
(1996) 09 CAL CK 0023
In the Calcutta High Court
Case No : C.O.C.R. No. (W) of 1994

Madan Mohan Laik

APPELLANT

Vs

Coal India Ltd. and Others

RESPONDENT

Date of Decision : 10-09-1996

Acts Referred:

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

Citation : (1998) 3 LLJ 1057

Hon'ble Judges : D.P. Kundu, J

Bench : Single Bench

Advocate : S. Bharati Chatterjee and S. Banerjee, for the Appellant; Rabindra Nath Bag, for the Respondent

Final Decision : Allowed

Judgement

D.P. Kundu, J.—In this writ application the petitioner has, inter alia, prayed for a writ in the nature of Mandamus commanding the respondents to release the cheque for the gratuity amount of the petitioner along with the payment of encashment of earned leave which is due to the petitioner.

2. The petitioner stated that he was an employee of New Kenda Colliery and had been working as Typist under the Eastern Coal Fields Ltd., a subsidiary of Coal India Ltd. The petitioner was appointed on May 11, 1953 in the said colliery. The petitioner stated that in the said colliery he had worked as P. A., U/Man No. 62310 though he was designated as Typist. The petitioner was served with a notice of superannuation dated February 12, 1990 by which he was asked to retire from service on and from July 1, 1990. The petitioner stated that being aggrieved by and dissatisfied with the said superannuation notice, he moved an application under Article 226 of the Constitution before this Hon'ble High Court and the said writ application was disposed of on April 24, 1990 by M.R. Mullick, J., after hearing the parties, directing the respondents to refer the matter to the apex Medical Board for determination of the actual age of the petitioner and accordingly the respondent company referred the matter to the apex Medical

Board and the Board determined the petitioner's age as 57 years as on May 25, 1990. Therefore, the writ petitioner retired from the service of the company on May 25, 1993.

3. The writ petitioner states that he was advised to submit the application for payment of gratuity in Form I as prescribed in the Payment of Gratuity Rules under the Payment of Gratuity Act, 1972 and the petitioner, after retirement, submitted the said application on June 18, 1993 in Form I for payment of gratuity. The petitioner stated that, he also submitted a Clearance Certificate on December 27, 1993 for releasing Gratuity Bill.

4. The petitioner also stated that he made a representation before the concerned authority for encashment of earned leave of 17 days in the year ending in 1992 and proportionate earned leave for the period January 1, 1993 to May 26, 1993 but no such payment has been made to the petitioner.

5. It appears from the Annexure "X" of the affidavit-in-opposition filed on behalf of the respondent Nos. 1 to 6 affirmed on March 16, 1995 that the cheque amounting to Rs. 75,000/-(seventy-five thousand) vide No. O/ B-19 / 400/ 65385 dated June 24, 1994 on the State Bank of India, Asansol Branch was prepared and made ready for disbursement in favour of the petitioner. In paragraph 16 of the aforesaid affidavit-in-opposition the respondent Nos. 1 to 6 have stated that the aforesaid A/c Payee Cheque was lying with the Cashier, New Kenda Colliery for disbursement but the petitioner did not collect it and he could not produce the Clearance Certificate from the department of the company dealing with the quarters and as the cheque became over dated on December 23, 1994 the same was returned to the Finance Manager, Kenda Area and has been deposited in his custody.

6. The respondents Nos. 1 to 6 in the aforesaid affidavit-in-opposition stated in paragraph 16 that a Clearance Certificate in favour of the petitioner was submitted before the company on December 27, 1993 but it appeared from the said certificate that no clearance had been obtained from the authority dealing with the quarters of the employees inasmuch as it is a general rule to hand over the vacant possession of the quarter occupied by the employee allotted in his name during his service life to the management after superannuation. The said respondents further stated that on enquiry it appeared that one Shri Anup Kumar Banerjee in connivance with the petitioner without having any legal authority and or permission from the management has occupied the quarter likely to be vacated by the petitioner. The said respondents further stated that the management is always ready to release the cheque to the petitioner provided he hands over the vacant possession of company's quarter to the management of the company.

7. The respondent Nos. 1 to 6 in paragraph 14 of the aforesaid affidavit-in-opposition categorically stated that in the instant case the petitioner occupied the quarter for some time even after his superannuation and handed over the

possession of the same to Shri Anup Kumar Banerjee without any intimation to the management. From this statement of the said respondents it is evident that even according to the respondents Nos. 1 to 6 the petitioner handed over the possession of the quarter to Shri Anup Kumar Banerjee after his superannuation.

8. It is an admitted fact that payment of gratuity to the petitioner is governed by the provisions of Payment of Gratuity Act, 1972 (hereinafter referred to as the said Act). Hon"ble Supreme Court in State of Punjab Vs. Labour Court Jullunder and Others, observed as follows (para 7) at p. 357 :

"It is apparent that the Payment of Gratuity Act enacts a complete Code containing detailed provisions covering all the essential features of a scheme for payment of gratuity. It creates the right to payment of gratuity, indicates when the right will accrue, and lays down the principles for quantification of the gratuity. It provides further for recovery of the amount, and contains a special provision that compound interest at nine percent, per annum will be payable on delayed payment. For the enforcement of its provisions, the Act provides for the appointment of a controlling authority, who is entrusted with the task of administering the Act. The fulfilment of the rights and obligations of the parties are made his responsibility, and he has been invested with an amplitude of power for the full discharge of that responsibility. Any error committed by him can be corrected in appeal by the appropriate Government or an appellate authority particularly constituted under the Act."

9. From the statements made by the respondents No 1 to 6 in the affidavit-in-opposition affirmed on March 16, 1995 and affidavit-in-opposition affirmed on August 21, 1996 in connection with the supplementary affidavit, it is evident that the respondents have not forfeited either whole or a part of gratuity which the petitioner is entitled to u/s 4 of the said Act.

10. Admittedly the petitioner's services have not been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer. The petitioner's services have not been terminated for his riotous or disorderly conduct or any other act of violence on his part. The petitioner's services have not been terminated for any act which constitutes an offence involving moral turpitude. Therefore, provisions relating to forfeiture of gratuity as contemplated in Sub-section (6) of Section 4 of the said Act have no manner of application in the facts and circumstances of the instant case. No provision of the said Act has been brought to the notice of this Court which confers right upon the employer to withhold the gratuity of an employee. The respondents Nos. 1 to 6, as stated earlier, have admitted that the petitioner handed over his quarter to Shri Anup Kumar Banerjee after his superannuation.

11. In Ramjilal v. Elphinstone Spg. Wvg. Mill Co. Ltd. reported in 1984 Lab IC 1703, Pendse J., of Hon"ble Bombay High Court, in paragraph 5 of the Report, inter alia, observed as follows :

"The contention cannot be accepted because the right to the amount of gratuity

is not circumscribed or made dependent on the conduct of the employee subsequent to the date of his retirement. A right to secure gratuity amount cannot be defeated or cannot be used as lever by the employer for securing back possession of the premises from the petitioner. It is not permissible under the Payment of Gratuity Act to withhold the amount for any reason and in my judgment even though the conduct of the petitioner in holding back possession of the premises is not very praiseworthy still that is not a sufficient reason to deprive him of the right of gratuity."

12. This Court respectfully agrees with the above quoted views of Pense, J.

13. The respondents Nos. 1 to 6 in their affidavits- in-opposition admitted that at present the concerned quarter is under possession of Shri Anup Kumar Banerjee who is admittedly an employee of the respondents. The respondents Nos. 1 to 6 in their affidavit-in-opposition have not disclosed what steps they have taken against Shri Anup Kumar Banerjee for his alleged wrongful or unauthorised possession or occupation of the concerned quarter.

14. Admittedly the writ petitioner has not moved the authorities under the said Act for realisation of his gratuity. This Court is of the view that such inaction of the writ petitioner will not disentitle him to get appropriate relief from this Court in exercise of its writ jurisdiction. No argument has been made in respect of encashment of earned leave of the petitioner.

15. In the facts and circumstances stated hereinabove the respondents Nos. 1 to 6 are directed to pay the writ petitioner the entire amount of gratuity he is entitled to under provisions of Payment of Gratuity Act, 1972 within six weeks from the date of this judgment. The writ petition is allowed to the extent mentioned hereinabove. However, there shall not be any order as to costs.