

(2004) 02 MAD CK 0010

In the Madras High Court

Case No : Writ Petition No. 12364 of 1997

Management of Central Theatre

APPELLANT

Vs

Controlling Authority, Payment of Gratuity Act and Another

RESPONDENT

Date of Decision : 24-02-2004

Acts Referred:

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

Citation : (2005) 1 LLJ 958

Hon'ble Judges : Prabha Sridevan, J

Bench : Single Bench

Advocate : D. Meenakshi Sundaram, for the Appellant; S.P. Prabhakaran, A.G.P. for Respondent No. 1 and K.V. Shanmughanathan, for the Respondent

Final Decision : Dismissed

Judgement

Prabha Sridevan, J.—The management has filed this writ petition against the order passed by the first respondent. The second respondent

was an employee under the petitioner. He claimed that he was entitled to payment of gratuity and it was quantified at Rs. 8,505. Against that this

writ petition has been filed.

2. The learned counsel for the petitioner would submit that there is absolutely no consideration by the first respondent regarding the act of moral

turpitude and whether or not it constituted an act of moral turpitude so as to disentitle the petitioner from claiming the gratuity has not been

considered.

3. It was submitted that the first respondent had contended himself with merely relying on Bharath Gold Mines Ltd. Vs. Reg. Labour

Commissioner (Central) and Others, , to award the payment of gratuity.

4. The learned counsel for the second respondent, on the other hand, would submit that the petitioner had framed charges against the second respondent for certain acts said to have been committed on June 30, 1992. He was terminated from service on July 10, 1992. Thereafter, the termination was set aside and therefore, he was reinstated to the service. When this is the case, it is not open to the petitioner to again withhold the payment of gratuity alleging certain acts which have already been made to the subject matter of proceedings, dated June 30, 1992, and which have been set aside. It was also submitted that no notice was given before forfeiting the claim for gratuity was forfeited. Section 4 of the Payment of Gratuity Act provides that the gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years; on his superannuation or on his retirement or resignation. Section 4(6) provides that notwithstanding anything contained in Sub-section (1) a gratuity of an employee shall be forfeited to the extent of the damage or loss caused if his services had been terminated by any act wilful omission or negligence causing damage, loss of destruction to the employee's property. :

Section 4(6) Notwithstanding anything contained in Sub-section (1). -

(b) provides that a gratuity payable to an employee shall be wholly or partially forfeited;

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part; or

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

5. The employer's duty to pay gratuity is absolute and Section 4(6) gives him a discretion to forfeit it wholly or partially. Therefore, a discretion is vested with the employer to decide either to withhold wholly or partially the gratuity that is payable. The very fact that a discretion is vested with an employee would indicate that the employee has an opportunity to show cause why his gratuity should not be forfeited either wholly or partially. It is for this reason that the first respondent held that since no opportunity was given to the second respondent, the claim now made by the petitioner that the entire gratuity was forfeited on the ground of moral turpitude cannot be

accepted. In the judgment referred to above, the Division Bench has considered what would amount to moral turpitude and in fact, they have quoted from the writ petition (Writ Petition No. 13303 of 1978) in which it is held that mere dishonesty will not make the act an act involving moral turpitude. The Division Bench answered the question that for holding that a misconduct involved a moral turpitude the misconduct must first be an offence under the law and such offence must involve moral turpitude.

6. In this case apart from stating that the charge is framed for an act involving moral turpitude, there is nothing in the counter regarding the nature of the act. The learned counsel for the petitioner pointed out to the affidavit filed in support of the stay petition, in the present writ petition. It is difficult to take note of the affidavit filed in support of the miscellaneous petition for deciding whether the first respondent had arrived at a decision in accordance with law. Even assuming that one has to take note of the abusive language, which is referred to in the affidavit it cannot be construed as an offence under law and an offence involving moral turpitude. In any event, it is clear from the impugned order that there was no evidence to show the nature of the act and whether it involved moral turpitude and no opportunity was given before the petitioner decided not to pay gratuity.

7. In these circumstances, I see no reason to quash the impugned order. The writ petition is dismissed. No costs.