(2015) 01 KL CK 0258

In the High Court Of Kerala

Case No : Writ Petition (C). No. 23603 of 2008 (I)

The General Manager (Treasury), State Bank of Travancore — APPELLANT

Vs

Appellate Authority Under The Payment of Gratuity Act (Central) and Others — RESPONDENT

Date of Decision : 22-01-2015

Acts Referred:
Payment of Gratuity Act, 1972 — Section 4(6), 7(4)

Citation : (2015) 01 KL CK 0258

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : P. Ramakrishnan and T.C. Krishna, for the Appellant; N. Nagaresh, Asst. Solicitor, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K. Surendra Mohan, J—The petitioner who is the General Manager, State Bank of Travancore has filed this writ petition challenging Exts. P2 and P4 proceedings of respondents 1 and 2 by which, the action of the petitioner in denying gratuity to the third respondent was found to be unsustainable.

2. The third respondent was a Peon of the State Bank of Travancore. He had joined service on 13.10.1979. In the year 2002, disciplinary proceedings were initiated against him alleging various acts including misappropriation of money. The third respondent admitted the charges. Nevertheless, a domestic enquiry was conducted, the third respondent was found guilty and was discharged from service. However, the order specifically stated that, he would be entitled to his superannuation benefits admissible as per law. Since the third respondent was not paid his gratuity, he approached the second respondent, the Controlling Authority under the Payment of Gratuity Act, 1972 (the ''Act'' for short). Since he had not filed his petition within the stipulated time, he also sought for condonation of the delay. The matter was considered and the second respondent condoned the delay by separate proceedings.

3. The petitioner contested the claim of the third respondent by filing Ext. P1 written statement. It was contended that, the gratuity of the third respondent had been forfeited in exercise of the power under Section 4(6) of the Act, which order was also duly communicated to the third respondent. However, he did not challenge the said order at any time. It was without challenging the said order that he had preferred the belated application before the second respondent. The petitioner asserted that the bank had the power and authority to forfeit the gratuity since the offence involved was one affecting the moral turpitude of the employee. However, as per Ext. P2 the second respondent rejected the contentions of the petitioner and found that the third respondent was entitled to be paid gratuity.

4. Aggrieved by Ext. P2, the petitioner preferred Ext. P3 appeal to the first respondent. The first respondent has by Ext. P4 confirmed the decision of the controlling authority in Ext. P2 and has dismissed the petitioner''s appeal. The petitioner has therefore filed this writ petition challenging Exts. P2 and P4.

5. According to Adv. P. Ramakrishnan who appears for the petitioner the bank had the power to pass appropriate orders invoking Section 4(6) of the Act. Since the offence was the one which involved moral turpitude, it is contended that the order forfeiting the gratuity of the third respondent was justified. The order was also communicated to the employee on 20.6.2004. The third respondent had accepted the order and that was the reason why he had not made any demand for payment of gratuity. It was long thereafter that he had approached the second respondent. Therefore, it is contended that Exts. P2 and P4 are liable to be set aside. According to the counsel, both respondents 1 and 2 erred in entertaining the claim of the third respondent long after the order forfeiting his gratuity had become final.

6. According to Adv. U.K. Devidas who appears for the third respondent the employee had been punished appropriately by his discharge from service. The order had provided that, the third respondent would be entitled to superannuation benefits admissible as per law. There was no justification for punishing the third respondent again by denying to him his gratuity amount also. Assuming that the petitioner was competent to invoke the power under Section 4(6) of the Act, such action could have been initiated only with notice to the third respondent. The third respondent ought to have been heard before any such punishment was imposed on him. A proper order also should have been passed, it is contended. Reliance is placed on the decision of this Court in Dhanalakshmi Bank Ltd. v. Ramachandran and another [2012 KHC 270] where it has been held that even where gratuity is forfeited by a reasoned order the same could be challenged before the controlling authority under the Act. Any such forfeiture could be justified only under proceedings contemplated by Section 7(4) of the Act. Therefore it is contended that there are absolutely no grounds to interfere with Exts. P2 and P4.

7. Heard. In the present case, admittedly the third respondent was found guilty

of the charges against him and was discharged from service. The order discharging him from service specified that the employee was imposed with the punishment of discharge from service with superannuation benefits, that is, pension and/or provident fund, gratuity and pension as would be due otherwise under the rules and regulations. Therefore, the order imposing punishment on the third respondent did not touch the right of the employee to receive his superannuation benefits, which included the gratuity also. The right to receive gratuity has been taken away, even according to the petitioner by separate proceedings issued later on. No such order has been produced before me. It is also not in dispute that no notice was issued to the petitioner before such order was passed. Nor was he heard. The controlling authority has considered the issue in Ext. P2 as follows:-

"However, while discharging the applicant from its services, the Opposite Party has stated that "I impose on the charge sheeted employee the punishment of discharge from service with superannuation benefits ie: pension and/or provident fund, gratuity and pension as would be due otherwise under the Rules and Regulations..... " From the said order of discharge it is evident that at the time of his termination the Opposite Party had decided to provide the applicant with all terminal benefits including the payment of gratuity. Further the Opposite Party has not furnished any documents whatsoever to show their intention or decision to forfeit the gratuity payable to the applicant. It is true that Sec. 4(6) of the Payment of Gratuity Act provides for forfeiture of the gratuity. However the Opposite Party has neither heard the applicant on the forfeiture of gratuity nor issued any orders in this regard."

I see no grounds to interfere with the above finding, which has been confirmed by Ext. P4 also.

8. The right to receive gratuity has been conferred on an employee by the statute. Such statutory right could be denied or taken away only in accordance with law. It has been held by this Court in Dhanalakshmi Bank v. N.R. Ramachandran (supra) that, even where gratuity is denied by an express and reasoned order, the action would have to be justified by the employer in proceedings under Section 7(4) of the Act. In the present case, no formal order was produced either before the controlling authority or before this Court. Therefore, for all purposes, there was no formal order in the present case. It has been held by this Court in the decision referred to above, that in order to deny gratuity, a formal order is necessary.

The above being the position, I find no grounds to interfere with Ext. P2 or P4 or to grant any of the reliefs sought for by the petitioner. This writ petition fails and is accordingly dismissed.

