

(2015) 04 MP CK 0112
In the Madhya Pradesh High Court
Case No : Writ Petition No. 7156 of 2014

S.A. Baigh

APPELLANT

Vs

Madhya Pradesh Khadi Tatha Gram Udyog Board

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Constitution of India, 1950 — Article 300 A
Madhya Pradesh Khadi Tatha Gramodyog Adhiniyam, 1978 — Section 29
Payment of Gratuity Act, 1972 — Section 4(6)

Citation : (2015) 04 MP CK 0112

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : M.S. Bhatti, Learned Counsel, for the Appellant; H.R. Upadhyay, Learned Counsel, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Sanjay Yadav, J.—Heard.

2. Petitioner is aggrieved of non-grant of gratuity amounting to Rs. 35,000/-. The reasons as borne out from record being pendency of three Lokayukta cases and three departmental enquiries.

3. Petitioner retired as Deputy Director, Madhya Pradesh Khadi Tatha Gram Udyog Board w.e.f. 30.11.2012 on attaining the age of superannuation. The Board is a statutory body constituted under the provisions of Madhya Pradesh Khadi Tatha Gram Udyog Adhiniyam, 1978 (hereinafter referred to as "the 1978 Act"). The services therein are non-pensionary. That, as per Regulation, known as Madhya Pradesh Khadi Tatha Gramodyog Regulation, 1980 framed under Section 29 of the 1978 Act, following Rules framed under Order 309 of the Constitution of India as applicable to members belonging to State service are made applicable mutatis mutandis, viz. M.P. Civil Services (Leave) Rules, 1977; M.P. Civil Services (Conduct) Rules, 1965; M.P. Civil Services (Medical Attendance) Rules, 1958; M.P. Civil Services Travelling Allowance and Daily

Allowance Rules; M.P. Civil Services (General Condition of Service) Rules, 1961; M.P. Civil Services (Classification, Control and Appeal) Rules, 1966.

4. Apparently, since the Board is not a pensionable establishment, Madhya Pradesh Civil Services (Pension) Rules, 1976 are not adopted. The gratuity, however, is governed by the Gratuity Payment Scheme brought in vogue by the Board vide resolution No. 19 passed in its 7th meeting on 21.03.1982 (brought on record as Annexure P/3). Clause 1 and 2 which are relevant in the present context are reproduced:

"1. Gratuity will be granted for good, efficient and faithful service to whole-time employees on the regular establishment of the M.P. Khadi and Village Industries Board and shall exclude the following:-

- 1) Casual and non-regular employees.
- 2) Government servants and others employed on deputation terms.
- 3) Employees on contract basis.
- 4) Apprentices and Trainees.
- 5) Re-employed persons.
- 6) Schematic Staff.
- 7) Honorary workers.
- 8) Honorary workers.
- 9) Employees on daily wages.
- 10) And other class of employees not specifically made eligible for this benefit.

2. Conditions:

(a) Gratuity shall be granted in the following cases:-

- i) Discharge on abolition of post;
- ii) Permanent incapacity due to bodily or mental infirmity;
- iii) Superannuation (i.e. On the attainment of 58 years of age in the case of class I, II, III and 60 years in the case of class IV).
- iv) Retirement/Resignation after 30 years qualifying service.

(b)(i) Gratuity will not be paid to an employee who resigns from his/her service except as provided in paragraph 2(a)(iv) above, or whose services are terminated for misconduct, insolvency or inefficiency.

(ii) Except in the case of death, the gratuity will be admissible only after 5 years" qualifying service.

"Qualifying Service" referred to above, will mean all service rendered under the

Board after completion of 18 years of age and shall include the past services in the M.B. Gramodyog Samiti and M.B. Khadi and Village Industries Board provided such service is continuous, except the period of service rendered such service is continuous, except the period of service rendered as apprentice and extraordinary leave without leave salary."

5. Relying on Clause 2 it is contended that gratuity can be withheld in the cases enumerated under sub-clause (b) of clause 2. It is contended that though proceeded against by Lokayukta and the departmental enquiry the gratuity cannot be withheld. Reliance is placed on the judgment in *State of Jharkhand and Others Vs. Jitendra Kumar Srivastava and Another*, (2013) 9 AD 48 : AIR 2013 SC 3383 : (2014) 117 CLT 945 : (2013) 139 FLR 74 : (2013) 11 JT 351 : (2013) LabIC 3674 : (2013) 5 LLN 91 : (2013) 4 LLN 56 : (2013) 10 SCALE 310 : (2013) 12 SCC 210 : (2013) 4 SCT 429 : (2013) 114 SLJ 370 : (2013) AIRSCW 4749 : (2013) 6 Supreme 5 .

6. Respondents on their turn have contradicted the claim. It is contended that since gratuity is granted for good efficient and faithful service to whole time employee and the services of the petitioner being not unblemished as he has been subjected to departmental enquiries and three challans having been filed in the Court by Lokayukta, the services cannot be termed as good, efficient and faithful. It is further contended that the charges framed against the petitioner is in respect of the losses incurred to the Board and if found guilty the same would entail recovery which can be only from the gratuity. For these reasons it is urged that the gratuity has been withheld. Reliance is placed on the decision in *Ch. cum Man. Director Mahanadi Coalfield Ltd. Vs. Rabindranath Choubey*, (2013) 11 AD 488 : AIR 2014 SC 234 : (2013) 6 CTC 342 : (2014) 140 FLR 303 : (2013) 14 JT 332 : (2014) LabIC 101 : (2013) 5 LLN 65 : (2013) 13 SCALE 319 : (2014) 3 SCJ 251 : (2014) 1 SCT 267 .

7. Considered the rival submissions.

8. The issue which crops up for consideration is whether the respondents, in absence of any specific provisions are justified in withholding the gratuity on the ground that the petitioner is facing criminal charges and the departmental enquiries wherein there is possibility of recovery in favour of department.

9. The gratuity and pension, as is settled, are not bounties. An employee earns these benefits by dint of good, efficient and faithful service. It is a right of an employee and the payment of it does not depend upon the discretion of the Authorities but is governed by Rules [please see: *D.S. Nakara and Others Vs. Union of India (UOI)*, AIR 1983 SC 130 : (1983) 1 LLJ 104 : (1982) 2 SCALE 1213 : (1983) 1 SCC 305 : (1983) 2 SCR 165 : (1983) 1 SLJ 131 . That, being hard earned benefit and is in the nature "property" in the hand of the employee, as held in *Jitendra Kumar Shrivastava (supra)*, "cannot be taken away without the due process of law as per provisions of Article 300 A of the Constitution of India."

10. Applying these principles in the present case, except in one departmental enquiry there is no finding against the petitioner that because of his unbecoming conduct, the Board has incurred a loss. However, even if it is presumed that the Board may incur a loss because of alleged misconduct, than also as per scheme the respondents cannot withhold or recover the amount from gratuity, because of clause 2(b) of the scheme which permits forfeiture of gratuity only in case where the employee is terminated for misconduct, insolvency or inefficiency. Since none of these criteria gets fulfilled in the case at hand. The withholding of gratuity or recovery therefrom is impermissible.

11. So far as reliance on the decision in Rabindranath Choubey (supra) is concerned the said case turns on its own fact and has no applicability in the case at hand because of non-applicability of section 4(6) of the Payment of Gratuity Act, 1972 as the petitioner is governed by the scheme framed by the respondent Board.

12. Lastly, during course of hearing learned counsel for the respondent though submits that the scheme of gratuity in vogue since 1982 has since been superseded, however, the contention is not substantiated, therefore, is not taken further and rejected at the outset.

13. Having thus considered, the action of respondents in withholding the gratuity cannot be approved. Consequently, the petition is allowed with a direction to the respondents to settle the gratuity in favour of the petitioner within three months. The petitioner, however, will not be entitled for interest thereover , for the reasons that no material is brought on record to establish the delineate on behalf of respondents who under bonafide understanding of the provisions had withheld the gratuity because of pendency of criminal cases and the departmental enquiry.

14. In the result petition is allowed to the extent above. There shall be no costs.