
(1998) 07 MP CK 0031

In the Madhya Pradesh High Court

Case No : Writ Petition No. 203 of 1994

Mansukh Lal

APPELLANT

Vs

National Textile Corporation (M.P.) Ltd.

RESPONDENT

Date of Decision : 28-07-1998

Acts Referred:

Citation : (1999) 81 FLR 377 : (1999) 2 LLJ 265

Hon'ble Judges : Deepak Verma, J

Bench : Single Bench

Advocate : S.H. Moyal, for the Appellant; K.N. Puntambekar, for the Respondent

Final Decision : Allowed

Judgement

Deepak Verma, J.—This order shall also govern disposal of W.P. No. 133 of 1995 (Mansukhlal Seth v. National Textile Corporation (MP) Ltd.) as common questions of fact and law are involved in both these petitions.

2. For the purpose of disposal of these petitions, the facts enumerated in the aforesaid petition are taken for consideration. The petitioner was working in respondent's Kalyan Mill, Indore on the post of Dyeing Superintendent. He retired from service on October 31, 1993 on attaining the age of superannuation. On the said date, his relieving order was passed. On such order of relieving being passed, he handed over the charge to the Management on the same day.

3. The Management of Kalyan Mill, Indore on the retirement of the petitioner requested Director, Finance, National Textile Corporation (MP) Ltd., respondent herein, for releasing the funds so as to enable the Mill to make the payment of gratuity to the petitioner. The gratuity scheme has been made applicable to the workers of the respondent Mill with effect from January 1, 1986. The same is payable amongst other retiral benefits on attaining the age of superannuation. The amount of gratuity is determined as per scale laid down in the National Textile Corporation (MP) Ltd. Gratuity Scheme (hereinafter called the Scheme). The amount of gratuity is determined as per scale laid down in Clause 5 of the

said Scheme. It is equal to 15/22 days" emoluments for each completed year of service or part thereof in excess of six months subject to maximum of 16-1/2 times the emoluments, or Rs. 1,00,000/- whichever is less. Petitioner had completed 20 years of service with respondent No. 1.

4. Petitioner claims the amount of gratuity to the extent of Rs. 93,500/-. However, this amount was not paid, instead a sum of Rs. 12,300/- was deducted from the said amount and balance was paid. Petitioner's contention is that the balance amount was also paid after much delay on December 30, 1994. Petitioner therefore, in this petition claims for payment of the remaining part of the gratuity amount to the tune of Rs. 12,300/- on the ground that for no fault of the petitioner respondent was not justified in deducting the said amount.

5. While this petition was still pending respondent passed an order on October 5, 1994 directing the petitioner to pay the said amount of Rs. 12,300/- on his alleged misconduct. Against this order petitioner filed W.P. No. 133 of 1995, which is also being disposed of by this common order.

6. Respondent in both the petitions filed its reply in opposition. It has been submitted that the gratuity scheme was extended by the respondent to its employees, who are not covered under the Gratuity Act, but the petitioner is not entitled to receive the whole of the gratuity amount as he did not qualify under Clauses 3 and 4 of the said Scheme. According to the respondent, the petitioner before attaining the age of superannuation was charge-sheeted on January 7, 1993. The Enquiry Officer submitted his report in the month of December, 1993 and held the petitioner liable for his misconduct and indifferent attitude towards performance of his duties thereby putting the Corporation to financial loss. According to the respondent the total loss sustained by the respondent works out to Rs. 24,580/-. However, ultimately the Disciplinary Authority, on consideration of the material placed before him and also keeping in mind that another employee was also involved, directed that only a sum of Rs. 12,300/- be recovered from the petitioner and the remaining from the other employee. Respondent, during the course of argument submitted that the order being appealable, petitioner should have filed an appeal instead he has approached this Court in a post haste manner. Thus on the ground of availability of alternative remedy, the submission is, that the petitions deserve to be thrown on this ground. However, this ground is no more available to the respondent as both the petitions have already been admitted for final hearing.

7. In the light of the aforesaid rival contentions as advanced by the parties I have heard them at length and perused the records. After having heard the learned counsel for the parties I am of the considered opinion that both these petitions deserve to be allowed. It is pertinent to point out here that in Annexure R-1 appended in W.P. No. 203 of 1994, the details of the charge-sheet and the enquiry conducted thereon have been given, but it has not been shown to this Court that the respondent was actually put to financial loss to the extent of Rs. 24,580/-. The loss is tried to be worked out on the basis of the price at which it

would have been sold if there had not been damage to the same and the difference is sought to be recovered on the assumption that if the damaged cloth is sold then it would fetch lesser price. Thus, the price at which it was to be sold and the price at which it could have been sold after damage the difference of which is shown in Annexure R-1 is sought to be recovered. After going through Annexure R-1, I find that this has been worked out only on assumption. There is nothing on record to show that the Corporation was actually put to so much of loss. The enquiry report which could have thrown some light on the controversy has not been filed on record by either of the parties. Thus, I find, no cogent and valid reasons which necessitated the respondent to deduct a sum of Rs. 12,300/- from petitioner's gratuity. The said order deserves to be quashed. It may also be mentioned here that the enquiry report has also been submitted much after the petitioner had already retired from service i.e. on December 20, 1993.

8. Petitioner has placed reliance on a Division Bench judgment of this Court (unreported) passed on February 28, 1994 in W.P. No. 1337 of 1994 (D.K. Chaturvedi v. NTC (MP) Ltd.), touching the same issue as also on a decision reported in Chandulal v. Director (Finance & Accounts) MPEB Jahalpur II (1991) Current Service Journal 33 (DB). In this judgment it has been held that it is now well settled that payment of pension and gratuity is no longer a bounty conferred by the State. It is a right of one who has served. While deciding that petition the D.B. has placed reliance on a judgment of the Supreme Court in State of Kerala v. Padmnabhan Nair. 1985 (50) FLR 145. To advance contention in this regard further reference has also been made to a judgment of the Supreme Court in High Court of Punjab and Haryana Vs. Amrik Singh, submitted that the relation of Master and Servant would come to an end after the employee has attained the age of superannuation.

9. To repel the submission as advanced by the learned counsel for petitioner apart from other submissions which have been mentioned above learned counsel for respondent has placed reliance on a judgment of the Supreme Court reported in State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, to contend that if disciplinary proceedings against an employee of the Government are initiated in respect of misconduct by him and he retires from service on attaining the age of superannuation before the completion of the proceedings it is open to the State Government to direct deduction in his pension on the proof of the allegations made against him. If the charges during the disciplinary proceedings or if the disciplinary proceedings are quashed it is not permissible to the State Government to direct deduction in the pension on the same allegations but if the disciplinary proceedings could not be completed and if the charges of serious allegations are established, which may have bearing on the question of rendering efficient and satisfactory service, it would be open to Government to take proceedings against the Government servant in accordance with Rules for deduction of pension and gratuity. The ratio of this judgment is not in dispute. However, in absence of any specific Rule applicable to the petitioner's service as per the Scheme, no such deduction was permissible.

10. On account of the foregoing discussions I find that this and the connected petition deserve to be allowed with costs. As a necessary consequence the petitioner would be entitled to a further sum of Rs. 12,300/-towards gratuity payable to him by the respondent. The impugned order Annexure P-5 dated October 5, 1994 in W.P. No. 133 of 1995 is hereby quashed and set aside. Counsel's fee Rs. 500/- in each, if certified. Security deposit, if any, be refunded to the petitioner after its due verification.