

(2010) 03 KAR CK 0237

In the Karnataka High Court

Case No : Writ Petition No. 7412 of 2010

Karnataka Vidyuth Karkhane Limited

APPELLANT

Vs

N.S.S. Bhagavat and Others

RESPONDENT

Date of Decision : 26-03-2010

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4, 4 (6), 7

Citation : (2010) 127 FLR 163 : (2010) 4 KLJ 344

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : H.N. Muralidhar, for Sreeranga Associates, for the Appellant; Party-in-person and Jagadeesh Mundargi, A.G.A., for the Respondent

Judgement

H.N. Nagamohan Das, J.—In this writ petition the petitioner has prayed for a writ in the nature of certiorari to quash the order dated 6-11-2008 as per Annexure-H and order dated 17-2-2010 as per Annexure-K passed by respondents 2 and 3 respectively.

2. Respondent 1 was working in the petitioner's establishment as Finance Manager, Company Secretary incharge and also as co-ordinator. Petitioner-company noticed certain irregularities committed by the respondent 1. Articles of charges were issued, enquiry was held and on 8-8-2006, respondent 1 was dismissed from service. After dismissal of respondent 1 from service, he filed an application u/s 7 of the Payment of Gratuity Act, 1972 (for short "the Act") since the petitioner had not paid the gratuity amount. After hearing both the parties, the second respondent by order dated 6-11-2008 as per Annexure-H directed the petitioner to pay the gratuity amount with interest. Petitioner being aggrieved by the order of respondent 2 filed an appeal before the third respondent and the same came to be dismissed vide order dated 17-2-2010 as per Annexure-K. Hence this writ petition.

3. Heard arguments of learned Counsel for the petitioner, learned Government Advocate and first respondent-party-in-person and perused the entire writ

papers.

4. It is necessary at this stage to notice the law laid down by this Court and Supreme Court while interpreting Section 4 of the Act. A Division Bench of this Court in *Bharat Gold Mines Limited v. Regional Labour Commissioner (Central)*, Bangalore 1986 Lab I.C. 1976 (Kar.), while interpreting the scope of Section 4(6) of the Act held as under.

10. Accordingly, we answer the question set out first, as follows:

Theft, is an offence involving moral turpitude and consequently, if the services of an employee had been terminated for committing theft in the course of his employment, the gratuity payable to him under the provisions of the Act stands wholly forfeited in view of Section 4(6)(b)(ii) of the Act.

11. In order that Section 4(6)(b)(ii) of the Act applies to a given case, the following conditions must exist: in the present case. Hence, the appellant was right in taking:

(i) The misconduct which constituted the basis for the determination of the tenure of an employee, must be an offence under the law; and

(ii) The misconduct which is an offence under the law must involve moral turpitude.

Both these conditions exist in the present case. Hence, the appellant was right in taking the view that the Gratuity payable to the third respondent stood wholly forfeited in view of Section 4(6)(b)(ii) of the Act.

In *J.B. Micheal D'Souza v. Appellate Authority under Payment of Gratuity Act*, Bangalore and Ors. 2001(5) Kar. L.J. 200, it is held:

From the reading of Section 4(6)(a) of the Act, it is clear that the employer may forfeit the amount to the extent of damage or loss so caused. So in order to ascertain what is the damage caused to forfeit the amount payable, the damage or loss so caused is required to be assessed. In order to assess necessarily, the employer should give a notice of the proposed action before passing any order to forfeit the amount.

The Apex Court in *Jaswant Singh Gill Vs. Bharat Coking Coal Ltd. and Others*, held that the provisions of Section 4(6) of the Act must scrupulously observed. Termination of services for any of the causes enumerated in Sub-section (6) of Section 4 of the Act, therefore, is imperative.

5. Keeping in mind the law laid down in the decisions referred to supra, it is necessary to examine the fact situation in the instant case. In the order of dismissal dated 8-8-2006, there is no determination of damages or losses caused by respondent 1. In the absence of determination of damages and losses, it is not open for the petitioner to forfeit the gratuity amount. By taking this aspect into consideration, both respondents 2 and 3 have concurrently held under the

impugned orders that petitioner cannot forfeit the gratuity amount without determining the quantum of damages or losses. I find no justifiable ground to interfere with the impugned order.

6. However, learned Counsel for the petitioner contends that after the order of termination of respondent 1, they have initiated enquiry with regard to losses caused to the petitioner-company and they have secured a report wherein it is stated that huge amount of losses are caused by the respondent 1 and other employees. If that is so, the petitioner is at liberty to take appropriate action against the concerned persons in accordance with law.

7. The gratuity amount together with interest is now deposited by the petitioner with the Controlling Authority. Petitioner and respondent 1 are also entitled to make appropriate application before the Controlling Authority in the matter of disbursement of gratuity amount and the same shall be dealt by the Controlling Authority in accordance with law. With the above observation, the writ petition is hereby rejected.