
(2009) 12 UK CK 0025
In the Uttarakhand High Court

U.P. State Road Transport Corporation	Vs	APPELLANT
Appellate Authority and Others		RESPONDENT

Date of Decision : 04-12-2009

Acts Referred:

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

Citation : (2010) 124 FLR 571 : (2010) 2 LLJ 173 : (2010) 1 UD 58

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—Heard Ms. Seema Sirohi, the learned Counsel for the petitioner and Shri Alok Mehra, the learned Counsel for the respondent No. 3.

2. The workman was appointed in the service of the Corporation on January 28, 1952 and after rendering 35 years of service was terminated by an order dated March 7, 1987 on account of a misconduct, namely, continuous unauthorized absence for 160 days. The order of termination was not challenged by the workman and it had attained finality. The workman, however, moved an application u/s 4 of the Payment of Gratuity Act, 1972 for gratuity for having rendered 35 years of service. The Prescribed Authority after considering the matter condoned the delay in filing the aforesaid application and allowed the same holding that the workman was entitled to a sum of Rs. 28,269.25 towards gratuity and also imposed 10% interest. The employer being aggrieved by the said order filed an appeal which was dismissed and, consequently, the present writ petition has been filed.

3. The sole contention of the learned Counsel for the petitioner is, that the workman was not entitled for payment of gratuity in view of Sub-clause (6) of Section 4 of the Payment of Gratuity Act, which provides that where the Services of an employee has been terminated for any act of misconduct, in that event, the gratuity stands forfeited.

4. The Court is not impressed with the argument advanced by the learned Counsel for the petitioner. For a proper appreciation, Sub-clause (6) of Section 4 of Payment of Gratuity Act is, extracted below:

(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 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.

5. A perusal of the same indicates that where the services of an employee is terminated for any act, which may be a wilful omission or negligence and which causes any loss or damage to the employer, then the gratuity could be forfeited to the extent of damage or the loss so caused. The said clause further provides that the gratuity can be forfeited wholly or partially where the services of the employee has been terminated for his riotous or disorderly conduct or any act of violence or where the services of the employee has been terminated for any act, which constitute an offence involving moral turpitude. From the aforesaid, it is clear that Sub-clause (6) of Section 4 is not applicable in this case. Consequently, only partial forfeiture of the gratuity could have been done by the employer under Sub-clause (6)(a) of Section 4. The record shows that nothing was indicated by the employer before the Prescribed Authority as to the loss or damage that was caused by the employer on account of the unauthorized absence on the part of the employee. In the absence of any evidence being filed to this effect, even the plea of partial forfeiture cannot be maintained. Consequently, this Court is of the opinion that the order passed by the Prescribed Authority does not suffer from any error of law. The writ petition fails and is dismissed.