(2010) 11 BOM CK 0125

In the Bombay High Court

Case No : Writ Petition No. 5278 of 2005

Vinod Jinturkar APPELLANT

Vs

State of Maharashtra and Others RESPONDENT

Date of Decision : 29-11-2010

Acts Referred:
Gratuity Act, 1972 — Section 4(1), 4(6)

Citation : (2011) 128 FLR 618 : (2011) 2 LLJ 659 : (2011) LLR 343 : (2011) 1 MhLj 843

Hon'ble Judges : V.C. Daga, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : Anand Parchure, for the Appellant; A.M. Deshpande, A.G.P. for Respondent No. 1, B. Lahiri and Tanna holding for, Sundaram, for the Respondent

Judgement

A.B. Chaudhari, J.—In the present writ petition, the Petitioner has put to challenge the order dated 28-11-2003 about the recovery of subsistence allowance and also prayed for a direction for payment of leave encashment, provident fund and gratuity with interest thereon.

2. During the pendency of the above writ petition, this Court by the order dated 11-12-2006 allowed the Petitioner to withdraw the amount of leave encashment in the sum of Rs. 98,400/- and the amount of gratuity Rs. 2,83,842/-was directed to be invested.

3. During the course of hearing of this petition, the counsel for contesting Respondent No. 2 fairly stated that insofar as leave encashment is concerned, the Petitioner was entitled to the same and Respondent No. 2 does not dispute its liability to make payment thereof and that is why this Court ordered payment of the same to the Petitioner. We, therefore, confirm the said interim order dated 11-12-2006. The counsel for Respondent No. 2 however hotly contested the claim of the Petitioner for payment of gratuity on the ground that the Petitioner was proceeded against in a Departmental Enquiry and was found guilty of serious charges and that is why Respondent No. 2 was entitled to forfeit the entire

gratuity amount. According to him, the Petitioner was charged for misappropriation of 3150 Mts. of iron and steel to Respondent No. 2 under Warehouse credit scheme and was found guilty. It is due to the act of omission and commission on the part of the Petitioner the Respondent No. 2 had to suffer loss of Rs. 4.85 crores and that is why Respondent No. 2 was entitled to have forfeiture of the amount of the gratuity due to the Petitioner.

4. We have heard learned Counsel for the rival parties. It is not in dispute that a regular Departmental Enquiry was held against the Petitioner. It is not further in dispute that in the said Departmental Enquiry no specific charge was framed against the Petitioner that he had caused a particular quantified loss to the Corporation and therefore he was liable to make payment of the amounts toward; the loss caused to the Corporation. Consequently, there is no finding recorded against the Petitioner that he had caused any particular loss to the Corporation by his act of omission and/or commission and therefore he was liable to make good the loss. The contentions raised by learned Counsel for Respondent N(sic) 2/Corporation are therefore liable to be rejected since Respondent No. 2 was obliged to follow the principles of natural justice, if at all it wanted to recover t(sic)amount from the Petitioner for the alleged loss caused to it by specific(sic) framing a charge to that effect and then by leading specific evidence on that p(sic) and then by recording a specific finding that the Petitioner had caused loss to t(sic) Corporation. Admittedly, in the instant case, neither there is any such cha(sic) framed against the Petitioner in the Departmental Enquiry held against him n(sic) any finding has been recorded to that effect.

5. While considering the scheme of the Gratuity Act, in the case (sic) Jaswant Singh Gill v. Bharat Coking Coal Ltd. and Ors. 2007(I) LLJ 795, th(sic) Supreme Court in para 9 has had to say thus:

The Act provides for a closely neat scheme providing for payment o gratuity. It is a complete code containing detailed provision covering the essential provisions of a scheme for a gratuity. It not only creates a righ(sic) to payment of gratuity but also lays down the principles for quantification thereof as also the conditions on which he may be denied therefrom. As noticed hereinbefore, Sub-section (6) of Section 4 of the Act contains a non-obstante clause vis-?-vis Sub-section (1) thereof. As by reason thereof, an accrued or vested right is sought to be taken away, the conditions laid down thereunder must be fulfilled. The provisions contained therein must, therefore, be scrupulously observed. Clause (a) of Sub-section (6) of Section 4 of the Act speaks of termination of service of an employee for any act, wilful omission or negligence causing any damage. However, the amount liable to be forfeited would be only to the extent of damage or loss caused. The disciplinary authority has not quantified the loss or damage.

From perusal of Section 4(6)(b) of the Gratuity Act, we find that the discretion given to the employer has to be based upon the material and the reasons recorded. The termination of services of an employee on the grounds contemplated u/s 4(6)(a) and (b), by itself does not entitle an employer to forfeit gratuity payable to an employee. Right to receive gratuity is a statutory right. It is not subservient to the common law rights of the employer to terminate the services of an employee. In our opinion, in the absence of any such specific finding, it was not open for Respondent No. 2-Corporation to forfeit the payment of gratuity nor the contentions raised by learned Counsel for Respondent No. 2 can be accepted. We, therefore, find that the submission on the part of Respondent No. 2 for forfeiting the gratuity amount will have to be rejected. In the light of the above discussion, we make the following order.

5A. W.P. No. 5278 of 2005 is partly allowed. Respondent No. 2 shall make payment of leave encashment and gratuity to the Petitioner. The amount of leave encashment has already been paid to the Petitioner under the orders of this Court dated 11-12-2006. The amount towards gratuity has been deposited in this Court and has been invested in the bank. The Petitioner shall be paid entire amount of gratuity with the interest accrued thereon, as a result of investment made under the orders of this Court. Writ petition disposed of accordingly. No order as to costs.

