
(2011) 02 BOM CK 0144
In the Bombay High Court
Case No : Writ Petition No. 4311 of 1999

Jaya Hind Industries Ltd.

APPELLANT

Vs

Shri Vilas Vithalrao Takale

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Bombay Shops and Establishments Act, 1948 — Section 2(24), 2(25), 2(27), 2(29), 2(4)
Constitution of India, 1950 — Article 12
Payment of Gratuity Act, 1972 — Section 4, 4(6), 7

Citation : (2011) 7 ALLMR 188 : (2011) 5 BomCR 703 : (2011) 129 FLR 1023 : (2011) 4 LLJ 263 : (2011) LLR 638 : (2011) 3 MhLj 199

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : S.K. Talsania and Pallavi Dedhia, for the Appellant; Neeta Karnik, for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—The question involved in the present petition is the interpretation of the provisions of Section 4(6)(b)(i) of the Payment of Gratuity Act, 1972. The Petitioners have challenged the order passed on 30.6.1999 by the Appellate Authority under the Payment of Gratuity Act. By this order, the Appellate Authority has set aside the decision of the competent authority dismissing the application filed by the Respondent for payment of gratuity.

2. The brief facts involved in the present case are as follows:

The Petitioners employed the Respondent as a Clerk in their Sales Department. Two charge sheets were issued to the Respondent - one on 31.7.1991 and the other on 28.9.1991 alleging that he had committed acts of misconduct under clauses 22(a) and 22(l) of the Model Standing Orders which admittedly governed his services. An enquiry was held against him and the charges were proved. He was therefore dismissed from service with effect from 25.7.1992. The

Respondent challenged the dismissal order by preferring Complaint (ULP) No. 177 of 1992 before the Labour Court. By an order dated 20.5.1995, the Labour Court dismissed the complaint and concluded that the Respondent had committed the acts of misconduct alleged against him. It was also held that the Petitioners had not indulged in any unfair labour practice while dismissing him from service.

3. Aggrieved by the decision of the Labour Court, the Respondent filed revision application (ULP) No. 116 of 1995. That revision application was dismissed on 16.10.1996. The Respondent then approached this Court by preferring Writ Petition No. 914 of 1997 against the orders of the Labour Court as well as the Industrial Court. It appears that the Writ Petition was dismissed on 8.4.2008 by a learned Single Judge of this Court. The Judgments of the Labour Court and the Industrial Court were confirmed and the order of dismissal was upheld. Admittedly, the Respondent has not challenged the order of the learned Single Judge in Writ Petition No. 914 of 1997.

4. While the Writ Petition was pending before this Court, the Respondent filed an application to recover the gratuity payable to him. This application was filed on 13.10.1992 and marked as application (PGA) No. 33 of 1992. A written statement was filed by the Petitioners, after five years, contending that since the workman had been dismissed for disorderly behavior he was not entitled to gratuity in view of the provisions of Section 4(6)(b)(i) of the Payment of Gratuity Act. The Respondent examined himself before the Labour Court in order to prove his claim. No evidence was led on behalf of the Petitioners.

5. The Controlling Authority by its order dated 19.3.1997 dismissed the application. It observed that since the Respondent had committed acts of misconduct under Standing Order 22(a) and 22(l) of the Model Standing Orders, the employer was entitled to deprive him of the gratuity payable to him by invoking the provisions of Section 4(6)(b)(i). The Controlling Authority held that since the Labour Court and the Industrial Court had upheld the order of dismissal on the ground that the misconduct alleged against the Respondent had been proved, he was not entitled to gratuity.

6. Aggrieved by the decision of the Controlling Authority, the Respondent preferred an appeal u/s 7 of the Payment of Gratuity Act. The Appellate Authority held that the Payment of Gratuity Act being a complete code by itself, it was necessary for the Controlling Authority to decide independently whether the Respondent herein was entitled to receive gratuity by conducting an enquiry. The Appellate Authority held that it was necessary for the Petitioners to prove that the Respondent had indulged in disorderly conduct, again before Controlling Authority. The Appellate Authority further concluded that the Controlling Authority had not drawn the conclusion after holding an enquiry as to whether the Respondent had in fact engaged in disorderly conduct. In these circumstances, the appeal was allowed and the Petitioners were directed to pay Rs. 25,200/- to the workman as gratuity, payable under the Payment of Gratuity

Act.

7. Taking exception to the order passed by the Appellate Authority, Mr. Talsania, the learned Counsel for the Petitioners, submitted that the order is completely erroneous as it has been passed without bearing in mind the facts and circumstances in the present case. He pointed out that the Controlling Authority was aware that the Labour Court had upheld the order of dismissal issued against the Respondent and the Industrial Court had confirmed it in revision. Therefore, according to the learned Counsel, the order of the Appellate Authority is contrary to law. He pointed out further that a learned Single Judge of this Court had already confirmed the findings of the Labour Court and the Industrial Court in the Writ Petition which was preferred by the Respondent against those orders. He submitted therefore that the Appellate Authority could not have reopened the issue as to whether the charge of misconduct was proved against the Respondent. He urged that in any event the workman was not entitled to gratuity in view of his "disorderly conduct".

8. Mrs. Karnik appearing for the Respondent submitted that the Industrial Court has committed no error in directing payment of gratuity. She submitted that although a full fledged enquiry as to whether the Respondent had committed acts of misconduct need not be carried out, it was necessary for the Controlling Authority to ascertain whether the misconduct committed by the workman warranted the forfeiture of his gratuity or any part thereof. Mrs. Karnik urged that there was no reason for depriving the workman of his gratuity as Section 4(6)(b)(i) does not grant a license to the employer to forfeit the gratuity for any and every act of disorderly behavior on the part of the workman.

9. In my opinion, the Industrial Court has erred in taking the view that a separate enquiry was required to determine whether the workman had committed an act of misconduct. In the facts and circumstances of the present case where a Court of competent jurisdiction had already held that the misconduct had been committed by the workman and that the order of dismissal was valid, it was not open for the Controlling Authority to examine the issue afresh. The Appellate Authority in my opinion has thus committed an error in deciding that a fresh enquiry was required to be held by the Controlling Authority.

10. This matter would ordinarily have been remanded to the Appellate Authority to decide the appeal afresh. However, it would not be appropriate to do so in the present case, in view of the fact that the issue of payment of gratuity to the workman has remained undecided for almost twenty years. Rather than sending the matter back to the Appellate Authority to decide it afresh, it would be appropriate to consider whether in the facts and circumstances of the case the Respondent is entitled to gratuity.

11. Mrs. Karnik, argued that it was not open for the Petitioners to deprive the workman of his gratuity, considering the nature of the misconduct which he had committed. She submitted that although it was true that the order of dismissal

had attained finality in view of this Court's decision, it would still be open for the Labour Court to consider whether the misconduct proved against him was so serious as to deprive a workman of his gratuity. She pointed out that the acts of misconduct proved against the workman were under Standing Order 22(a) and 22(l) of the Model Standing Orders. According to her, the gratuity cannot be denied or forfeited for such acts of misconduct. She submitted that Clause (b) of Sub-section (6) of Section 4 will have to be construed narrowly and should not be used as a carte blanche for the employer to deprive a workman of his gratuity for any and every act of misconduct. She submitted that the expression "riotous or disorderly conduct or any other act of violence" contained in s.4(6)(b)(ii) must be read to mean that such disorderly conduct which was violent. She has relied on the judgment of the Supreme Court in the case of Dr. Devendra M. Surti Vs. The State of Gujarat, in support of her submission that the words "disorderly conduct" must take their color from the words or terms they are associated with, namely, "riotous conduct" and "any other act of violence" in consonance with the principle of *noscitur a sociis*. According to her the expressions which are associated with the term "disorderly conduct" indicate that there must be an element of violence in such conduct for the workman to be deprived of his gratuity. She pointed out that a similar view has been taken in 1978 (37) FLR 280 (SC) Amar Chandra Chakraborty Vs. The Collector of Excise, Government of Tripura and Others, , and The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, . She has also relied on the judgment of a learned Single Judge of Karnataka High Court in the case of Bopalaswamy (since deceased) by LRs and Another Vs. Management of Usha Martin Industries and Another, to buttress her submission that any and every disorderly conduct would not lead to a forfeiture of gratuity.

12. Mr. Talsania, submitted that in the case of The Management of Tournamulla Estate Vs. Workmen, , the Supreme Court was considering a situation where gratuity had not been paid to a workman who was dismissed for misconduct. He pointed out that the Supreme Court has observed that the misconduct alleged against the workman could be of three types, and depending on the seriousness of the misconduct the gratuity can be forfeited in its entirety. He further submitted that the principle of *noscitur a sociis* will not be applicable in the present case as the words "riotous" and "disorderly" must be read disjunctively and in any case distinctively from the expression "any other act of violence". According to him the Sub-section, if read in its true spirit, would indicate that the workman can be deprived of his gratuity even if such conduct is not violent.

13. It is necessary to set out the scheme of the Act as contained in Section 4: Sub-section (1) of Section 4 provides that gratuity would be payable to an employee on his termination from service after he had rendered continuous service for not less than five years either when he is superannuated or he retires or resigns or on his death or disablement due to an accident or disease. In case of death, the nominee would be entitled to the amount of gratuity and in such a case the employment need not be for a continuous period of five years. Similarly

in the case of disablement, the employee would not be disentitled to gratuity merely because he had not completed five years of service before he became disabled or incapacitated to work. Sub-section (2) provides for the manner of calculating gratuity. Sub-section (3) limits the gratuity payable to an employee to a certain amount which when the gratuity became payable to the workman in 1992, was Rs. 50,000/-. Sub-section (4) provides that for computing gratuity payable to an employee who is employed on reduced wages after his disablement, his gratuity for the period before and after the disablement should be calculated on the wages drawn in that particular period. Sub-section (5) provides that an employee would be entitled to receive gratuity on better terms under any award or agreement or contract with the employer, than under the Payment of Gratuity Act. Sub-section (6) reads thus:

(6) Notwithstanding anything contained in Sub-section (i),

(a) the gratuity of an employee, whose services have been 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.

(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 an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

14. For the purpose of deciding this petition what is relevant is Sub-clause (i) of Clause (b). In the present case, the acts of misconduct for which the Respondent was dismissed are defined under Standing Order 22(a) and 22(l) which read thus:

22(a) wilful insubordination or disobedience, whether or not in combination with another, of any lawful and reasonable order of superior;

22(l) commission of any act subversive to discipline or good behavior on the premises of the establishment.

14. Significantly, the Respondent was not charged with having committed the misconduct under 22(k) which reads thus:

22 (k) drunkenness, riotous, disorderly or indecent behavior on the premises of the establishment;

15. In the charge sheet, the act of misconduct alleged against the workman was that he had committed acts of insubordination by not completing the work assigned to him and that he was rude to his superiors because he felt that he was overburdened with work. The allegation in the second charge sheet issued to him was that he had been negligent in his work by not making several entries in

a particular register. When this was pointed out to the Respondent, he allegedly shouted at his superior and abused him in filthy language. Thus, he had committed acts of willful insubordination or disobedience of a lawful and reasonable order and acts subversive of discipline or good behavior on the premises of the establishment. There is no allegation against him that his behavior was either riotous or disorderly or violent. Before an employee can be deprived of his gratuity it would be necessary for the employer to establish that the services of the employee have been terminated for riotous or disorderly conduct or any other act of violence. Acts of insubordination and disobedience of lawful orders or acts subversive of discipline or good behavior must be shown to be acts of riotous and/or disorderly conduct or acts of violence before a workman can be denied his gratuity. Admittedly, the employer in the present case has not led any evidence at all. Thus, there is nothing on record to show that the acts committed by the Respondent amounted to disorderly behavior. Even if the argument of Mr. Talsania, that such acts would constitute disorderly behavior is accepted, it would not necessarily lead to the inference that the employee should be deprived of his gratuity.

16. The words "riotous or disorderly conduct" cannot be read in isolation as sought to be submitted by Mr. Talsania. These words must be read in conjunction with the expression that follows, namely "any other act of violence". Ms Karnik was right in urging that principle of *Noscitur a sociis* is applicable in the present case. The words "riotous" and "disorderly" are adjectives used to describe the conduct of the employee who has been terminated. The terms "riotous conduct" and "any other act of violence" would mean behavior which tends to disrupt the working of the establishment. "Riotous Behaviour" includes conduct which violently disturbs peace or which is tumultuous or wild and uncontrolled behavior. The serious disruption in the establishment due to the violence caused by the riotous conduct or due to any other act can lead to the forfeiture of gratuity. Similarly the term disorderly behavior must also be interpreted to mean that contact which disrupts the work in an establishment completely. Viewed differently, the expression "riotous or disorderly conduct" takes the color of the expression which follows it, namely "any other act of violence". The legislature in its wisdom has used the word "other" acts of violence. This would presuppose that the conduct which is "riotous" or "disorderly" would necessarily have to be violent. Or else, there would be no need for the legislature to use the word "other". The legislature could well have used the words "riotous or disorderly conduct or any act of violence". A cardinal principle which must be borne in mind while interpreting statutes is that each word must be given its true meaning; phrases and sentences must be accorded their grammatical meaning unless it would lead to some absurdity or something in the context or in the object of the statute suggests to the contrary. It is also well settled that the legislature does not use words which are otiose while drafting a statute. The only interpretation which is possible, in my view, is that the words "riotous or disorderly" must be read to mean that such acts must be tinged with violence. This means that

riotous or disorderly conduct which is violent in nature and causes a major disruption of the working in the establishment could result in the penalty of forfeiture of gratuity. The consequence of a workman found guilty of disorderly behavior alone cannot lead to the deprivation of gratuity. The object of the Act is to ensure that a workman is rewarded for the honest, efficient and faithful service that he renders for his employer's benefit. Any construction placed on the words and expressions used in this statute must advance the policy of the act which is the payment of gratuity to workmen employed for not less than five years with an employer. Thus any provision which seeks to impede this right of the workman must be construed by applying the principle of *Noscitur a Sociis*.

17. In the case of *Dr. Devendra M. Surti (supra)*, the Supreme Court has explained the doctrine of *Noscitur a Sociis* with reference to the provisions of the Bombay Shops and Establishments Act. In para 6 it has been observed as follows:

Under Section 2(8) of the Act an "establishment" is defined as meaning "a shop, commercial establishment, residential hotel, restaurant, eating house, theatre, or other place of public amusement or entertainment to which this Act applies". Section 2(24) again defines a "Residential hotel", Section 2(25) a "Restaurant or eating house" and Section 2(27) similarly defines a "Shop". Section 2(29) defines a "Theatre". It is clear therefore that the legislature has taken care separately to define each one of the categories of "the establishments mentioned in Section 2(8) of the Act. It is, true that Section 2(4) of the Act has used words of very wide import and grammatically it may include even a consulting room where a doctor examines his patients with the help of a solitary nurse or attendant. But, in our opinion, in the matter of construing the language of Section 2(4) of the Act we must adopt the principle of *noscitur a sociis*. This rule, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. The words take as it were their colour from each other, that is, the more general is restricted to a, sense analogous to, a less general. "Associated words take their meaning from one another under the doctrine of *noscitur a sociis*, the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim *Ejusdem Generis*. (Words and Phrases. Vol. XIV, p. 207).

18. Similarly, in the present case, the words "riotous or disorderly conduct" when

19. The doctrine of *ejusdem generis* which is set out in *Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others*, has been explained thus:

65. Before advertng to the core issues at some length we may take a look at Article 12 of the Constitution which reads as under:

12. In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

66. In this article, "State" has not been defined. It is merely an inclusive definition. It includes all other authorities within the territory of India or under the control of the Government of India. It does not say that such other authorities must be under the control of the Government of India. The word "or" is disjunctive and not conjunctive.

67. The expression "authority" has a definite connotation. It has different dimensions and, thus, must receive a liberal interpretation. To arrive at a conclusion, as to which "other authorities" could come within the purview of Article 12, we may notice the meaning of the word "authority".

68. The words "other authorities" contained in Article 12 are not to be treated as *ejusdem generis*.

20. The doctrine of *ejusdem generis* is more narrow than the principle of *Noscitur a Sociis*. Mr. Talsania was at pains to point out that the term "any other act of violence" must be read disjunctively from the rest of the subsection. According to him, the expression need not necessarily mean that the riotous conduct or disorderly behavior on the part of the workman must be violent in nature. Disorderly behavior, depending on its nature, would lead to forfeiture of the gratuity, urged the learned Counsel. It would then be open for the Controlling Authority to consider whether such disorderly conduct would warrant forfeiture of gratuity, either wholly or partly.

21. In the case of *Amarchandra Chakraborty (supra)*, the Supreme Court was considering arguments based on the *ejusdem generis* rule. It observed as under:

9. ... The *ejusdem generis* rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words; (ii) the subjects of the enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration and (v) there is no indication of a different legislative intent. In the present case it is not easy to construe the various clauses as constituting one category or class. But that apart, the very language of the two sections and the objects intended respectively to be achieved by them also negative any intention of the legislature to attract the rule of *ejusdem generis*.

22. In the case of *The Management of Tournamulla Estate v. Workmen (supra)*, the Supreme Court considered the issue of the forfeiture of gratuity of a person who was dismissed after being found guilty of misconduct, prior to the enactment of the Payment of Gratuity Act. Under the terms of agreement between the parties an employee was liable to be deprived of his gratuity if he had been dismissed for misconduct and any dispute arising from such forfeiture would be referred to the Labour Court. The Management denied gratuity to the workman on account of his riotous and disorderly behavior and for having assaulted his supervisor. The Supreme Court noted its earlier judgment in the case of *Delhi Cloth and General Mills Company v. The Workmen*, AIR 1970 SC

911 wherein the Court had observed that the object of having a gratuity scheme was to provide a retiral benefit to an employee who had rendered a long and unblemished service to an employer and thereby had contributed to the prosperity of the employer. The apex Court then observed that the Gratuity Act has incorporated the principle laid down in the case of Delhi Cloth and General Mills (supra) with regard to the forfeiture of gratuity for commission of gross misconduct.

23. This judgment in fact supports the view that the misconduct must be so gross that it borders on violence. Every disorderly behaviour need not be violent. Therefore can an employee be deprived of gratuity merely because his conduct is disorderly? The answer is clearly in the negative. Disorderly conduct for which the gratuity could be forfeited cannot be left to the whim or caprice of the employer and therefore it must be read to mean that disorderly conduct which tends to disrupt the entire working in an establishment or which brings the working to a grinding halt would result in forfeiture of gratuity.

24. It would indeed be incongruous if a person who is terminated for any act or willful omission or negligence causing damage or loss or destruction of property belonging to an employer is denied his gratuity to the extent of the damage caused as provided in the Act, but a person who shouts in the department or is rude to his superiors is liable to be deprived of his entire gratuity. That could not have been the intention of the legislature while providing that an employer may forfeit either wholly or partially the gratuity payable to an employee who indulges in disorderly conduct. In the present case admittedly, there is no act of violence. The misconduct proved is that the Respondent was negligent in his duties and had shouted at or back answered his superiors when corrected. In my opinion, such conduct though disorderly cannot result in the forfeiture of the gratuity of the workman either wholly or in part. It must be borne in mind that the Payment of Gratuity Act is a welfare legislation to provide a reward and security to employees in the evening of their lives for having worked diligently for an employer in order to increase his profits. In my opinion, therefore the forfeiture of gratuity of the Respondent is not tenable. Though the industrial Court has committed an error by holding that a full fledged enquiry was necessary before the Controlling Authority could decide whether the gratuity was to be forfeited, his conclusion that the Respondent is entitled to gratuity is not erroneous.

25. The petition is dismissed accordingly. The Respondent is entitled to gratuity as claimed in application together with interest as payable u/s 7(3A).

26. Rule discharged. No order as to costs.

27. The learned Counsel appearing for the Petitioner seeks a stay of this order. In my opinion, stay need not be granted as the gratuity has not been paid to the workman for almost 20 years and the amount is bare minimum. Stay is therefore refused.