

(2015) 03 CAL CK 0117

In the Calcutta High Court

Case No : APO No. 200 of 2014 and WP No. 121 of 2014

Union of India

APPELLANT

Vs

Joydev Ghatak

RESPONDENT

Date of Decision : 02-03-2015

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2(e), Section 4(6)

Citation : (2016) 4 CalHCN 238

Hon'ble Judges : Banerjee and Samapti Chatterjee, JJ.

Bench : Division Bench

Advocate : Mr. Ashok Chakraborty, Sr. Advocate with Mr. Arindam Chattopadhyay, Ld. Advocate, for the Appellant; Mr. Anjan Bhattacharya, Ld. Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

1. The facts of this case would relate to an allegation of illegal gratification for which the respondent was charged with. The facts would depict, the respondent was working as a Railway Inspector while he was charged with the above allegation. The Railway handed over the case to the CBI, who initiated criminal proceeding as against the respondent. The respondent would claim, he was honourably acquitted by the criminal Court. CBI would, however, not agree with such decision and has preferred an appeal being CRA No. 260 of 2007 (CBI v. Joydev Ghatak) that is awaiting disposal before this Court.

2. The respondent approached the learned Single Judge for release of the gratuity that the respondent withheld in view of the pendency of the proceeding. Pertinent to note, the railway authorities had initiated the disciplinary proceeding that they subsequently dropped and allowed the respondent to serve the railway till his natural date of superannuation. We are told, after superannuation, he had been paid all retrial benefits except the gratuity for which he approached the learned Single Judge. However, his pension is yet to be finalised as he is now getting provisional pension.

3. The learned Judge allowed the writ petition on the plea, the Section 4(6) of the Payment of Gratuity Act, 1972 being a special Act would have predominance over any others general law. Though the Rules 9 and 10 would permit the railway authorities to withhold the gratuity, such rules would not have any effect in view of the said Act, 1972. The learned Single Judge also held, even if the CBI would succeed in their appeal, since there was no loss caused to the railway so proved, the provisions of Section 4(6) would not debar the respondent from receiving the gratuity.

4. Being aggrieved, the railway is before us with this appeal.

5. Mr. Ashok Chakraborty, learned Senior Counsel appearing for the appellant, would draw our attention to the definition of the "employee" under Section 2(e) of the said Act, 1972 that would keep the Central Government employees outside the purview of the said Act, 1972. Mr. Chakraborty would further say, Rules 9 and 10 having the blessings of Article 309 of the Constitution of India would have the pre-dominance that the learned Judge failed to appreciate.

6. He would rely upon the Apex Court decision in the case of P. Rajan Sandhi, reported in 2010(10) SCC 338. In the said case the employee was dismissed from service. His challenge to the order of dismissal could not succeed up to the Apex Court level. Yet, he claimed gratuity. The Apex Court while interpreting Section 4(6) would make a distinction as to the applicability of the said provision. Paragraphs 11 and 12 being relevant herein are quoted below :

"11. It may be seen that there is a difference between the provisions for denial of gratuity in the Payment of Gratuity Act and in the Working Journalists Act. Under the Working Journalists Act gratuity can be denied if the service is terminated as a punishment inflicted by way of disciplinary act, as has been done in the instant case. We are of the opinion that Section 5 of the working Journalists Act being a special law will prevail over Section 4(6) of the Payment of Gratuity Act which is a general law. Section 5 of the working Journalists Act is only for working journalists, whereas the Payment of Gratuity Act is available to all employees who are covered by that Act and is not limited to working journalists. Hence, the working Journalists act is a special law, whereas the Payment of Gratuity Act is a general law. It is well settled that special law will prevail over the general law, vide G.P. Singh's Principles of Statutory Interpretation, 9th Edn., 2004, pp.133 and 134.

12. The special law i.e. Section 5(1)(a)(I) of the Working Journalists Act, does not require any allegation or proof of any damage or loss to, or destruction of, property, etc. as is required under the general law i.e. the Payment of Gratuity Act. All that is required under the Working Journalists Act is that the termination should be as a punishment inflicted by way of disciplinary action, which is the position in the case at hand. Thus, if the service of an employee has been terminated by way of disciplinary action under the Working Journalists Act, he is not entitled to gratuity".

7. Mr. Chakraborty would further contend, once an employee accepts his employment, the service rules applicable therefor would be binding upon him. Even if Section 4(6) would not create any embargo, Rules 9 and 10 would operate as a bar for the employee to receive the said gratuity.

8. Per contra, Mr. Anjan Bhattacharya, learned Counsel appearing for the respondent would submit, since the authority did not come with any concrete proof as to the loss suffered to the employer, Section 4(6) would not create any bar in the instant case that would not stop the respondent from receiving the payment of gratuity.

9. We have considered the rival contentions. We find logic in Mr. Chakraborty's contention as to the binding effect of the Service Rules on the employee concerned. At the same time, we must appreciate the miseries that the respondent would suffer particularly when his employer dropped the disciplinary proceeding against him and permitted him to serve the entire service tenure.

10. We are told, the railway authorities kept the gratuity in a suitable interest bearing fixed deposit in a Nationalised Bank pursuant to the order of the Division Bench. Striking a balance, we permit the respondent to receive the interest part of it and appropriate the same for his sustenance in addition to the provisional pension. Such arrangement would continue till the disposal of the criminal proceeding.

11. The parties would be free to take appropriate steps in the matter in the light of the observations made by us herein after disposal of the Criminal Appeal. Cost is made easy.

12. The order of the learned Single Judge stands modified.

13. The appeal is disposed of without any order as to costs.