
(1992) 11 MP CK 0005
In the Madhya Pradesh High Court
Case No : M.P. No. 2026 of 1984

M.P. State Road Transport Corporation	APPELLANT
Vs	
Dy. Labour Commissioner and Others	RESPONDENT

Date of Decision : 06-11-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 4(6)

Citation : (1999) 3 LLJ 1273

Hon'ble Judges : R.P. Awasthy, J; D.M. Dharmadhikari, J

Bench : Division Bench

Judgement

D.M. Dharmadhikari, J.—The petitioner M. P. State Road Transport Corporation, (hereinafter referred to as "the employer") challenges in this petition under Article 227 of the Constitution of India, the impugned orders Annexure-D, dated June 27, 1980 of the Controlling Authority under the Payment of Gratuity Act, 1972 and Annexure-P dated August 19, 1983 of the appellate authority under the said Act, holding the employee-respondent No. 3 as entitled to payment of gratuity in the sum of Rs. 1,987.50.

2. The learned counsel appearing for the petitioner-employer submits that gratuity is payable under the Act to an employee for unblemished service and it can be forfeited if the employee is found to be guilty of a misconduct or of any offence involving moral turpitude. Reliance is placed by the learned counsel on the provisions contained in Section 4 (6) (b) of the Act and the decision of the Supreme Court in the case of *The Management of Tournamulla Estate v. Workmen* 1973 AIR SC 2344. The learned counsel points out from the record of the petition that the respondent employee was charge-sheeted for carrying passengers without ticket as a conductor of the bus on which he was working. The domestic enquiry was held and his services were dismissed. The dismissal of his services was upheld by the Labour Court, as also by the Industrial Court by orders marked as Annexures-A and A-1, to the petition.

3. The Controlling Authority, under the Act, by the impugned order dated June 27, 1980 (Annexure-D), repelled the contention advanced on behalf of the employer and relying on a decision of Division Bench of this Court in the case of *Rajdeo Pooranlal v. State Industrial Court, Indore* and Anr. 1979 M.P.L.J. 198 held that the charge held to have been proved against the employee of carrying passengers without ticket does not amount to an offence or misconduct amounting to moral turpitude. Directions were, therefore, issued by the Controlling Authority for payment of gratuity to the employee.

4. On the same reasoning the appellate Authority also, by the impugned order dated August 19, 1983 (Annexure-F) held the employee entitled to the payment of gratuity.

5. We have heard the learned counsel appearing for the employee. The employee-respondent No. 3, although noticed by S. P.C. has chosen not to appear in this Court. He also did not appear before the appellate authority. We have perused the provisions contained in Section 4 (6) (b) of the Payment of Gratuity Act, 1972. From the aforesaid provisions, it is clear that amount of gratuity can be wholly or partially forfeited if the employee has been terminated for an act which constituted an offence involving moral turpitude. In the present case it is not in dispute that the services of respondent-employee were terminated after a charge-sheet on the alleged misconduct that he carried 37 passengers without ticket and misbehaved with the checking staff. The decision of the Division Bench reported in the case of *Rajdeo* (supra) could be of no help to the employee claiming gratuity. The Controlling Authority and the Appellate Authority did not properly construe the ratio of that case which is, according to us clearly distinguishable. There, the question involved was only whether the services of a conductor, who was convicted and released on probation by the Criminal Court, could be terminated by the employer without holding any enquiry, in terms of the Standing Orders applicable as conditions of his service. It is in relation to that controversy that some observations were made by the Division Bench in that case. In that case the plea of the conductor was that there was mere negligence or omission on his part in issuing tickets to the passengers concerned. This circumstance weighed with the Court to hold that it necessitated holding of a domestic enquiry into misconduct. The aforesaid decision of the Division Bench could not have been relied upon by the respondent authorities to hold that in the present case the misconduct alleged did not amount to a misconduct involving moral turpitude. The respondent workman was dismissed from service for carrying 37 passengers without ticket and was also found to have misbehaved with the checking staff. He has, therefore, not rendered unblemished services and the provisions of Section 4 (6) (b) of the Act empowered the employer to wholly or partially forfeit the gratuity payable to such an employee.

6. In view of the aforesaid discussion, the impugned orders of the Controlling Authority and the Appellate Authority under the Act cannot be sustained. The respondent employee had served only for two years and in that short span was

found guilty of misconduct and was terminated. There was, therefore, justification for the employer to forfeit the gratuity payable to him.

7. Consequently, the petition succeeds and is hereby allowed. The impugned order of the Controlling Authority dated June 27, 1980 (Annexure-D) and that of the Appellate Authority dated August 19, 1983 (Annexure-F) are hereby quashed. Since the respondent-employee has not appeared to oppose the petition, we make no order as to costs. The amount of security, if deposited, be refunded to the petitioner.