaibhav Prashar for respondent No. 1 and Mr. H.S. Sethi, for the Respondent

Final Decision : Dismissed

Judgement

K. Kannan, J.

1.The writ petition challenges the order passed by the Appellate Authority finding that the employee was entitled to the payment of gratuity by virtue of the provisions of Section 4 of the Payment of Gratuity Act. The Appellate Authority, set aside the order passed by the Controlling Authority which took note against the provisions of the Punjab Financial Corporation (Payment of Gratuity of Employees) Regulation of 1964 that denied to an employee a claim for gratuity, if his services had been terminated as a result of an enquiry for a misconduct It is an admitted case that the petitioner was charged with certain irregularities in not securing appropriate securities from a borrower that exposed the Financial Corporation to serious financial crisis. The enquiry officer held that all the charges had been proved and proceeded to dismiss the petitioner from service. The appeal filed was also dismissed. It appears that the employee has filed a Civil Suit challenging the order of dismissal and the case is still pending.

2.When a claim for gratuity was made by the employee, it was denied to the

employee by the petitioner Corporation by resort to 1964 Regulations as disentitling him to claim gratuity. This application of Regulation was found by the Appellate Authority to be not justified and it held that the provisions of the Payment of Gratuity Act, 1972 restricted the forfeiture only to circumstances spelt out u/s 4 (6) of the Act that required proof of damage or loss or destruction arising out of willful omission or negligence. If there was no loss or damage or destruction to property, even a mere negligent act that may have resulted in termination of service cannot be a bar to secure gratuity.

3. There is a seeming conflict between what is contained in 1964 Regulations and what is contained under the Payment of Gratuity Act. The 1964 Regulation Clause 5 states that no gratuity will be granted to in the case of an employee had not completed 5 years service or had been dismissed from service for any misconduct. The reproduction of this provision is relevant for the case :-

Gratuity When not admissible 5 (1) No gratuity will be granted to in the case of an employee (a) If he has not completed service in the Corporation for a minimum period of 5 years or if he or she has been dismissed from services of the Corporation for any misconduct

The restrictive clause found under Payment of Gratuity Act, 1972 is also reproduced :-

S 4(6) The gratuity of an employee, whose services have been terminated of any act, willful omission or negligence causing any damage or loss to, or destruction or, 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 involving moral turpitude provided that such offence is committed by him in the course of his employment.

4. Learned counsel for the petitioner Corporation argued that the Appellate Authority had completely erred in treating the termination of service as not falling within expression of dismissal, since such an expression has not been used in the Payment of Gratuity act. I would definitely find such a reasoning to be erroneous but still the issue will be, whether the Corporation can rely on the 1964 Regulations and effect a forfeiture of gratuity by the fact that the employee had been dismissed from service for a misconduct. Learned counsel for the petitioner would also rely on a judgment of the Supreme Court rendered in *Rajan Sandhi P v. Union of India*¹ 2011 (1) SCT 183 where it was considering a seeming conflict between the provisions of Payment of Gratuity Act of 1972 with reference to the provisions which have been extracted, namely, Section 4 (6) and the Section 5 of Working Journalists and Other Newspaper Employees

(Conditions of Service) and Miscellaneous Provisions Act, 1955. Section 5 of the latter Act is very similar to Clause 5 of the Regulation 1964. Section 5 (1) (a) (I) extends the benefit of gratuity to an employee whose services are terminated by the employer for any reason whatever, otherwise than a punishment inflicted by way of disciplinary act. The Supreme Court reasoned that the Payment of Gratuity Act was a General Act and the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 was a special enactment and the special enactment will prevail when there is a conflict between a general Act and a special Act. The Supreme Court held, "All that is required under the Working Journalists Act, 1955 is that the termination should be as a punishment inflicted by way of disciplinary action, which is the position in the case at hand. Thus if the service of an employee has been terminated by way of disciplinary action under the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 he is not entitled to gratuity

5. Against this contention put forward by the petitioner, learned counsel appearing on behalf of the respondent would refer again to the judgment of the Supreme Court itself that came by a different ruling in a similar situation of a conflict between the provisions of the Coal India Executives' Conduct Discipline and Appeal Rules, 1978 and the Payment of Gratuity Act. In *Jaswant Singh Gill v. M/s Bharat Coking Coal Ltd. And others* 2 (2007)1 SCC 663, the Supreme Court held that the rules framed under the Coal India Executives' Conduct Discipline and Appeal Rules, 1978, which provided for a forfeiture of gratuity were not statutory rules and the provisions of the Gratuity Act must therefore prevail over the rules. Learned counsel would also point out to the fact that the Act itself stipulates the situation when the provisions of Payment of Gratuity Act, 1972 could be excluded, that is, when the right of employee to receive better terms of gratuity were provided under any award or agreement or contract with the employer under S 4(5). It is for the obvious reason that where an employee has better terms than the provisions of Payment of Gratuity Act itself, the latter cannot apply. In this case, we are concerned about a situation where the Payment of Gratuity Act is more beneficial than the Regulation of the year 1964. Section 14 of the Payment of Gratuity Act overrides any other enactment. The provision reads as under:

The provision of this Act or any rule made there under 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.

6. This Section makes it clear that any other Act or Rule which was inconsistent must be taken to be completely excluded by virtue of Section 14. In this case, if the provision of Section 4 (6) of Payment of Gratuity Act (extracted above) denies the entitlement of an employee to claim gratuity only in a situation where the negligent conduct resulted in actual loss, damage or destruction, the said

provision ought to over ride Regulation 5(1). The Payment of Gratuity is a beneficial enactment and it must be so construed as to fulfill the purpose for which the Act was made. If an exclusion of liability were to be made then such an exclusion would be possible only by strict standards which the Act itself lays down. In this case, on a matter of fact it is elicited by the employee in the examination of the management witness that apart from an amount of Rs. 21,688/- which was recovered from the employee while making the payment of Provident Fund no other amount was recovered or recoverable from the employee. In the words of the Manager of Finance, "as per the record as today as well as my knowledge no other amount is recoverable from Sh. D.R. Sharma(respondent). No suit has been filed for the recovery of any amount against Sh. D.R. Sharma as per my knowledge.

7. From the examination of these provisions I would hold that the extent to which 1964 Act provided for an exclusion of entitlement whenever there was a dismissal on account of a misconduct is not replicated through Section 4(6) of the Payment of Gratuity Act, but the latter Act restricts the petitioner only the situation where actual loss or destruction is established. No such loss was proved or established

8. Counsel for the petitioner strenuously argues that the respondent's conduct has involved the Corporation in heavy financial loss. So long as it is not so assessed, especially at a time when claim for gratuity was made, the employee is entitled to secure what is due to him and he cannot be made to wait indefinitely for an employer to quantify that there is some loss which will be assessed in an uncertain future. The decision of the Appellate Authority allowing for the petitioner to claim the gratuity is therefore justified although, for other reasons that I have enumerated in this judgment. The writ petition is dismissed with costs at Rs. 5,000/- against the respondents.