

(2008) 09 KAR CK 0043

In the Karnataka High Court

Case No : Writ Petition No. 6845 of 2007

Karnataka State Road Transport Corporation and Another

APPELLANT

Vs

Mahadev and Others

RESPONDENT

Date of Decision : 08-09-2008

Acts Referred:

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

Citation : (2008) ILR (Kar) 4867 : (2008) 4 KCCR 342 SN : (2009) 3 LLJ 90

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : B.L. Sanjeev, for the Appellant; Lex Nexus, for R1 and Jagadeesh Mundargi, AGA for R2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—The petitioner terminated the services of the 1st respondent driver w.e.f. 02.09.2003 on the premise that the appointment against a vacancy reserved for Scheduled Tribe was by producing false documents as regards his social status, being an offence involving moral turpitude, eligible for 50% of the gratuity under the Payment of Gratuity Act 1972 for short the "Act", in terms of Circular No. 49 dtd. 17.1.1994 and deposited the said sum with the controlling authority. The respondent having made a claim for full amount of gratuity, the controlling authority by order dtd. 06.01.2006 Annexure-B determined the full amount of gratuity payable and directed the petitioner to make payment of the said sum, which when carried in an appeal before the appellate authority, was confirmed by order dtd. 24.02.2007 Annexure-C. Hence, this Writ Petition.

2. Admittedly, the petitioner did not launch a prosecution against the respondent for making a false claim for appointment to the vacancy in the post of Driver reserved for a Scheduled Tribe candidate, so as to contend that the act of misconduct was an offence involving moral turpitude, disentitling the respondent to gratuity under Clause (b)(ii) of Sub-section (6) of Section 4 of the Act.

3. A bare reading of the aforesaid provision of the Act discloses that the full amount of Gratuity can be forfeited, in the event the employee is convicted for an offence involving moral turpitude.

4. In the absence of a conviction, of the respondent for an offence involving moral turpitude, a strict application of the said provision of the Act does not disentitle, the respondent to receive gratuity amount, and the petitioner was not justified in denying the gratuity to the respondent.

5. The observation of the Apex Court in *Jaswant Singh Gill Vs. Bharat Coking Coal Ltd. and Others*, while interpreting Section 4(6)(b)(ii) of the Act in the circumstances is apposite

The Act provides for a close-knit scheme providing for payment of gratuity. It is a complete code containing detailed provisions covering the essential provisions of a scheme for a gratuity. It not only creates a right to payment of gratuity but also lays down the principles for quantification thereof as also the conditions on which he may be denied therefrom. As noticed hereinbefore, Sub-section (6) of Section 4 of the Act contains a non obstante clause vis-a-vis Sub-section (1) thereof. As by reason thereof, an accrued or vested rights is sought to be taken away, the conditions laid down thereunder must be fulfilled. The provisions contained therein must, therefore, be scrupulously observed. Clause (a) of Sub-section (6) of Section 4 of the Act speaks of termination of service of an employee for any act, willful omission or negligence causing any damage. However, the amount liable to be forfeited would be only to the extent of damage or loss caused. The disciplinary authority has not quantified the loss or damage. It was not found that the damages or loss caused to respondent 1 was more than the amount of gratuity payable to the appellant. Clause (b) of Sub-section (6) of Section 4 of the Act also provides for forfeiture of the whole amount of gratuity or part in the event his services had been terminated for his riotous or disorderly conduct or any other act of violence on his part or if he has been convicted for an offence involving moral turpitude. Conditions laid down therein are also not satisfied.

(emphasis supplied)

6. In the light of the aforesaid observations, no exception can be taken to the orders impugned of the controlling authority and the appellate authority, holding that the petitioner is liable to make payment of the entire sum of gratuity due and payable to the respondent under the Act.

7. Learned Counsel for the petitioner submits that the respondent has since raised an industrial disputes over the termination of his service and that the same is pending before the 3rd Addl. Labour Court, Bangalore, in ID No. 101/03, and that it has been the experience of the petitioner that the workmen when reinstated have failed to retribute the employer by repaying the amount received as gratuity. If that is so, it is open to the petitioner to advance appropriate contentions before the Labour Court and secure directions to the workmen

regarding the repayment of the amounts paid as gratuity, in the event, the workman succeeds in the proceeding.

8. The writ petition is accordingly rejected.