(2018) 07 CAL CK 0160

In the Calcutta High Court

Case No : Writ Petition No. 4229 (W) of 2018

State Bank of India & Ors. — APPELLANT

Vs

Shri Ratan Kumar Rababi & Ors. — RESPONDENT

Date of Decision : 30-07-2018

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4, 4(1), 4(6)
State Bank of India Officers' Service Rules, 1992 — Rule 19(3)

Citation : (2018) 07 CAL CK 0160

Hon'ble Judges : ARINDAM SINHA, J

Bench : Single Bench

Advocate : Soumya Majumder, Susanta Pal, Sudeep Pal Chouduri, Jagadish Ranjan Das

Final Decision : Dismissed

Judgement

By order dated 22nd August, 2016 Controlling Authority in directing forfeiture of gratuity against respondent no.1 had observed, inter alia, said

respondent had compulsorily retired from service on 30th November, 2011. Order of Disciplinary Authority came in August, 2012 by which there was

award of major punishment of removal from service as well as forfeiture of gratuity. Against this order of Controlling Authority, said respondent had

come before Deputy Chief Labour Commissioner (Central), Kolkata, in appeal. The Authority passed order dated 14th December, 2017. In directing

payment of gratuity along with interest, the Authority took cognizance of above fact found by Controlling Authority. It held, services having been

terminated by superannuation on 30th November, 2011, order for withholding gratuity came more than eight months later. Employer was due to pay or

deposit the gratuity amount within one month from date of termination.

Mr. Majumder, learned advocate appears on behalf of petitioner. He demonstrates from impugned order, service of respondent no.1 was extended as

per Rule 19(3) of State Bank of India Officersâ?? Service Rules (SBIOSR) for limited purpose of completing of enquiry proceedings. An employee

becomes entitled to payment of gratuity on termination of his employment after he has rendered continuous service for not less than 5 years as

provided under section 4 of Payment of Gratuity Act, 1972. By operation of rule invoked, service stood extended. Termination was by order of

Disciplinary Authority 10th August, 2012. One month thereafter said respondent would become entitled to payment of gratuity subject to provision in

sub-section (6) of section 4. Provision in sub-section (6) overrides provisions in sub-section (1) of section 4. Order of Disciplinary Authority was

removal from service and forfeiture of gratuity, confirmed in appeal as well as by Controlling Authority on the question of forfeiture. This the

Authority had failed to appreciate and thus committed perversity.

Mr. Majumder submits further, the Authority relied on judgment of Supreme Court in Jaswant Singh Gill versus Bharat Coking Coal Ltd. and others

reported in (2007) 1 Supreme Court Cases 663. View taken therein is not settled position in law as the question has been referred to larger Bench of

Supreme Court by judgment in Chairmancum-Managing Director Mahanadi Coalfield Limited versus Rabindranath Choubey reported in (2013) 16

Supreme Court Cases 411. He submits, it is not a settled position in law regarding whether Disciplinary Authority has necessary power to impose

penalty of dismissal upon respondent even after his retirement but by judgment dated 22nd December, 2017 a Division Bench of this Court in A.P.O.

490 of 2017 (United Bank of India versus Rana Mazumder & Ors.) had set aside interim order for payment of gratuity while order of dismissal made

on disciplinary proceedings continuing after age of retirement was pending challenge before Appellate Authority.

The only point for consideration is whether or not order impugned contains a possible view on the question regarding employerâ??s right to impose

major penalty upon employee on conclusion of disciplinary proceedings beyond service tenure of employee. Facts are that Rule 19(3) of SBIOSR

stood invoked since respondent no.1 achieved age of superannuation during continuation of disciplinary proceedings. In Jaswant Singh Gill (supra) similar rule of holding coal company stood invoked. Supreme Court considered clauses (a) and (b) in sub-section 6 of section 4 of the Act. By that

judgment said Court declared provisions of the Act must prevail over the rules. Penalty can be imposed so long an employee remains in service. Even

if a disciplinary proceeding was initiated prior to attaining age of superannuation, in the event employee retires from service, question of imposing

major penalty by removal or dismissal from service would not arise. Rule no doubt provides for continuation of a disciplinary proceeding despite

retirement of employee if the same was initiated before his retirement but the same would not mean that although he was permitted to retire and his

services for the said purpose had not been extended, a major penalty can be imposed. A statutory right accrued, thus, cannot be impaired by reason of

a rule which does not have the force of a statute, the rules in any event not providing for withholding of retiral benefits or gratuity.

For the purposes of this writ petition following passages from Rabindranath Choubey (supra) are reproduced below:-

â??21. It is thus clear that the question as to whether penalty of dismissal could be imposed after retirement was not categorically raised or dealt with

in Ram Lal case. No doubt, penalty of dismissal was inflicted upon the employee in that case. But it was not specifically or in clear terms contended

that such a penalty could not be imposed on an employee who is already permitted to retire. At the same time, innuendo, the judgment gives a

semblance of indication that such a penalty is permissible because of the reason that as per the rules, for the purpose of enquiry, the employee shall be

deemed to be in service. As a sequitur, one can deduce the principle that when the Rules, by creating fiction, treat the officer still in service, albeit for

the limited purpose of the continuance and conclusion of such proceedings, then any of the prescribed penalties, including dismissal, can be imposed.

â?¦ â?¦ â?¦â??

â??22. The issue which confronts us in the instant appeal is as to whether gratuity can be withheld in the wake of Rule 34 of the CDA Rules when

examined in juxtaposition with the provisions of the Gratuity Act. To put it otherwise, whether in the scheme of the Gratuity Act, gratuity has to be

necessarily released to the employee concerned on his retirement even if departmental proceedings are pending against him. We find that Jaswant

Singh Gill case directly answers this question, that too in the context of these very CDA Rulesâ?¦ â?¦ ..â??

â??23. It is the case of the appellant that in the charge-sheet served upon the respondent herein, there are very serious allegations of misconduct

alleging dishonestly causing coal stock shortage amounting to Rs. 31.65 crores, and thereby causing substantial loss to the employer. If such a charge

is proved and punishment of dismissal is given thereupon, the provisions of Section 4(6) of the Payment of Gratuity Act would naturally get attracted

and it would be within the discretion of the appellant to forfeit the gratuity payable to the respondent. As a corollary one can safely say that the

employer has right to withhold the gratuity pending departmental inquiry. However, as explained above, this course of action is available only if

disciplinary authority has necessary powers to impose the penalty of dismissal upon the respondent even after his retirement. Having regard to our

discussion above of Jaswant Singh Gill and Ram Lal Bhaskar, this issue needs to be considered authoritatively by a large Bench. We, therefore, are of

the opinion that the present appeal be decided by a Bench of three Judges.â??

This Court finds in Rabindranath Choubey (supra) Supreme Court while referring the question to a larger Bench found Jaswant Singh Gill (supra) to

have directly answered the question. As such, this Court has no hesitation in holding, therefore, impugned order speaks of a possible view. So far as

Rana Mazumder (supra) is concerned that was view expressed by Division Bench on a question of paying out gratuity amount during pendency of

appellate proceedings regarding major punishment imposed along with forfeiture of gratuity.

That was satisfaction in the context regarding balance of convenience and irreparable injury for passing interim order. It does not aid petitioner in its

application to impugned order for latter to be termed a view no reasonable person can take in the facts and circumstances. For reasons aforesaid the

writ petition is found without merit and same is dismissed. Mr. Pal, learned advocate prays for stay of operation of this order. Prayer is considered and

rejected.