

(2016) 09 BOM CK 0079

In the Bombay High Court

Case No : Writ Petition No. 1026 of 2016

M/s. Force Motors Limited

APPELLANT

Vs

Mr. Subhash Simratmal Gugale

RESPONDENT

Date of Decision : 07-09-2016

Acts Referred:

Citation : (2016) 151 FLR 1012

Hon'ble Judges : R.M. Savant, J.

Bench : Single Bench

Advocate : Manoj Sawardekar i/by P.G. Kathane, Advocates, for the Respondent; Vishal Talsania a/w Radha Ved i/by Sanjay Udeshi and Co, for the Petitioner

Final Decision : Allowed

Judgement

R.M. Savant, J.(Oral) - Rule. Having regard to the challenge raised made returnable forthwith and heard.

2. The writ jurisdiction of this Court is invoked against the order dated 02.12.2015 passed by the Appellate Authority under the Payment of Gratuity Act, 1972 (For short "the said Act"). By which order, the Appeal filed by the Petitioner herein came to be dismissed and resultantly, the order passed by the Controlling Authority dated 29.09.2014 came to be confirmed.

3. The Petitioner herein is in the business of manufacturing of Automobiles and has its factory in Pune. The Respondent No.1 herein was employed with the Petitioner as a senior clerk in the security department. It seems that the Respondent No.1 had an altercation with another workman in the security department and in the said altercation which took place, the Respondent No.1 and the other workman were found to be shouting and abusing each other. It seems that the two workmen indulged in a physical scuffle, as a result of which they suffered grievous injuries, for which they had to be taken to the medical center to medical attention. The said conduct of the workmen resulted in

disturbing the atmosphere at the workplace and resulting in a disorderly and undisciplined scene at the workplace. On account of such conduct, the Respondent No. 1 and other workman both suspended. Both of them charge-sheeted on 15.11.2010 under the relevant clauses of the model standing orders, interalia for riotous and disorderly behaviour. An enquiry was commenced against the two workmen. In which enquiry, on the basis of the material on record, the Enquiry Officer in respect of the Respondent No. 1 herein is concerned, held that the charges were proved. The reply of the Respondent No.1 to the said findings of the Enquiry Officer was considered and after taking into consideration the said reply as well as the findings of the Enquiry Officer that the services of the Respondent No. 1 came to be terminated by the order dated 12.03.2011. On the termination of his services, the Respondent No. 1 herein raised a Industrial Dispute. The said dispute has been referred to the Labour Court, Pune and bears Reference (IDA) No.9 of 2012 which is pending.

4. The Respondent No. 1 post the termination of his services was issued a show-cause notice on 16.03.2011 asking him to show cause as to why his gratuity should not be forfeited. The Respondent No. 1 replied to the said show-cause notice and the reply having not found to be satisfactory, the Petitioner informed the Respondent No. 1 by letter dated 26.03.2011 that his gratuity is being withheld in view of his dismissal from service for his riotous, disorderly and violent behaviour. The Respondent No. 1 thereafter approached the Controlling Authority under the Payment of Gratuity Act for payment of his gratuity till the date of his termination. The said application filed by the Respondent No.1 was opposed to on behalf of the Petitioner and the stand taken was that in terms of Section 4(6)(b) of the said Act, the Petitioner was entitled to withhold the gratuity as the services of the Respondent No. 1 were terminated on account of riotous and disorderly behaviour. The Controlling Authority considered the said application and has by order dated 29.09.2014 allowed the same and directed the Petitioner to pay a sum of Rs. 1,73,243/- along with simple interest at 10% per annum with effect from the date of entitlement of gratuity till actual date of payment. The gist of the reasoning of the Controlling Authority was that the Petitioner could not withhold and forfeit the gratuity without proving the loss or damage caused to it. The Controlling Authority therefore has adjudicated the application on the touchstone of Section 4(6)(a) of the said Act.

5. The Petitioner aggrieved by the said order dated 29.09.2014 passed by the Controlling Authority challenged the same before the Appellate Authority. The challenge before the Appellate Authority was to the order passed by the Controlling Authority on the ground that the Controlling Authority has proceeded on a erroneous premise that the forfeiture or withholding of the gratuity was under Section 4(6)(a) of the said Act when it was actually under Section 4(6)(b) (1) of the said Act. Having regard to the said challenge, the Appellate Authority having realised that the Controlling Authority has approached the application on the basis of a wrong provision sought to uphold the order passed by the Controlling Authority on the ground that if it was the case of the Petitioner that

the gratuity has been withheld on account of riotous, disorderly or indecent behaviour, it was expected of the Petitioner i.e. the employer to approach Police and file an FIR depending the gravity of the case and thereafter the Police would investigate the matter and take further action as per the provisions of the IPC and Court has to decide the offences of the said Act as proved or not proved. Hence, the Appellate Authority has given a dimension to Section 4(6)(b) of the said Act which is not contemplated by the statute. The Appellate Authority therefore can be said to have compounded the matter further by not adjudicating the application on the basis of facts which were already on record, namely that the services of the Respondent No. 1 terminated pursuant to the enquiry which were held, wherein the charge levelled against the Respondent No. 1 was interalia as regards riotous, disorderly and indecent behaviour. In so far as the Controlling Authority is concerned, the judgments which were cited before it on behalf of the Respondent No. 1 i.e. the Applicant were all involved Section 4(6) (a) of the said Act and not Section 4(6)(b) of the said Act. The Controlling Authority has also wrongly interpreted the judgment of a Learned Single Judge of the Karnataka High Court in the case of Bopalaswamy (since deceased by LRs.) and another v. Management of Usha Martin Industries and another reported in 2001(3) L.L.N. 213. In fact, in the said case the contentions based on Section 4(6)(b) of the said Act which was upheld by the Appellate Authority was rejected by the Learned Single Judge of the Karnataka High Court and the order passed by the Controlling Authority was accordingly confirmed. Hence the judgment in Bopalaswamy's case (supra) cannot be a germane for the proposition that unless the loss or damage quantified, the gratuity cannot be withheld under Section 4(6) (b)(1) of the said Act. As indicated above, the Appellate Authority has compounded the matter further by prescribing a condition which is not envisaged under the statute. Both the Authorities below decided the matter oblivious of the fact that a reference is pending in respect of the termination of the services of the Respondent No. 1, wherein the order of termination passed against the Respondent No. 1 based on the charges of disorderly, riotous and indecent behaviour is proved against him, is pending. The adjudication of the said reference would undoubtedly have its impact on the entitlement of the Respondent No. 1 to gratuity.

6. In my view, for the reasons afore stated, the orders passed by the authorities below i.e. the Controlling Authority as well as the Appellate Authority would have to be quashed and set aside and are accordingly quashed and set aside and the matter is relegated back to the Controlling Officer for a denovo consideration of the said application which would be on the touchstone of Section 4(6)(b)(1) of the said Act also in terms of the observations made herein above. On remand, the Controlling Authority to decide the said application expeditiously. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute, with parties to bear their respective costs.