

(2015) 07 JH CK 0110

In the Jharkhand High Court

Case No : Writ Petition (L) Nos. 706 and 712 of 2013

Tata Steel Limited

APPELLANT

Vs

V. Shankaran

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Constitution of India, 1950 — Article 300A

Payment of Gratuity Act, 1972 — Section 4(6), 4(6)(b), 4(6)(b)(ii)

Citation : (2015) 4 AJR 797

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Abhay Kumar Mishra, for the Appellant; Ananda Sen and Kaustav Panda, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J—Challenging common order dated 18.12.2012 in Appeal Case No. PG 01 of 2012 and PG 02 of 2012, writ petitions have been filed by M/s. Tata Steel Limited.

2. The Appeal Case No. PG 01 of 2012 was preferred by the respondent-workman challenging order dated 07.09.2011 in G.A. Case No. 52 of 2002 whereby, payment of gratuity "without interest" was ordered by the Controlling Authority and, aggrieved by order for payment of gratuity to the respondent, Appeal Case No. PG 02 of 2012 was filed by M/s. Tata Steel Limited. Both the writ petitions have been heard together and, I propose to dispose of both the writ petitions by this common order.

3. Briefly stated, the facts leading to filing of the writ petitions are summarised thus:

"(i) The respondent-workman was appointed on 29.07.1975 as Accountant in the Accounts Department of M/s. Tata Steel Limited. A charge-memo dated 04.09.2001 was served upon the respondent on the allegation of committing acts

of misappropriation of company's money and for falsifying official records for undue personal gain and causing financial loss to the company. The Board of Enquiry submitted enquiry report holding the charges proved. Consequently, vide order dated 20.12.2001, the respondent was dismissed from the service of M/s. Tata Steel Limited. Thereafter, notice dated 02.01.2002 was issued to the workman for forfeiture of gratuity of Rs. 1,94,327.70 payable to him by the company. The respondent submitted his reply on 07.01.2002 contending that the company has not suffered any financial loss due to "mistake" committed by him. However, vide order dated 11.09.2002 the amount of gratuity payable to the workman was forfeited in full on the ground that the acts of fraud and dishonesty committed by him during the course of employment constitute an offence involving "moral turpitude". Aggrieved, the workman filed application dated 19.09.2009 before the Controlling Authority for a direction to M/s. Tata Steel Limited for payment of gratuity with interest. The Controlling Authority held forfeiture of gratuity not justified and accordingly, a direction was issued to the company to make payment of Rs. 1,94,327.70 within 30 days however, without interest. Aggrieved, the workman and M/s. Tata Steel Limited both challenged order dated 07.09.2011 by filing separate appeals. As noticed above, both the appeals were disposed by common order dated 18.12.2012 modifying the order for payment of gratuity to the workman to the extent that forfeiture of gratuity has been restricted to 50% however, with interest."

4. Heard the learned counsel for the parties.

5. Mr. Abhay Kumar Mishra, the learned counsel for the petitioner submits that in terms of Section 4(6)(b)(ii) of the Payment of Gratuity Act, 1972, the company is entitled to forfeit full amount of gratuity if the workman is guilty of an act amounting to moral turpitude. The Appellate Authority though, held that the act of fraud and dishonesty committed by the workman amounts to moral turpitude still, forfeiture of gratuity has been restricted to 50% which is contrary to Section 4(6)(b)(ii) of the Act. Relying on Full Bench decision of this Court in " Sarju Prasad Singh Vs. State of Bihar and Others, (1987) 35 BLJR 691 : (1987) PLJR 285 , the learned counsel for the petitioner submits that the misconduct of committing fraud and dishonesty in course of employment of the company would amount to moral turpitude. Referring to decision in " The Management of Tournamulla Estate Vs. Workmen, AIR 1973 SC 2344 : (1973) LabIC 1465 : (1973) 2 LLJ 241 : (1973) 2 SCC 502 : (1973) 3 SCR 762 , it is submitted that in cases of grave misconduct forfeiture of 100% gratuity is justified. The learned counsel for the petitioner has also relied on decisions in " Bharat Coking Coal Ltd. Vs. Brajendra Kumar Choubey, (2014) 4 AJR 175 : (2014) 143 FLR 662 : (2014) 3 JLJR 398 , " The Indian Iron and Steel Co. Ltd. Vs. Himangshu Bikash Sarkar and Others, (2006) 2 CALLT 89 : (2006) 3 CHN 469 : (2006) 109 FLR 1161 and " Narayan R. Bhosekar Vs. Municipal Corporation for Greater Bombay and Others, (2002) 1 ALLMR 1034 : (2002) 3 BomCR 340 : (2002) 94 FLR 55 : (2002) 1 MhLj 576 .

6. Per contra, Mr. Ananda Sen, the learned counsel for the respondent submits that the Controlling Authority ordered payment of gratuity holding that the misconduct found proved against the respondent-workman has not resulted in loss to the company. However, the Appellate Authority without advertng to the findings recorded by the Controlling Authority held that the misconduct committed by the respondent would amount to moral turpitude which justifies 50% forfeiture of the gratuity. It is submitted that gratuity is paid to the workman for the service rendered by him to the employer and it can be forfeited only in accordance with the procedure established in law. It is contended that the Payment of Gratuity Act provides that the gratuity payable to an employee may be forfeited however, only to the extent of damage or loss caused to the company. However, in the present case, the employer has not pleaded loss or damage caused to it.

7. I have carefully considered the rival contentions raised on behalf of the parties and perused the documents on record.

8. In " The Garment Cleaning Works Vs. Its Workmen, AIR 1962 SC 673 : (1961) 2 FLR 534 : (1961) 1 LLJ 513 : (1962) 1 SCR 711 , it was observed that the gratuity is not paid to the employee gratuitously or merely as a matter of boon rather, it is paid to him for long and meritorious service rendered by him to the employer. It is well settled that pension is property within the meaning of Article 300A of the Constitution of India and a workman can be deprived of benefit of pension only in accordance with law. Ordinarily, pension includes gratuity except, when the term "pension" is used in contra-distinction to gratuity. In " Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, AIR 2000 SC 1596 : (2000) 90 CLT 450 : (2000) 86 FLR 197 : (2000) 7 JT 135 : (2000) 6 JT 281 : (2000) 2 LLJ 1 : (2000) 4 SCALE 670 : (2000) 6 SCC 493 : (2000) SCC(L&S) 767 : (2000) AIRSCW 1745 : (2000) 4 Supreme 602 , it has been held that, "the payment of gratuity is no longer in the realm of charity but it is the statutory right provided in favour of the employee". The petitioner-M/s. Tata Steel Limited has not framed Rules which provide forfeiture of gratuity. The petitioner has relied on Section 4(6)(b)(ii) of the Payment of Gratuity Act, 1972 for forfeiting the entire gratuity amount payable to the respondent. In " Allahabad Bank and Another Vs. All India Allahabad Bank Retired Emps. Assn., (2010) 124 FLR 192 : (2009) 15 JT 394 : (2010) 1 LLJ 593 : (2009) 14 SCALE 577 : (2010) 2 SCC 44 : (2010) 2 SLJ 379 : (2010) 1 SLR 22 : (2009) 2 UJ 1104 it has been held that gratuity being a statutory right cannot be taken away except, in accordance with the provisions of the Act.

9. Section 4(6) of the Payment of Gratuity Act, 1972 reads as under:

"4.(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."

10. In " Jaswant Singh Gill Vs. Bharat Coking Coal Ltd. and Others, (2007) 112 FLR 196 : (2007) 1 JT 6 : (2007) 2 LLJ 206 : (2006) 11 SCALE 624 : (2007) 1 SCC(L&S) 584 : (2006) 8 SCR 1064 Supp , it has been held that the payment under Gratuity Act lays down the conditions on which the workman may be denied payment of gratuity and therefore, if accrued or vested right is sought to be taken away, the conditions laid down in the Act must be fulfilled. Section 4(6) (b)(ii) provides that if the services of the employees have been terminated for any act which constitutes an offence involving moral turpitude, provided such offence is committed by him in course of employment, the gratuity payable to him may be wholly or partially forfeited. Admittedly, no criminal case was lodged against the respondent and he has not been convicted for an offence of fraud and dishonesty. Though, the charge of fraud and dishonesty in terms of the Company's Standing Order has been found proved, the employer-M/s. Tata Steel Limited has not assigned reasons for forfeiting the entire gratuity amount.

11. The learned counsel for the petitioner has relied on decision in " Delhi Cloth and General Mills Co., Ltd. Vs. Workmen and Others etc., AIR 1970 SC 919 : (1970) 20 FLR 176 : (1970) LabIC 787 : (1969) 2 LLJ 755 : (1969) 2 SCR 307 to contend that in cases of serious misconduct, gratuity due to the workman is liable for forfeiture, in full. The contention is liable to be rejected. In "Delhi Cloth and General Mills Co. Ltd." case it has not been laid down as an absolute proposition in law that in every case in which the workman is guilty of serious misconduct, his gratuity must be forfeited in its entirety. In so far as, dismissal of the respondent from the service of company for committing an act amounting to fraud and dishonesty to the company is concerned, there is no dispute. The misconduct imputed to the workman includes the following instances of financial irregularities:

"(i) That while doing the above mentioned official job he had processed ESS payments in four cases in such a way that the payments could be credited to M.J. Namagiri Lakshmi's Bank A/c No. 30974 of Bank of India, Main Branch, Bistupur, 5994 of Union Bank of India, Bistupur 19178 of UTI Bank, Bistupur and 3673 of Bank of India, Circuit House Branch in which he was one of the account holders along with his wife M.J. Namagiri Lakshmi. Although the payment could not be credited to this account due to a mismatch between the names and the account numbers and was refunded to the Company.

(ii) That it was revealed that he had processed another such case of Mr. B. Hessa in the ESS System although the employee had been settled under the Medical Separation Scheme w.e.f. 15.02.2000. In this case also he had inserted the name of M.J. Namagiri Lakshmi as nominee and logged the bank account number of the joint account which he was holding with his wife. Based on the information logged by him in the system an amount of Rs. 2,65,154.34 was credited to his SBI account in the name of his wife M.J. Namagiri Lakshmi on 05.07.2001. The amount of Rs. 2,65,154.34 which was a wrong payment in the name of M.J. Namagiri Lakshmi was subsequently refunded to the company by SBI Main Branch."

12. During the departmental enquiry, the workman took a plea that the alleged instances of misconduct were result of mere mistake on his part. It is not in dispute that in four cases due to technical reasons, the amount was not transferred in the joint account of the workman and the amount of Rs. 2,65,154.34 involved in the 5th transaction was subsequently deposited by the workman in the company's account. Before the Controlling Authority, the workman took a specific plea that on account of his misconduct, the company has not suffered any financial loss. The Controlling Authority taking note of the above fact ordered payment of gratuity to the workman on the ground that the company has not suffered any loss. In Appeal Case No. PG 01 of 2012, the respondent-workman reiterated the plea that on account of misconduct, the company has not suffered financial loss. In reply, M/s. Tata Steel Limited took a stand that for forfeiting gratuity on the ground of misconduct amounting to moral turpitude, it was not necessary to plead and prove loss caused to the company. It was asserted that the gratuity of the respondent has been forfeited in terms of Section 4(6)(b)(ii) of the Payment of Gratuity Act, 1972. In Gratuity Appeal No. 1/2011, the appellant-workman has asserted as under:

VI. "For that the Respondent No. 1 could not provide any monetary loss or damage against the Appellant before the Learned Respondent No. 2.

VII. For that the Respondent No. 1 could not establish the case relating to Moral Turpitude.

VIII. For that the Respondent No. 1 did not mention in its show cause for any loss or damages the caused by Appellant.

IX. For that the Respondent No. 1 unnecessarily, harassed the Appellant for illegally withholding the earned Gratuity amount of the Appellant.

X. For that the Respondent No. 1 did not mention in its show cause about any quantum of loss."

13. In reply, M/s. Tata Steel Limited took the following stand:

vi. "That it is stated that the Respondent No. 1 has amply proved before the Respondent No. 2 that the services of the Appellant were terminated in accordance with Section 4(6)(b)(ii) which does not require any loss or damage to

have been caused by the employee in order to forfeit his retiring gratuity. The applicable provision of law only requires that his services have been terminated for an act of misconduct amounting to moral turpitude. But the Respondent No. 2 has completely overlooked this fact and wrongly placed emphasis on "loss or damage caused by the Appellant". However, though loss or damage caused to the Company is not relevant under Sec. 4(6)(b)(ii), in its Appeal filed before this Hon"ble Authority numbered as PG-2/2012 the Respondent No. 1 has stated how financial loss and damage has been caused to it by the act of the Appellant.

....

....

ix. That it is already stated above in Para i and Para vi of this rejoinder that the said forfeiture of gratuity was in accordance with Section 4(6)(b)(ii) of the Payment of Gratuity Act, 1972, hence the claim of the Appellant that his gratuity was illegally withheld is totally misconceived.

x. That once again the Respondent No. 1 was not required to give any quantum of loss because the action of forfeiture of gratuity was taken in accordance with Section 4(6)(b)(ii) of the Payment of Gratuity Act, 1972 which is wholly legal and justified."

14. The Appellate Authority affirmed that due to misconduct of the workman no loss has been caused to the company. The misconduct committed by the workman was the first and the only instance for which he was dismissed from service. Taking note of the unblemished career of the workman, before charge-memo dated 04.09.2001 was served upon him, the Appellate Authority held that forfeiture of gratuity in full is not justified. The decisions cited by the learned counsel for the petitioner do not deal with a case in which the Court concluded that acts of fraud and dishonesty committed by an employee in course of employment would amount to moral turpitude. In "Sarju Prasad Singh case" the Hon"ble Full Bench affirmed the proposition that every act punishable in law is not an offence involving moral turpitude. The learned counsel for the petitioner refers to decision in " Durga Singh Vs. The State of Punjab, AIR 1957 P&H 97 and relies on the following observation:

"After all, the term "moral turpitudes" is a rather vague one and it may have different meanings in different contexts. The term has generally been taken to mean to be a conduct contrary to justice, honesty modesty or good morals and contrary to what a man owes to a fellow-man or to society in general. It has never been held that gravity or punishment is to be considered in determining whether the misconduct involves moral turpitude or not."

15. Since the workman has not challenged the finding recorded by the Appellate Authority in Appeal Case No. PG 02 of 2012 holding that the misconduct of fraud and dishonesty committed by the workman would amount to moral turpitude, I am not required to examine correctness of the said finding. I assume, for the

sake of argument that the misconduct committed by the respondent amounts to moral turpitude, still the employer, in my opinion, must assign specific reasons for forfeiting 100% gratuity due to the employee. As noticed above, Section 4(6) (b) of the Payment of Gratuity Act uses the expression "may be wholly or partially forfeited". The expression used in Section 4(6)(b) indicates the legislative intent that every case falling under clause (i) or (ii) of Section 4(6)(b) does not entail forfeiture of full amount of gratuity. The stand taken by the petitioner that, Section 4(6)(b)(ii) confers power upon the employer to forfeit 100% gratuity therefore, it has been forfeited in entirety, cannot be approved in law. Though, for resorting to Section 4(6)(b) of the Act it is not necessary to demonstrate monetary loss caused to company, the fact that no monetary loss was caused to the petitioner due to misconduct of the respondent has been considered by the Appellate Authority as a mitigating circumstance and, accordingly, forfeiture of 50% gratuity amount has been approved. Since the gratuity was not paid within statutory period the Appellate Authority has rightly awarded interest thereon. I find no infirmity in the impugned order and accordingly, both the writ petitions are dismissed.