
(2014) 01 KL CK 0083
In the High Court Of Kerala
Case No : W.P. (C) No. 4372 of 2006

Lalitha B.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 07-01-2014

Acts Referred:

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

Citation : (2014) 2 KHC 147 : (2014) 2 KLJ 707

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : Sreedevi Kylasanath, T.P. Deyananthan and S. Preetha, Advocate for the Appellant; N.D. Premachandran, Mathai Varkey Muthirenthu, Standing Counsels, Supplyco and R. Lakshmi Narayan, Senior Government Pleader, Advocate for the Respondent

Judgement

A.V. Ramakrishna Pillai, J.—Aggrieved by the retention of gratuity amount due to the petitioner, who demitted her office as Helper from the service of the respondents, she has come up before this Court. The petitioner who was a Helper in the Maveli Store, Vettukad, retired from the service on 31/05/2004. The petitioner alleges that she faced a disciplinary action on the allegation that she caused shortage of commodities worth Rs. 63,975/- during the period ranging from 01/04/98 to 31/12/98 and as per Exts. P4 and P5, recovery was ordered for Rs. 63,571.60 at the rate of Rs. 2,500/- per month from her salary from October, 2003 onwards till her retirement.

2. The petitioner would allege that the disciplinary action was biased and her present grievance is that as per Ext. P12, a sum of Rs. 45,130/- was ordered to be retained from the gratuity amount due to her. This, according to the petitioner is illegal.

3. I have heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent Corporation and the learned Senior Government Pleader.

4. Though various grounds have been raised in this writ petition, the learned counsel for the petitioner gave thrust to the argument that the retention of gratuity of the petitioner by the respondent Corporation is illegal. In support of the argument, the learned counsel for the petitioner invited my attention to Rule 16 of the Helpers Service Rules, 1978, which reads as follows:

16. Disciplinary action.--(i) Any member of the establishment for good and sufficient reasons may be punished by imposing any of the following penalties, by the appointing authority;

Minor penalties;

(a) Censure

(b) Fine

(c) Withholding of increments with or without cumulative effect.

Major penalties:

(d) withholding of promotion.

(e) Recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of orders or otherwise;

(f) Dismissal from service.

(ii) No Kind of punishment shall be awarded to an employee unless he has been informed in writing of the grounds on which it is proposed to take action against and he has been afforded an opportunity including a personal hearing if so demanded, to defend himself. No major penalty shall be imposed without holding a domestic enquiry. Every order awarding punishment shall be communicated to the employee concerned in writing stating the grounds on which the punishment has been awarded.

(iii) The Appellate Authority shall be Board of Directors of the Corporation and the appeal has to be filed within 30 days of the receipt of these orders.

(iv) A Manager of the Corporation shall also have powers to inflict minor penalties, and the Managing Director will be the Appellate Authority in such cases.

5. It was submitted by the learned counsel for the petitioner that there is no whisper in Rule 16 regarding recovery of gratuity as a major penalty. The learned counsel for the petitioner invited my attention to two decisions of this Court wherein it was held that employer cannot deduct amounts allegedly due from employee to employer from the amount of gratuity due to employee under it. The first decision on that point is C.C. Devassia Vs. Kerala Small Industries Devt. Corpn. Ltd. and Others, . There a forfeiture u/s 4(6) of the Payment of Gratuity Act was imposed on the employees who was permitted to retire on superannuation. Referring to the statutory provisions, it was observed by this Court that an employer is entitled to forfeit gratuity, either wholly or partly, only

to the extent provided under sub-section (6) of Section 4 of that Act and that provision comes into play only in cases where the services of an employee are terminated. It was, therefore, observed that it does not apply to a case where the delinquent employee was permitted to retire on superannuation.

6. The second decision cited is State Farms Corporation of India Vs. Mathai, . There, an employee has opted for VRS Amounts due as per scheme were paid to him. When gratuity was paid, an amount of Rs. 70,432/- was deducted from gratuity amount, which according to the employer was excess ex gratia amount mistakenly paid and VRS application was allowed declining prayer for deduction. There, the Court held that except as authorised by the Act, no deduction whatsoever can be made by the employer from amounts due as gratuity to an employee and even if it is possible, if amount is disputed by the employee, it has to be determined by an independent authority. During the course of argument, an order of the Kerala Lok Ayuktha in Complaint Nos. 1967 & 1969 of 2006 was also made available for my perusal. Those cases were disposed of on the same reasoning. It was also brought to my notice that the aforesaid order has been challenged before this Court in W.P. (C.) No. 2495 of 2008 which confirmed the order of the Lok Ayuktha. In view of the authoritative pronouncement of law governing the point at issue by this Court, the contention of the petitioner has to be allowed to stand. The forfeiture of the respective amounts from the gratuity amount due to the petitioner being illegal and unsustainable, the respondents are liable to release the forfeited amounts to the petitioner.

Therefore, the writ petition is disposed of quashing Ext. P12 and the respondent Corporation is directed to pay entire gratuity amount withheld by them, within a period of one month. To facilitate early payment, the petitioner shall be at liberty to produce the copy of this judgment along with the copy of the writ petition before the respondent Corporation at the earliest. If the respondent Corporation fail to disburse the amount within the aforesaid period, the amount withheld shall carry interest at the rate of 10% per annum from the date on which the amount was withheld.