

(2014) 05 CAL CK 0063
In the Calcutta High Court
Case No : Writ Petition No. 121 of 2014

Joydeb Ghatak

APPELLANT

Vs

Railway Protection Force

RESPONDENT

Date of Decision : 02-05-2014

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4, 4(1), 4(6), 4(6)(b)(ii)

Citation : (2014) 3 CHN 542 : (2015) 3 WBLR 319

Hon'ble Judges : S. Banerjee, J

Bench : Single Bench

Advocate : Aryan Bhattacharya, Advocate for the Appellant; Ashoke Chakraborty and Arindam Chattopadhyay, Advocate for the Respondent

Judgement

Sanjib Banerjee, J.—The petitioner, who retired as an Assistant Security Commandant in the Railway Protection Force in April, 2013, seeks a direction on the railway authorities for the payment of the subsistence allowance that the petitioner ought to have received during the period that he remained suspended and for his gratuity which, according to him, has been wrongfully withheld. The respondents say that serious charges were levelled against the petitioner and a Central Bureau of Investigation criminal case was instituted against him, inter alia, under the provisions of the Prevention of Corruption Act, 1973. The petitioner has been acquitted at the criminal trial and, though the petitioner has not produced a copy of the judgment, the petitioner claims that he was honourably acquitted. The respondents say that the petitioner was not honourably acquitted and an appeal has been preferred by the CBI against the order of acquittal. The appeal is pending in this Court and it is not the petitioner's case that the appellant in the relevant appeal has not been diligent in prosecuting the same.

2. The petitioner refers to the Payment of Gratuity Act, 1972 and says that the right of an employee who is eligible to receive gratuity under the said Act may only be whittled down in accordance with the provisions of the statute. According

to the petitioner, the right conferred on the petitioner under section 4(1) of the Act cannot be interfered with in any manner whatsoever unless one or more of the conditions as enumerated in section 4(6) thereof arises.

3. The respondents refer to Rule 10 of the Rules governing the petitioner's service which is quoted in the petition. Rule 10(1)(c) of the Railway Service Pension Rules, 1993 provides as follows:

"(c) No gratuity shall be paid to the railway servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon; provided that where departmental proceedings have been instituted under the provisions of the Railway Servants Discipline and Appeal Rules, 1968, for imposing any of the penalties specified in clauses (i), (ii), (iia) and (iv) of rule 6 of the said rules, the payment of gratuity shall be authorised to be paid to the railway servant."

4. The respondents insist that since the petitioner is governed by the service rules and an appeal has been preferred by the CBI against the order of acquittal, the petitioner cannot claim or receive the gratuity at this stage. The respondents also refer to Rule 9 of the service rules which envisages the right of the President to withhold or withdraw pension or gratuity.

5. Upon the petitioner's superannuation, the petitioner was granted provisional pension. The petitioner makes no immediate claim as to the full commuted value of pension since the petitioner accepts that it is only after the conclusion of the appeal and the petitioner's success therein that the petitioner may receive the same. However, according to the petitioner, the railways have no defence to the petitioner's claim on account of gratuity by virtue of the said Act of 1972 and the railways ought to have released the subsistence allowance due to the petitioner during his period of suspension from July 3, 2003 till March 31, 2004.

6. The respondents concede that the subsistence allowance due to the petitioner could not have been withheld and needs to be paid. However, the respondents say that in view of Rule 10(1)(c) of the said Rules of 1993, the petitioner does not have an immediate claim on account of gratuity.

7. The 1972 Act is a special statute covering the payment of gratuity. It provides a scheme for the payment of gratuity to several classes of employees and has to be accepted as the ultimate law relating to gratuity in this country.

Section 4(1) of the Act entitles an employee to receive gratuity upon the fulfilment of certain conditions. Sub-section (6) of section 4 of the Act is the only recognised statutory exception to the entitlement conferred by section 4(1) of the Act. Section 4(6)(b)(ii) is relevant for the present purpose:

"4. Payment of Gratuity.--(1) Gratuity shall be payable to an employee...

(2)...

(3)...

(4)...

(5)...

(6) notwithstanding anything contained in sub-section (1)--

(i)-

(a)...

(b) the gratuity payable to an employee may be wholly or partially forfeited

(i)...

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such an offence is committed by him in course of his employment."

8. The pre-condition to the operation of sub-clause (ii) would be if the services of the concerned employee are terminated. If the services of an employee are not terminated, his gratuity cannot be forfeited. If there is no provision for forfeiture of the gratuity, there is no rationale in withholding the gratuity for, if the employer is not entitled to forfeit it even if the petitioner's order of acquittal is reversed in the appeal, the employer cannot delay the release thereof. It must also be appreciated that the said Act of 1972 not only provides for payment of gratuity but also provides for interest at the rate of ten per cent per annum to be paid for the period of delay.

9. Though the respondents submit that Rule 10 of the said Rules of 1993 has not been struck down and such rule has not been challenged by the petitioner, it is only an argument as to form. It is elementary that once a special statute covers a field, rules made in respect of matters covered by the special statute have to conform to the provisions of the statute or be disregarded. Since the statute does not confer any authority on the employer or any other to withhold or forfeit gratuity upon any act of moral turpitude being committed by a person unless his services are terminated on such ground, even if the petitioner were to suffer a reversal in the appeal and be held guilty of the act of graft or moral turpitude that he had been accused of, the gratuity due to the petitioner cannot be forfeited since his services had not been terminated on such score.

10. WP No. 121 of 2014 is allowed by directing the railways to release the amount due to the petitioner on account of his gratuity together with interest thereon at the statutory rate of ten per cent per annum from the date of the petitioner's superannuation. The petitioner will also be entitled to the subsistence allowance during the period that the petitioner remained suspended. Such subsistence allowance should be released within a period of six weeks from date, failing which the amount in such regard will carry interest at the rate of seven per cent per annum till payment.

11. It is recorded that the railways had instituted disciplinary proceedings against

the petitioner in connection with the same perceived offence for which the petitioner was charged by the CM, but such disciplinary proceedings were dropped and the petitioner retired from service without any disciplinary proceedings pending against him.

12. The petitioner will also be entitled to costs assessed at 500 GM to be paid by the railways along with the first payment in terms of this order made to the petitioner. Urgent: certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.