

(2020) 01 BOM CK 0173
In the Bombay High Court
Case No : Writ Petition No. 5805 Of 2009

Vasant B. Bhujbal

APPELLANT

Vs

Controlling Authority

RESPONDENT

Date of Decision : 27-01-2020

Acts Referred:

Citation : (2020) 01 BOM CK 0173

Hon'ble Judges : S.C. Gupte, J

Bench : Single Bench

Advocate : Balasaheb Deshmukh, G.S. Hegde

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the parties. Rule. Rule taken up for hearing forthwith with consent of Counsel.

2. This writ petition challenges an order passed the Deputy Commissioner of Labour and the Appellate Authority under the Payment of Gratuity Act,

1972. By the impugned order, the Appellate Authority allowed the appeal of the Respondent herein from an order passed by the Controlling Authority

for payment of gratuity to the Petitioner herein.

3. Since May 1968, the Petitioner was working as a conductor with the Respondent-corporation. On 29 August 1993, whilst the Petitioner was

on duty, his ST bus was checked by Inspector of the Respondent when the Petitioner herein was found to have given tickets to each of ten

passengers of a denomination lesser by 50 ps. The Respondent thereafter issued a charge-sheet and conducted a departmental enquiry against the

Petitioner. After such enquiry, and after accepting the findings of the Enquiry Officer, the Respondent-corporation issued to the Petitioner a show

cause notice as to why he should not be discharged from the services. The Petitioner thereafter approached the Labour Court at Pune by filing a complaint of unfair labour practice. He was granted ad-interim relief, by which, the Respondent-corporation was restrained from acting on the show cause notice or terminating services of the Petitioner in any manner. This relief was confirmed by the Labour Court at Pune after hearing both parties. Subsequently, at the stage of final hearing, the Petitioner's complaint was dismissed by the Labour Court. The Petitioner thereafter approached the Industrial Court at Pune in revision. The Industrial Court confirmed the order of the Labour Court holding the enquiry to be legal and proper. By then, that is, in or about April 2003, the Petitioner crossed the age of superannuation. The Petitioner, in the premises, applied for gratuity by approaching the Controlling Authority. The Controlling Authority, by its judgment and order dated 2 July 2006, allowed the Petitioner's application directing the Respondent to pay a sum of Rs.1,48,231 along with interest at the rate of 8 per cent per annum from 29 July 2004 until payment or realization. The Respondent thereafter carried the matter in appeal before the Appellate Authority, who, as noticed above, by its impugned order dated 25 March 2009, allowed the appeal and set aside the order of the Controlling Authority. That is how the Petitioner has approached this court invoking writ jurisdiction of this court.

4. It is not in dispute that forfeiture of the Petitioner's gratuity has been ordered by the Respondent without any show cause notice. No such show cause notice was issued by the Respondent purportedly on the basis that there was already an enquiry held into the Petitioner's misconduct and that no fresh opportunity before forfeiture of gratuity was necessary to be afforded to the Petitioner. This court, in its order passed in the case of Nanubhai Nichhabhai Desai Vs. The Deputy General Manager, UCO Bank 2017 4 AIIMR, 1 has considered the issue as to whether an employer is bound to issue a separate show cause notice to a delinquent employee before forfeiture of his gratuity in a case where the employee is terminated by a departmental enquiry held into his misconduct. After considering the case law on the subject, including the decision of the Supreme Court in the case of Board of Mining Examination Vs. Ramjee AIR 1977 SC 96,5 the court held that if there was no proven case against the employee of an offence

involving moral turpitude, the question as to whether the act of the delinquent employee complained of amounts to a willful omission or negligence

causing any damage to or destruction of property belonging to the employer, needs to be examined by issuance of a separate show cause notice. Such

show cause notice should be for finding out whether there was any willful omission or negligence on the part of the employee; whether such omission

or negligence caused any damage or loss, or destruction of property belonging, to the employer; and what is the extent of the damage or loss so

caused. The action of the employer in forfeiting the delinquent employee's gratuity without issuing a show cause notice and giving an opportunity

to the latter to show cause to such forfeiture, would be bad in law; such order of forfeiture cannot be sustained. This law clearly governs the facts of

the present case.

5. Mr. Hegde, learned Counsel appearing for the Respondent-corporation submits that in this case, a competent court has already considered the

legality and propriety of forfeiture of gratuity and, in the premises, there was no need for a show cause notice. The argument is circular. There may

be an order of the competent court denying gratuity to the employee, but the fact of the matter is that this order is passed without regard to the law on

the subject, namely, that when there is no proven case of an offence involving moral turpitude, gratuity of an employee cannot be forfeited except with

a show cause notice followed by an enquiry where opportunity is extended to the employee to show cause against the forfeiture. If that is so, mere

judgment of the Controlling Authority cannot constitute an answer to the submission that gratuity was forfeited without the mandatory show cause

notice to the employee.

6. Rule, in the premises, is made absolute and the writ petition is allowed by quashing and setting aside the impugned order of the Appellate Authority

and restoring the original order of the Controlling Authority passed on 25 July 2006. The Respondent-corporation shall pay the amount along with

interest in accordance with the order of the Controlling Authority within a period of four weeks from today.