

(2009) 01 MAD CK 0059
In the Madras High Court
Case No : Writ Petition No. 12976 of 2005

P. Varadharajan

APPELLANT

Vs

The Unit Officer, National Project Construction Corporation
Limited MRTS Unit MTP Railways Compound Behind VSNL
Government Estate and The Chairman and Managing Director
National Project Construction Corporation Limited

RESPONDENT

Date of Decision : 12-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226
NPCC Employees (Payment of Gratuity) Rules, 1975 — Rule 4, 5, 6

Citation : (2009) 2 LLJ 521 : (2009) 2 MLJ 593

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : D. Selvanbabu, for the Appellant; K.S.V. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—Petitioner seeks writ of mandamus directing the Respondents to pay Petitioner's gratuity amounting Rs. 59,258/-

together with interest at the rate of 12% p.a.

2. Petitioner was working as Assistant Executive Engineer in the 1st Respondent Office and took voluntary retirement on 15.04.1994. The

Respondents accepted the Petitioner's application for voluntary retirement and relieved the Petitioner in the afternoon on 15.04.1994. The

Petitioner had put in 19 years of service in the office of the Respondent. According to Petitioner he is entitled to Rs. 59,258/- as on the date of

voluntary retirement for the period of 19 years.

3. Case of Petitioner is that instead of his entitlement to gratuity he has not been paid gratuity by the Respondents and therefore seeks direction to

the Respondents to pay the gratuity amounting Rs. 59,258/-.

4. Learned Counsel for the Petitioner Mr. D.Selvanbabu, contended that though Petitioner is entitled to gratuity, the Petitioner was not paid the gratuity inspite of repeated demands. It was further argued that during his service no disciplinary proceeding was initiated against the Petitioner and while so the Respondents are not justified in denying payment of gratuity.

5. Placing reliance upon Prof. Arun Nigavekar, Chairman, University Grants Commission Vs. Dr. R. Natarajan, The Secretary to Government, Ministry of Human Resources Development, Department of Secondary and Higher Education, Union of India (UOI) and The Secretary to

Government, Ministry of Law, Justice and Company Affairs, Union of India (UOI), , learned Counsel for the Respondents Mr. K.S.V. Prasad,

contended that when there is undue delay the writ petitioner is not entitled to the discretionary relief. Learned Counsel for the Respondents further

contended that the Petitioner very well knew that Rs. 65,625/- is due from him towards shortage.

6. At the outset, the delay in filing the writ petition is to be pointed out. The Petitioner retired on voluntary retirement in 1994. Any claim of gratuity should have been made within a reasonable time.

7. Observing that if the person approaches the writ court with inordinate delay, he would not be entitled to discretionary relief under Article 226 of

the Constitution of India, in Prof. Arun Nigavekar, Chairman, University Grants Commission Vs. Dr. R. Natarajan, The Secretary to Government,

Ministry of Human Resources Development, Department of Secondary and Higher Education, Union of India (UOI) and The Secretary to

Government, Ministry of Law, Justice and Company Affairs, Union of India (UOI), , First Bench of this Court has held as under:

...

37. It is well settled that if there is undue delay on the part of the Petitioner in filing a writ petition, he would not be entitled to the discretionary relief under Article 226 of the Constitution of India.

38. In State of Maharashtra Vs. Digambar, , the Supreme Court observed that it is well settled by the decisions of the Court that no person is

entitled to obtain equitable relief under Article 226 of the Constitution of India if his conduct is blame-worthy because of laches, undue delay,

acquiescence, waiver and the like.

39. Similarly, in *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, , it was held that when there is inordinate

delay in filing a writ petition, the High Court in its discretionary powers under Article 226 of the Constitution of India can dismiss it on this ground

without going into the merits.

40. In *Gian Singh Mann v. P and H* HighCourt AIR 1980 S.c 1894 : (1980) 4 SCC 266 a petition under Article 226 was filed by the Petitioner

about 11 years from the date on which he claimed promotion. The Supreme Court held that such inordinate delay could not be overlooked on the

ground that the Petitioner was making successive representations.

8. Conduct of the Petitioner is blame-worthy because of laches, undue delay, acquiescence, waiver and the like. Because of the delay the

Respondents are put to disadvantage in tracing out the relevant records.

9. Since the claim pertains to payment of gratuity, notwithstanding the laches I have gone into merits of the matter. The Petitioner was working as

a Section Officer in Godavari unit of Andhra Pradesh in the year 1977. At that time there was a shortage of steel, to a tune of 11.27 M.T in the

material at site in the account of the Petitioner during his tenure in the said unit. The value of the shortage steel in the year 1977 was Rs. 65,411/-

10. By letter No. Hyd/202/358 dated 06.05.1994, the Personnel Officer, the then Hyderabad Sector Office, requested the Deputy Manager

(P&A) Corporate Office, Faridabad, to recover a sum of Rs. 65,625/- from gratuity/CPF dues and sent Advice Transfer/Credit to their office,

with reference to C.O. Order No. 581563 dated 18.04.1994 in respect of the steel of 11.270 MT, valued at Rs. 65,625/- as on 06.05.1994

outstanding in the name of the Petitioner, relating to Godavari Unit.

11. By the office order dated 15.07.1994, the terminal benefits as per guidelines issued was conveyed. While referring to ex-gratia amount and

leave salary etc., the footnote refers to outstanding amount of Rs. 65,625/- from the Petitioner. The relevant endorsement regarding outstanding

amount from the Petitioner reads as under:

...To the Madras Sector Office with a request not to release the payment as a sum of Rs. 65,625/- is outstanding against him.

The above said office order dated 15.07.1994 was communicated to the Petitioner. Though the Petitioner has produced the office order dated

15.07.1994, the above endorsement has not been disclosed by the Petitioner in the typed set of papers filed by him.

12. Learned Counsel for the Petitioner has contended that as per Rule 6 (c) of the NPCC Employees (payment of gratuity) Rules, an employee

may be reduced by deduction if there is any amount due under the liability incurred by the employee of the Corporation.

13. The Payment of Gratuity Act, does not apply to the Petitioner. For making payment to such of those NPCC employees to whom the Payment

of Gratuity Act, 1972, did not apply, the Respondent Corporation had framed gratuity rules called as NPCC Employees (Payment of Gratuity)

Rules, 1975. The Rule 6 of these rules deals with ""Forfeiture of Gratuity"" it reads as follows:

6 forfeiture of gratuity.

Notwithstanding anything obtained in Rules 4 and 5.

a) the gratuity of an employee, whose services have been terminates for any act, wilful omission or negligence causing any damage or less to, or

destruction or property belonging to the Corporation, shall be forfeited to the extent of the damage or loss so caused;

b) the gratuity payable to an employee shall be wholly forfeited,

i) if the services of such employees 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.

c) the gratuity payable to an employee may be reduced by deduction there from of any amount due under a liability incurred by the employee to

the Corporation....

14. By perusal of proceedings dated 17.11.1995, it is seen that the committee was of the opinion that there is no justification to write off the further

shortage of 11.691 MT which is not accounted for and the ATD issued against the Petitioner for the recovery appears to be justified. The

committee was of the view that the quantity mentioned in ATD is 11.270MT which now is worked out as 11.691MT and is likely to be increased

by 2.680MT which could not be verified by Hyderabad Office due to non-availability of records and therefore it was requested not to release any further payment to the Petitioner till the matter is finalised.

15. When the Committee had taken a view that there is no justification to write off the shortage, exercising jurisdiction under Article 226 of the

Constitution of India, this Court cannot take a different view. More so, when the Petitioner has not taken any steps to make a claim at an earlier

point of time. Having regard to the view of the Committee and Rule 6 (c) of NPCC Employees (Payment of Gratuity) Rules, the Petitioner is not

entitled to the relief sought for in this writ petition.

16. In the result, the writ petition is dismissed. No costs.