

(2014) 04 BOM CK 0129

In the Bombay High Court

Case No : Writ Petition No. 4105 of 2000

Western Coalfields Ltd.

APPELLANT

Vs

Regional Labour Commissioner (Central), Asstt. Labour
Commissioner (Central)-II and Devidas Yadeo Kale, Ex-Chief
Security Officer

RESPONDENT

Date of Decision : 04-04-2014

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4

Citation : (2014) 5 ALLMR 636 : (2015) 1 BomCR 894 : (2014) 142 FLR 383 :
(2014) 2 LLJ 503 : (2014) 3 MhLj 625

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : A.S. Mehadia, Advocate for the Appellant

Final Decision : Dismissed

Judgement

R.K. Deshpande, J.—The challenge in this petition is to the order dated 22-2-2000 passed by the Controlling Authority under the Payment of Gratuity Act, 1972, setting aside the order passed by the petitioner-employer withholding the gratuity of Rs. 25,000/- payable to the respondent No. 3-employee. This order was confirmed in appeal by the Appellate Authority by its order dated 25-10-2000. Hence, the employer is before this Court. The undisputed factual position is that the respondent No. 3-employee was chargesheeted on 10-10-1995 for certain acts of misconduct. During the pendency of an enquiry, the respondent No. 3-employee retired from service on 31-10-1997, on attaining the age of superannuation of 58 years. The penalty of Rs. 25,000/- imposed upon him for the loss caused to the petitioner-employer, as a result of an enquiry, was deducted from the gratuity payable. Undisputedly, the order dated 3-3-1998 passed after his superannuation for recovery of the amount from the gratuity payable, was not challenged and it attained the finality.

2. The Controlling Authority has held that there is no provision for recovery of

this amount on account of pecuniary loss caused to the petitioner-employer because of negligence on the part of the respondent No. 3-employee. It has further been held that the entire action of issuance of chargesheet and imposing punishment was illegal. This order is confirmed by the Appellate Authority.

3. It is not disputed that the gratuity payable to the employees working under the petitioner-employer is governed by the provisions of the Payment of Gratuity Act. The petitioner-employer has tried to justify his action on the basis of clause (a) of sub-section (6) of Section 4 of the said act and on no other ground. Sub-sections (1) and (6) of Section 4 of the said Act being relevant, are reproduced below:

4. Payment of gratuity.-

(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,--

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees of heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation-For the purposes of this section, disablement means such disablement as incapacitates as employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2)...

(3)...

(4)...

(5)...

(6) Notwithstanding anything contained in sub-section (1),--

(a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, 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.

4. The provisions of sub-sections (1) and (6) of Section 4 of the Payment of Gratuity Act fell for consideration of the Division Bench of this Court in the case of *Rajinder Kumar Nangia Vs. Rashtriya Chemicals and Fertilizers Ltd.*, . The Division Bench has held that an employee becomes entitled to gratuity under sub-section (1), on termination of his employment either on account of his superannuation or his retirement or resignation or on his death or disablement due to accident or disease, if he has rendered continuous service for not less than five years. Sub-section (6) is an exception to sub-section (1) and makes a provision of forfeiture of the gratuity wholly or partially in the circumstances mentioned therein. According to sub-section (6), the gratuity of an employee may be forfeited to the extent of damage or loss caused to the employer, if the services of that employee have been terminated for any act, willful omission or negligence on that ground.

5. The provision of sub-section (6) of Section 4 of the said Act being in the nature of exception, it will have to be construed strictly, as it denies the right of an employee to payment of gratuity either wholly or partially. The provision of clause (a) of sub-section (6) with which the dispute in this case pertained, is attracted only in case where the service of an employee is terminated for any act, willful omission or negligence causing any damage, loss to, or destruction of, property belonging to the employer. The termination of the services of an employee is a condition precedent under clause (a), to recover the loss caused to the property belonging to the employer. Mere assessment of the loss and entitlement of the employer to recover such a loss from the employee concerned, would not attract the said provision, unless the services of the employee concerned are terminated in the circumstances mentioned in clause (a) of sub-section (6). The recovery of loss caused to the property of the employer cannot be recovered from the gratuity payable to the employee, if the employee ceases to be in service on account of his attaining the age of superannuation, for the reason that clause (a) of sub-section (6) of Section 4 does not use the word "superannuation". It is only the word "termination", which is used therein.

6. In the present case, it is not in dispute that there was a simple order dated 3-3-1998 for recovery of the loss caused to the petitioner-employer. It is open for the petitioner-employer to recover the said loss from the respondent-employee by any other mode. Undisputedly, there is no termination of the services of the respondent No. 3-employee for any act, willful omission or

negligence causing any damage or loss to, or destruction of, property belonging to the petitioner-employer, as contemplated under clause (a) of sub-section (6) of Section 4 of the said Act. Hence, it was not permissible for the petitioner-employer to recover an amount of Rs. 25,000/- from the gratuity payable to the respondent No. 3-employee. In the result, the petition is dismissed. Rule stands discharged. Interim relief granted earlier is vacated. No order as to costs.