

(2004) 08 JH CK 0031
In the Jharkhand High Court
Case No : L.P.A. No. 143 of 2003

Manohar Singh Neech (Tak)

APPELLANT

Vs

The Regional Labour Commissioner (Central) Dhanbad-cum-
Appellate Authority and Others

RESPONDENT

Date of Decision : 11-08-2004

Acts Referred:

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

Citation : (2004) 4 JCR 320

Hon'ble Judges : P.K. Balasubramanyan, C.J;R.K. Merathia, J

Bench : Division Bench

Advocate : Chandrika Prasad, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is by the appellant, respondent No. 3 in CWJC No. 824 of 2000 (R). Respondent No. 3 was dismissed from service for gross misconduct. He challenged that under the Industrial Disputes Act and the order of dismissal was upheld. He filed a writ petition in the Patna High Court challenging that award. The writ petition was dismissed. He filed Letters Patent Appeal challenging the dismissal of the writ petition. That was also dismissed. Thus the dismissal of respondent No. 3 in the writ petition, the appellant before us, for the gross misconduct became final. Thereafter the appellant claimed that he was entitled to gratuity and moved the Controlling Authority under the Payment of Gratuity Act (the Act). The management resisted the claim by pointing out that the appellant has been dismissed from service for gross misconduct arid in terms of the relevant provision of the Act, his gratuity has been / forfeited. The Controlling authority dismissed the claim of the appellant. The appellant filed an appeal. The appellate authority allowed the appeal on the ground that there was no specific or separate order for forfeiting the gratuity and thus order the payment of gratuity.

2. The management approached this Court by filing a writ petition challenging

the decision of the appellate authority. It was contended that in terms of Section 4 with particular reference to sub-section (6) thereof, the appellant was not entitled to gratuity in the circumstances of the case. It was also pointed out that the appellate authority had not applied its mind to the question falling for decision. The learned single Judge on a consideration of the relevant aspects including the misconduct whereby the appellant was dismissed, came to the conclusion that in terms of Section 4 of sub-section (6) (b) of the Act. The appellant has forfeited his right for payment of gratuity. Thus the writ petition was allowed and the order of the appellate authority was set aside and that of the controlling authority was restored. This is what is challenged before us by the appellant.

3. It is argued on behalf of the appellant that unless there was a separate proceeding leading to forfeiting the gratuity that may be paid, the appellant would be entitled to gratuity, whatever might be the misconduct for which he was dismissed from service. We find it difficult to accept the submission. In our view, the learned single Judge has rightly interpreted the scope of Section 4, sub-section (6) (b) of the Act, and has rightly come to the conclusion that in view of the misconduct the appellant was found guilty of and the order of dismissal which was upheld by the Division Bench, he was not entitled to claim gratuity. It was contended that the appellant was acquitted in a criminal case, as can be seen from Annexure 5, the order in revision and, in view of that, gratuity could not be denied. We find no merit of this submission. It is not for us to comment on the nature of the judgment of the proceeding in the Revisional Court, but the mere fact that he was acquitted in a criminal case does not at all affect the dismissal from service for gross misconduct automatically disentitling him to gratuity in terms of the Act.

4. For the reasons aforesaid, we agree with the decision of the learned Single Judge and dismiss this Letters Patent Appeal.