
(1998) 07 PAT CK 0050
In the Patna High Court
Case No : C.W.J.C. No. 3826 of 1989

Union of India(UOI) and Another	APPELLANT
Vs	
Assistant Labour Commissioner (Central) and Another	RESPONDENT

Date of Decision : 16-07-1998

Acts Referred:

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

Citation : (1999) 2 LLJ 1324 : (1998) 3 PLJR 223

Hon'ble Judges : A.K. Ganguly, J

Bench : Single Bench

Advocate : A.B. Ojha, for the Appellant; Gaurang Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Ganguly, J.—This writ petition has been filed by the railway administration challenging the legality of the impugned order dated December 30, 1988 (Annexure-6) passed by the Assistant Labour Commissioner (Central), Patna in Case No. 3 of 1980 under the Payment of Gratuity Act, 1972.

2. The short facts of this case are noted below:

Respondent No. 2 Satyendra Narayan Ghosh was appointed on April 18, 1938 as an employee of the then Railway Company which later on was taken over by the Government of India and was entrusted to the North East Frontier Railway. It is alleged by the petitioner that in the year 1967 while respondent No. 2 was posted as Station Master, Jalalgarh in the district of Purnea, the allegation of misappropriation of money was levelled against respondent No. 2 and the said respondent No. 2 was placed under suspension on October 30, 1987 and a criminal case was instituted against him by the C. B. I. in the Court of the Special Judge, Patna. Subsequently a departmental enquiry was also initiated against respondent No. 2. When the matter was subjudice in the Court of the Special Judge, C.B.I., Patna, the railway administration did not take action on the basis of the report submitted in the departmental enquiry proceedings. It appears that

ultimately respondent No. 2 was convicted for the offences under Sections 409 and 477 of the Indian Penal Code and Section 5(1)(c)(d) read with Section 5(2) of the Prevention of Corruption Act, 1948 and was sentenced to undergo imprisonment for one year and pay a fine of Rs. 2000/- and in default to undergo imprisonment for three months vide judgment dated September 14, 1973. Against the said judgment respondent No. 2 preferred an appeal before this Court. The said appeal was registered as Criminal Appeal No. 279 of 1973. By judgment dated October 16, 1979 the said appeal was allowed on merits and the learned Judge deciding the said appeal held that "the prosecution has not been able to prove charges against the appellant and he is, therefore, acquitted of all the charges." The learned Judge deciding the appeal has also commented upon the strange procedure followed in the departmental proceeding. Be that as it may, in law after the said order of acquittal was passed by the High Court, it cannot be said that respondent No. 2 is accused of an offence for which he was charged.

3. By the time the appeal was allowed and the judgment was delivered, respondent No. 2 was dismissed from service in view of the finding of conviction given by the learned Special Judge, C.B.I. Patna. The said order of dismissal was passed on April 19, 1976. From perusal of the said dismissal order it appears that the dismissal order solely rests on the conviction of respondent No. 2 by the criminal Court. The respondent No. 2 reached the age of superannuation on December 1, 1977. This also happened before the High Court acquitted respondent No. 2 of the charges levelled against him.

4. Thereafter respondent No. 2 filed a petition before the Assistant Labour Commissioner (Central) New Area, Kadam Kuan, Patna under the provisions of the Payment of Gratuity Act (hereinafter referred to as the said Act), for payment of gratuity. The said proceeding before respondent No. 1 was contested by the Railway Administration and ultimately by judgment dated May 24, 1982 respondent No. 1 allowed the petition filed by respondent No. 2 and directed the payment of gratuity for the period from April 19, 1938 to December 1, 1977 in accordance with the provisions of the said Act.

5. The Railway Administration challenged the said decision on a preliminary point that the Union of India was not made a party. This was done by the railway administration by filing a writ petition being C.W.J.C. No. 2910 of 1982. A learned Judge of this Court hearing the said writ petition passed an order on January 4, 1988 holding, inter alia, that as a result of setting aside of the order of dismissal of respondent No. 2 from service, certainly the liability will be fastened on the Union of India in the matter of payment of gratuity and, therefore, the Union of India was a necessary party. That being the position, the matter was remanded to the respondent No. 1, the Assistant Labour Commissioner (Central) Patna who was the controlling authority under the said Act for considering the whole matter afresh after giving due notice to the Union of India and after allowing the applicant to add the Union of India as necessary party in the said proceeding.

Thereafter the matter was again heard with a notice to the parties and by the impugned order the controlling authority again reiterated the order directing the railway administration to pay gratuity to respondent No. 2 for the period from April 19, 1938 to December 1, 1977 along with interest in terms of Sub-section (3-A) of Section 7 of the Payment of Gratuity Act from 30 days after the judgment of the High Court exonerating the applicant from the charge of misconduct resulting in his dismissal.

6. Challenging the aforesaid order of respondent No. 1 dated December 30, 1988 the railway administration filed this writ petition and "urged two points, namely, (i) the Assistant Labour Commissioner (Central) Patna who is the controlling authority under the Payment of Gratuity Act has no power or jurisdiction to pass such an order. Such an order can be passed only by the competent Civil Court and (ii) respondent No. 2 having been dismissed from service and the said order not having been set aside or reviewed by any appellate or revisional authority, the order of dismissal stands and a person who has been dismissed from service is not entitled to payment of gratuity.

7. In support of the aforesaid contention learned Counsel for the petitioners relied on Section 4(6)(b)(ii) of the said Act. Sub-section (6)(a) of Section 4 of the said Act provides that the right to gratuity shall be forfeited in respect 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 to the extent of the damage or loss so caused. Clause (b) of Sub-section (6) of Section 4 of the said Act on which reliance has been placed is set out below: ;

"(b) the gratuity payable to an employee shall 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."

8. Clause (b)(ii) is sought to be applied in this case. Learned Counsel submitted that in this case the service of the employee (respondent No. 2) was dismissed for defalcation of fund. Therefore, it comes within the meaning of Clause (b)(ii) of Sub-section (6) of Section 4 of the said Act.

9. This Court finds that the dismissal order of respondent No. 2 was solely based on the ground of his conviction by the criminal Court but once that conviction has been set aside by the High Court, it cannot be construed that the employee concerned has committed an act which constitutes an offence involving moral turpitude. The effect of acquittal is completely wiping out of the entire allegation relating to the commission of offence, alleged to have been committed by respondent No. 2 and in law the status of respondent No. 2 is not that of an

accused. The order of dismissal thus ceases to exist in the eye of law.

10. Reliance in this connection may be placed on the judgment of Division Bench of Madras High Court in the case of Union of India (UOI) Vs. R. Akbar Sheriff, . In that case also the question of dismissal of a railway servant on his conviction on criminal charge came up for consideration and the Court had to consider the effect of an order of acquittal passed by the Superior Court on such conviction and the consequent order of dismissal. The relevant observation is quoted below:

"Once the conviction is set aside or quashed the dismissal order must fall to the ground. An acquittal of a person of a criminal charge by a higher Court setting aside the conviction passed by a subordinate or an inferior Court is tantamount to, the person not having been convicted at all. The setting aside of a wrong order of a Court results in the position as if such order was never in existence, though as a fact the order was passed and lasted till it was set aside. This view of the matter is not a legal fiction as the proceedings forming the subject matter of a Criminal charge of a person from the Primary Court of trial to the ultimate Court of final appeal or revision really constitute one proceeding and, however, varying the fortunes of the person indicated may be, the proceeding can always have only one result, and that is the result of the last proceeding which becomes indefeasibly final,"

11. Following the said ratio, this Court holds that as a result of the order of acquittal passed by this Court, the order of conviction passed against the petitioner does not have any existence in the eye of law and respondent No. 2 also cannot be said to have committed any offence involving moral turpitude. Therefore, the claim of gratuity made by respondent No. 2 cannot be defeated.

12. In so far as other grounds are concerned, namely, that the controlling authority has no power to decide the issue cannot be allowed to be urged by the petitioner in this case especially in view of the previous judgment of this Court in C.W.J.C. No. 2910 of 1982 against the same party and for the same issue. In the previous judgment the High Court has held that the matter should be decided afresh by the controlling authority. Therefore, all objections about the jurisdiction of competent Court has been over ruled by the said order. Therefore, both the contentions raised by the learned Counsel for the petitioners fail. This writ petition is thus dismissed. The petitioner is directed to implement the order dated December 30, 1988 (Annexure-6) passed by respondent No. 1 at an early date and not later than two months from today. The record of the criminal appeal which were called for and were perused by this Court may be returned. There will be no order as to costs.