

(2004) 02 AHC CK 0202
In the Allahabad High Court
Case No : C.M.W.P. No. 7960 of 1990

Hindalco Industries Ltd.

APPELLANT

Vs

Appellate Authority, under the Payment of Gratuity Act and
Others

RESPONDENT

Date of Decision : 12-02-2004

Acts Referred:

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

Citation : (2004) 101 FLR 1063 : (2004) 3 LLJ 148

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : N.B. Singh and Sanjay Misra, for the Appellant; Standing Counsel,
for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Sri Sanjay Misra for petitioner. No one appears for respondents. The petitioner is challenging the orders passed by Controlling Authority and the Appellate Authority under Payment of Gratuity Act, 1972, by which the petitioner had been directed to pay the entire amount of gratuity of Rs. 23,1907- along with cost of the case assessed as Rs. 1007- within 30 days.

2. The claimant-respondent No. 3 was engaged as workman by the petitioner-company on December 8, 1965. After a domestic enquiry, he was dismissed from service on April 2, 1986 for an act of misbehaviour. The workman raised an industrial dispute which was referred and adjudicated as Industrial Dispute No. 61 of 1987 and was decided against him on February 24, 1989. A writ petition No. Nil of 1989 filed by the workman against the award was dismissed on November 1, 1989, The workman requested the company for payment of gratuity, and thereafter filed an application before the Controlling Authority under Payment of Gratuity Act, 1972. The Controlling Authority found that no evidence has been led to show that the workman was guilty of any such acts of disorderly or riotous behaviour which may have resulted in any loss to the employer, and

directed that the entire amount should be paid to him. The Appellate Authority, in its order dated March 30, 1990 has upheld the findings of the Controlling Authority.

3. Sri Sanjay Misra, counsel for petitioner states that the workman whose services have been terminated, for serious disorderly or riotous conduct, or any act of violence, on his part is not entitled to gratuity. The findings in domestic enquiry were affirmed by the Labour Court and that a writ petition against the award was dismissed. In the circumstances, he submits that the workman was not entitled to gratuity.

4. The Payment of Gratuity Act, 1972 gives a statutory right to an employee for payment of gratuity on his superannuation, retirement or resignation, or on his death or disablement due to accident or disease. Section 4(6)(a) of the Act 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. Sub-section 6(b), provides that 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 an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

5. The scheme of the Act and the provisions of Section 4(6)(a) and (b) shows that for depriving an employee his statutory right to receive gratuity, an order must be passed forfeiting the gratuity, and conscious decision to be taken with regard to reasons specified in Sub-section (a) and to damage or loss so caused. The Sub-section (b) after its amendment by Act No. 26 of 1984 (with effect from February 11, 1981) to the effect that gratuity may be wholly or in part forfeited, gives discretion to the employer and thus postulates application of mind and recording of reasons.

6. In the present case there is no averment that any express order was passed by the employer forfeiting petitioner's right to receive gratuity. In *Remington Rand of India Ltd. Vs. The Workmen*, the Supreme Court considered the qualifying period for payment of gratuity, and the consequences of payment of gratuity on the termination of services for misconduct. It was held that gratuity is paid to ensure good conduct throughout the period that the workman serves his employer is an accepted proposition. The clause as to misconduct covers the act which may vary in degree of gravity, nature and its impact on the discipline and the working of the concern. All these acts may not result in loss capable of being calculated in terms of money. There may be an action which may forthwith disentitle the workman from retaining his employment and justifying his dismissal. It appears that after this pronouncement, the Act was amended and that a provision was made u/s 4(6)(b) for forfeiture of gratuity either wholly or

partially. The discretion given to the employer must be based upon the material and the reasons recorded, after serving principle of natural justice and these conditions postulate an order to be passed by the employer. The termination of services of an employee on the grounds contemplated u/s 4(6)(a) and (b), by itself does not entitle the employer to forfeit gratuity payable to an employee. The right of an employer to terminate the services of an employee under the Certified Standing Orders, or Service Conditions on any such act given in Section 4(6)(a) and (b), of the Act of 1972, is circumscribed and restricted to holding a just and fair domestic enquiry serving principles of natural justice, which may be examined and justified in industrial adjudication, in which the proportionality of punishment may be examined u/s 11A of the Industrial Disputes Act, 1947. The Industrial adjudicature may find the domestic enquiry and punishment to be just, fair and proper, but these findings by themselves do not serve the requirements of Section 4(6)(a) and (b) of the Payment of Gratuity Act, 1972. The right to receive gratuity is a statutory right. It is not sub-servient to the common law rights of the employer to terminate the services of an employee. In order to forfeit the statutory right of gratuity, qualified by expression "to the extent of damage or loss so caused" in Sub-section (6)(b), the quantum of forfeiture has to be determined, and thus it requires an order, which can only be passed after giving opportunity to the employee. When the forfeiture, even if by an express and reasoned order is challenged before the Controlling Authority under the Act, the employer must satisfy the authority in proceedings u/s 7(4) of the Act, with the justification of forfeiture.

7. In the present case, the objections filed by the petitioner, before the Controlling Authority does not show that any specific order was passed by the petitioner forfeiting the gratuity. The employer did not lead any evidence except relying upon the Award dated November 1, 1989 in I.D. No. 61 of 1987, and did not even care to produce the report of the enquiry officer and justify the forfeiture.

8. There is no good ground to interfere with the order passed by the Controlling Authority or the Appellate Authority. The writ petition has no merit and is dismissed.