

(2023) 09 CAL CK 0077
In the Calcutta High Court
Case No : W.P.A. No. 16064 Of 2021

Surendra Prasad	Vs	APPELLANT
Union Of India & Ors.		RESPONDENT

Date of Decision : 21-09-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 120, 120B, 420
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)
Payment of Gratuity Act, 1972 — Section 4(6), 4(6)(a), 4(6)(b), 4(6)(b)(ii)

Citation : (2023) 09 CAL CK 0077

Hon'ble Judges : Shekhar B. Saraf, J

Bench : Single Bench

Advocate : Debasish Saha, Srabonti Das, Kamal Kumar Chattopadhyay

Final Decision : Allowed

Judgement

Shekhar B. Saraf, J

1. The instant writ petition has been filed by the petitioner, Surendra Prasad praying for writ of and/or a writ in the nature of Mandamus commanding the respondents to set aside the order dated March 16, 2018 passed by the Deputy Chief Labour Commissioner (Central), Asansol, West Bengal (hereinafter referred to as 'Deputy Chief Labour Commissioner') and consequently affirm the order of the Assistant Labour Commissioner, Raniganj/Durgapur (hereinafter referred to as 'Assistant Labour Commissioner') passed on May 18, 2017. The petitioner has also prayed for a writ of and/or a writ in the nature of Mandamus directing the respondents to pay his due gratuity along with interest as may be applicable.

Facts:

2. I have laid down the factual matrix of the instant case below:

a. The petitioner joined service as an AG-III(D) in Food Corporation of India (hereinafter referred to as 'FCI') on January 31, 1978. The petitioner was first

promoted to the post of AG-II(D) and then to the post of AG-I(D) in 2001. The petitioner was depot-in-charge/overall in-charge of two sheds at F.S.D. Chanpatia.

b. In 2012, a physical verification of such sheds was conducted by a team of officials of District Office, FCI, Champaran (Motihari), Regional Office, Patna and Zonal Office, Kolkata team where a shortage of food grains was found. Subsequently, the FCI, Zonal Office, Kolkata and FCI Headquarters, New Delhi conducted an audit of accounts of the depot. The petitioner, along with other officials, was placed on suspension by the General Manager, FCI on June 1, 2012, and the suspension was revoked on October 17, 2012. After such revocation, the petitioner was posted at FCI District Office, Suri (West Bengal) and thereafter at the depot in Abdarpur, West Bengal.

c. On January 19, 2013, a charge sheet was issued against the petitioner and disciplinary proceedings were initiated. Soon after, the petitioner superannuated on November 30, 2013. Following were the findings of the inquiry officer which were mentioned in the order of the General Manager, Regional Office, Patna dated August 31, 2015:

S.

No.

Name &

Designation of CO

Conclusion/Findings

1.

Sri Surendra Prasad, Ex-AG- I(D)

A. Article I & II of Memorandum No.

Vig-2(1449)/03/2012/Part dated January 19, 2013, fully proved

B. The charges of excess payment of Rs. 1,12,88,153/- (Rupees One Crore Twelve Lacs Eighty-Eight Thousand One Hundred and Fifty- Three only) made to H/T contractor

not sustained by listed documents of Addendum No. Vig-2(1449)/03/2012/Part dated January 6, 2015

C. Charges of excess payment of Rs.

34,59,715/- (Rupees Thirty-Four Lacs Fifty-Nine Thousand Seven Hundred and Fifteen only) made to H/T contractors as per Addendum No. Vig-2(1449)/03/2012/Part dated January 6, 2015, not found tenable.

D. Charges of fictitious payment of Rs.

2,60,077/- (Rupees Two Lacs Sixty Thousand and Seventy-Seven only)
to H/T contractors as per Addendum
No. Vig-

2(1449)/03/2012/Part dated

January 6, 2015, not found tenable.

d. The General Manager Regional Office, Patna, FCI, taking heed of the
aforementioned findings of the inquiry officer, issued the following punishment
against the petitioner:-

S.

No.

Name &

Designation of CO

Conclusion/Findings

1.

Sri Surendra Prasad, Ex-AG- I(D)

"Reduction to lower post of AG-III(D) at minimum of the reduced
post of AG- III(D) along with token recovery of Rs. 1,00,000/- (Rupees
One Lac only) from the retiral dues other than gratuity"

e. The petitioner contended that he did not receive gratuity and therefore
approached the Regional Labour Commissioner (Central), Kolkata for a payment
of gratuity worth Rs. 10,00,000/- (Rupees Ten Lacs only). The Regional Labour
Commissioner (Central), Kolkata transferred the said petition to the Assistant
Labour Commissioner who delivered an order dated May 18, 2017. The said
order of the Assistant Labour Commissioner gave directions for a payment of Rs.
3,48,358/-(Rupees Three Lacs Forty-Eight Thousand Three Hundred and Fifty-
Eight only) as gratuity to the petitioner.

f. FCI preferred an appeal against the order of the Assistant Labour
Commissioner, dated May 18, 2017, before the Deputy Chief Labour
Commissioner. FCI produced the following materials for the Deputy Chief Labour
Commissioner's perusal:

(i) That the petitioner had a police case registered against him at PS, Chanpatia
bearing case no. 170/2010 dated July 17, 2010;

(ii) That a CBI case bearing No. RC 203 2012 A 0028 dated December 27, 2012,
had been registered against the petitioner;

(iii) That another police case bearing No. 512/2004 dated December 12, 2004
under Section 120 of the Indian Penal Code, 1860 was also pending against him;

(iv) That a CBI case bearing No. RCO23 2014 A0018 dated August 30, 2014, under Section 120B and 420 of the Indian Penal Code, 1860 and under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 had been registered by CBI/ACB/Patna against the petitioner;

(v) That an amount of Rs. 2,47,523/- (Rupees Two Lacs Forty-Seven Thousand Five Hundred and Twenty-Three only) was outstanding against the petitioner for which a demand notice under Ref. No. A/23(Vig)/NDC/2006-15/261(II) dated June 6, 2016 had been served on him;

g. The Deputy Chief Labour Commissioner considered the aforementioned material placed before him as evidence of the petitioner's guilt and deemed this to be a case of "offence involving moral turpitude" as stipulated in Section 4(6)(b) (ii) of the Payment of Gratuity Act, 1972. The order of the Deputy Chief Labour Commissioner dated March 16, 2018, allowed the appeal filed by FCI, set aside the previous order of the Assistant Labour Commissioner, and rejected the claim of the petitioner of Rs. 10,00,000/- (Rupees Ten Lacs only).

h. Following this, the petitioner filed a writ petition, namely C.W.J.C. No. 12767 of 2018 before the Hon'ble High Court at Patna for quashing the order passed by the Deputy Chief Labour Commissioner dated, March 16, 2018. On November 5, 2020, the learned Single Judge of the High Court at Patna dismissed the writ petition on jurisdictional grounds without going into the merits of the case.

i. Being aggrieved and dissatisfied by the order dated March 16, 2018, of the Deputy Chief Labour Commissioner, the petitioner has filed the instant writ petition under Article 226 of the Constitution of India before this Court.

Contentions

3. The counsel for the petitioner has made the following submissions:-

a. It is the contention of the petitioner that the Deputy Chief Labour Commissioner failed to appreciate the scope of Section 4(6) of the Payment of Gratuity Act, 1972 and that payment of gratuity is not a gesture of charity, rather is a recognized statutory right to be provided in favour of the employee.

b. Furthermore, the petitioner submitted that he was never terminated from service and therefore is entitled to gratuity. The fact that the petitioner was never terminated from service was not considered by the Deputy Chief Labour Commissioner and therefore the order dated March 16, 2018 is bad in law.

c. The petitioner also submitted that the precedents specified and the discussion pertaining to the meaning and scope of "moral turpitude" by the Deputy Chief Labour Commissioner in the order dated March 16, 2018, does not have any bearing on the facts and circumstances of the present case.

d. Finally, the counsel for the petitioner submitted that the respondent authorities have attempted to falsely implicate the petitioner in cases including G.R. Case No. 5373/2004 where he has been acquitted on all counts by the

learned Judicial Magistrate-I-cum-Additional Munsif.

4. The counsel for the respondents has made the following submissions:-

a. It has been argued that the petitioner has multiple cases against him including CBI cases, RC No. 203 2012 A 0028 dated December 27, 2012, and another CBI case registered by CBI/ACB/Patna bearing RC No. 023 2014 A0018 dated August 30, 2014. The respondents have also highlighted that two police cases at the PS Chanpatia, including case No. 512 of 2004 dated December 12, 2004, and case No. 170 of 2010 dated July 10, 2010, have been registered against the petitioner. Furthermore, an amount of Rs. 2,47,523/- (Rupees Two Lacs Forty-Seven Thousand Five Hundred and Twenty-Three only) has remained outstanding against the petitioner for which a demand notice dated June 6, 2016, has been served. Keeping all such issues in mind, the respondent authorities have argued before this Court that the petitioner did not serve faithfully to his employer, i.e., FCI and the same would count as offence constituting "moral turpitude" within the scope of Section 4(6) of the Payment of Gratuity Act, 1972.

b. The respondent authorities have argued that the petitioner's pay was reduced to Rs. 9,300/- (Rupees Nine Thousand Three Hundred only) after the penalty order dated August 31, 2015 and that the petitioner has the aforementioned cases pending against him which are both grounds for finding the petitioner guilty of "offence involving moral turpitude". The respondents submit that the Deputy Chief Labour Commissioner had taken consideration of both such issues and therefore has correctly denied gratuity to the petitioner by invoking Section 4(6)(b)(ii) of the Payment of Gratuity Act, 1972.

c. The respondent authorities have finally submitted that the present writ petition is not maintainable in law as the Hon'ble High Court at Patna already dismissed the previous writ petition namely C.W.J.C. No. 12767 of 2018 on November 5, 2020, where the Hon'ble High Court at Patna did not grant leave to the petitioner to initiate any fresh proceedings on the same cause of action.

Observation and Analysis

5. I have heard the learned counsels appearing for both parties and perused the materials on record. Before this Court considers the focal issue in the present writ petition it is imperative that the Deputy Chief Labour Commissioner's order dated March 16, 2018, is analysed.

6. The Deputy Chief Labour Commissioner as per order dated March 16, 2018, had deemed this to be a case of "offence involving moral turpitude" where the alleged offence was the pendency of the criminal and CBI cases against the petitioner. Relevant paragraphs of the Deputy Chief Labour Commissioner's discussion over the petitioner's alleged criminal and CBI cases have been reproduced below:-

"During the course of the proceedings he gave a very funny statement viz. the cases and police reports against him are mere allegations. It is very strange!!!

How a history sheeter can give such a funny and irresponsible statement!!!

He faced disciplinary inquiry, and I am sure, he must have got opportunities to defend himself. After conclusion of the inquiry, he has been awarded with punishments. In such a situation how can he say that these are merely allegations on him!"

7. The Deputy Chief Labour Commissioner decided upon the issue of payment of gratuity depending on the possibility that the petitioner could be found guilty in the pending CBI proceedings against him. The relevant paragraph of such discussion have been reproduced below:-

"If gratuity is not paid to a normally retired person this will amount to withholding but in the present case the Respondent is a history sheeter and a person of doubtful integrity. In my considered view, such a person does not deserve gratuity. If gratuity is paid to such person, I am afraid, a fraud will be committed on the Act which the Hon'ble Legislature did not intend while passing the Act in the year 1972. If the respondent is convicted by the Hon'ble CBI Court, what then? If he is convicted of the offences it would be offence(s) constituting moral turpitude and Payment of Gratuity Act, 1972 prohibits payment of gratuity to such persons."

8. Aside from the aforementioned observations, the Deputy Chief Labour Commissioner discussed not only the etymology of "moral turpitude" but offered insight on the phrase by quoting an expansive collection of philosophers and dictionaries. The said order followed this rather drawn-out discussion over "moral turpitude" by citing judgements from a plethora of High Courts of this country. This Court does not find any reason to delve into the etymological and philosophical scope of "moral turpitude", nor does it find any relevance in the judgements cited by the Deputy Chief Labour Commissioner, that may be applicable to the factual matrix of the present case. The primary reason for the inapplicability of such judgements is because the judgements cited by the Deputy Chief Labour Commissioner pertain to an employee who was dismissed or terminated from service due to their actions during the course of employment. The Deputy Chief Labour Commissioner did not factor in, this seemingly trivial issue, but the petitioner was never dismissed nor terminated from service because of the penalty imposed during the disciplinary proceedings against him. The order of the General Manager, Regional Office, Patna dated August 31, 2015, specifically imposes a penalty of demotion to the post of AG-III(D) and a token recovery of Rs. 1,00,000/- (Rupees One Lac only) from the retiral dues other than gratuity, but the penalty order does not terminate, nor does it dismiss the petitioner from service.

9. Keeping such discussion in mind, this Court has found only one primary issue, i.e., whether the petitioner's circumstances attract the application of Section 4(6) of the Payment of Gratuity Act, 1972.

10. Section 4(6) of the Payment of Gratuity Act, 1972 specifically states

'termination' as a pre-requisite condition for forfeiture of gratuity in all cases, including the present allegation of "offence involving moral turpitude". The relevant section of the Payment of Gratuity Act, 1972 is as follows:-

"4. Payment of Gratuity:

(6) Notwithstanding anything contained in sub-section (1), -

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

(b) the gratuity payable to an employee may be wholly or partially forfeited] -

(i) if the services of such employee 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."

11. This Court will now consider various judgements of the Supreme Court and the High Court at Calcutta to substantiate the aforementioned discussion.

12. The Supreme Court in Jorsingh Govind Vanjari Vs. Divisional Controller, Maharashtra State Road Transport Corporation, Jalgaon Division, Jalgaon, reported in (2017) 2 SCC 12 stated that termination of service was an essential pre-requisite for denial of gratuity. The relevant paragraph of the judgement has been reproduced below:-

"15. In order to deny gratuity to an employee, it is not enough that the alleged misconduct of the employee constitutes an offence involving moral turpitude as per the report of the domestic inquiry. There must be termination on account of the alleged misconduct, which constitutes an offence involving moral turpitude."

13. In Union Bank of India & Ors. Vs. C.G. Ajay Babu & Anr., reported in (2018) 9 SCC 529 the Supreme Court further affirmed that forfeiture of payment of gratuity is not permissible unless the same is done in lieu of the specific circumstances mentioned in Section 4(6) of the Payment of Gratuity Act, 1972. The relevant paragraphs of the judgement have been reproduced below:-

"17. Though the learned counsel for the appellant Bank has contended that the conduct of the respondent employee, which leads to the framing of charges in the departmental proceedings involves moral turpitude, we are afraid the contention cannot be appreciated. It is not the conduct of a person involving moral turpitude that is required for forfeiture of gratuity but the conduct or the act should constitute an offence involving moral turpitude. To be an offence, the act should be made punishable under law. That is absolutely in the realm of criminal law. It is not for the Bank to decide whether an offence has been

committed. It is for the court. Apart from the disciplinary proceedings initiated by the appellant Bank, the Bank has not set the criminal law in motion either by registering an FIR or by filing a criminal complaint so as to establish that the misconduct leading to dismissal is an offence involving moral turpitude. Under sub-section (6)(b)(ii) of the Act, forfeiture of gratuity is permissible only if the termination of an employee is for any misconduct which constitutes an offence involving moral turpitude, and convicted accordingly by a court of competent jurisdiction.

* * *

19. In the present case, there is no conviction of the respondent for the misconduct which according to the Bank is an offence involving moral turpitude. Hence, there is no justification for the forfeiture of gratuity on the ground stated in the order dated 20-4-2004 that the "misconduct proved against you amounts to acts involving moral turpitude". At the risk of redundancy, we may state that the requirement of the statute is not the proof of misconduct of acts involving moral turpitude but the acts should constitute an offence involving moral turpitude and such offence should be duly established in a court of law."

14. It is pertinent to mention that the petitioner has been acquitted of all charges in the criminal case with G.R. Case No. 5373/2004 and rest of the cases including CBI case with RC No. 203 2012 A 0028 dated December 27, 2012, another CBI case registered by CBI/ACB/Patna bearing RC No. 023 2014 A0018 dated August 30, 2014, and the criminal case No. 170 of 2010 dated July 10, 2010 are pending. Therefore, so long as the aforementioned criminal and CBI proceedings are pending before the court, the employer, i.e., FCI cannot forfeit the payment of gratuity to the petitioner.

15. Furthermore, in *Jaswant Singh Gill Vs. Bharat Coking Coal Ltd. & Ors.*, reported in (2007) 1 SCC 663 the Apex Court emphasized on the need for fulfilment of the conditions specified in Section 4(6) of the Payment of Gratuity Act, 1972. The relevant paragraphs have been reproduced below:-

"13. The Act provides for a close-knit scheme providing for payment of gratuity. It is a complete code containing detailed provisions covering the essential provisions of a scheme for a gratuity. It not only creates a right to payment of gratuity but also lays down the principles for quantification thereof as also the conditions on which he may be denied therefrom. As noticed hereinbefore, sub-section (6) of Section 4 of the Act contains a non obstante clause vis-à-vis sub-section (1) thereof. As by reason thereof, an accrued or vested right is sought to be taken away, the conditions laid down thereunder must be fulfilled. The provisions contained therein must, therefore, be scrupulously observed. Clause (a) of sub-section (6) of Section 4 of the Act speaks of termination of service of an employee for any act, wilful omission or negligence causing any damage. However, the amount liable to be forfeited would be only to the extent of damage or loss caused. The disciplinary authority has not quantified the loss or damage.

It was not found that the damages or loss caused to Respondent 1 was more than the amount of gratuity payable to the appellant. Clause (b) of sub-section (6) of Section 4 of the Act also provides for forfeiture of the whole amount of gratuity or part in the event his services had been terminated for his riotous or disorderly conduct or any other act of violence on his part or if he has been convicted for an offence involving moral turpitude. Conditions laid down therein are also not satisfied.

14. Termination of services for any of the causes enumerated in sub-section (6) of Section 4 of the Act, therefore, is imperative.”

16. The co-ordinate bench of this High Court in Steel Authority of India Ltd. & Anr. Vs. Taraknath Sengupta & Ors., reported in 2009 SCC OnLine Cal 882, affirmed the right of an employee to receive payment of gratuity and postulated the need for ‘termination’ as a requisite for invoking Section 4(6) of the Payment of Gratuity Act, 1972. The relevant paragraphs of the judgement have been reproduced below:-

“22. In terms of provisions contained in the Act, gratuity is payable to an employee covered by it by his employer not as a bounty or as a gratuitous payment; instead, it is a payment which is earned by an employee for meritorious service rendered by him over a period of time

* * *

26. This Court humbly shares the view. Since the Act itself provides for quantification of gratuity as well as its recovery, it would be open to an employer to make supplemental provisions for promoting the object of the Act but making of provisions which in effect curtails an employee's right to receive gratuity under the Act is not legally permissible. The provision contained in Section 14 of the Act has overriding effect and therefore is a prohibition against application of any other law or terms of instrument or contract inconsistent therewith to deny an employee his due gratuity except to the extent authorised by Section 4(6) thereof. The employer is thus not entitled in law to effect any deduction from gratuity on account of any misdemeanour or objectionable conduct of an employee, post-retirement. There is no warrant for the proposition that any amount which an employee may owe to his employer in respect of acts of omission/commission after he has retired from service can be deducted from his gratuity even though the rules of the employer may permit the same. The right to gratuity under the Act is statutory. Having regard to the provisions of Section 14 of the Act, any non-statutory rule (which is nothing but an instrument as is referred to therein) inconsistent with the provisions of the Act cannot impair the statutory right to receive gratuity, which flows from the Act. It is only when an employee's service is terminated on grounds of the nature specified in clauses (a) and (b) of sub-section (6) of Section 4 of the Act that he forfeits his right to receive gratuity under the Act and not otherwise.”

17. Lastly, one may consider the case of Oriental Bank of Commerce Vs. The

Deputy Chief Labour Commissioner (Central), Kolkata & Ors., reported in 2017 SCC OnLine Cal 3479 wherein a similar factual matrix was before a co-ordinate bench of this High Court. The learned Single Judge had directed the employer to make payment of gratuity with interest, to the petitioner despite the departmental inquiry penalizing the petitioner with a demotion. The court reached such a decision by relying on the aforementioned Supreme Court judgements pertaining to Section 4(6) of the Payment of Gratuity Act, 1972.

Summary and Conclusion

18. For the sake of brevity, I have extracted the relevant principles emerging from the aforementioned discussion of the law:

a. Payment of gratuity is not charity, rather is a statutory right recognized by the Payment of Gratuity Act, 1972.

b. Section 4(6) of the Payment of Gratuity Act, 1972 stipulates specific conditions where the employer may forfeit gratuity. Through the aforementioned judgements, specifically, Jorsingh Govind Vanjari Vs. Divisional Controller, Maharashtra State Road Transport Corporation, Jalgaon Division, Jalgaon (supra), alleged misconduct of the employee as per the report of the domestic inquiry is not enough to constitute an "offence involving moral turpitude", rather termination of services on account of the alleged misconduct, which constitutes an offence involving moral turpitude is essential for forfeiture of payment of gratuity.

c. As per Union Bank of India & Ors. Vs. C.G. Ajay Babu & Anr. (supra), "offences involving moral turpitude" must be offences punishable under law and duly established in a court of law, i.e., the petitioner ought to have been convicted of such offences in a court of law. It is only when termination of employment on grounds of such "offences involving moral turpitude" are established in a court of law, that Section 4(6) of the Payment of Gratuity, 1972 is attracted.

19. Based on the aforementioned established principles of law, this Court highlights that the petitioner was never terminated from services and cases including CBI case with RC No. 203 2012 A 0028 dated December 27, 2012, another CBI case registered by CBI/ACB/Patna bearing RC No. 023 2014 A0018 dated August 30, 2014, and the criminal case No. 170 of 2010 dated July 10, 2010 are all pending.

20. Accordingly, this Court gives the following directions.

Order and Directions

21. In view of the aforementioned discussion, let there be a Writ of Mandamus issued in terms of the prayer (b) against the respondents. This Court sets aside the order dated March 16, 2018 passed by the Deputy Chief Labour Commissioner and affirms the order of the Assistant Labour Commissioner dated May 18, 2017. The respondent authorities are directed to pay the petitioner

gratuity along with interest @ 8 percent from one month after the date of his superannuation as may be applicable.

22. Accordingly, this Writ Petition being WPA/16064/2021 is allowed. There shall be no order as to the costs.

23. An urgent photostat-certified copy of this order, if applied for, should be made available to the parties upon compliance with requisite formalities.