

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.288 of 2018

In
Civil Writ Jurisdiction Case No.18110 of 2015

The General Manager (Region), Food Corporation Of India, Regional Office,
Arunachal Building, Exhibition Road, Patna-800001.

... .. Appellant/s

Versus

1. The Union Of India through the Secretary, Ministry of Labour & Employment, New Delhi
2. The Regional Labour Commissioner, Central, Patna-Cum-Appellate Authority Under the Payment of Gratuity Act, 1972 Maurya Lok Complex 2nd Floor, Patna-800001
3. The Assistant Labour Commissioner Central-Cum-Controlling Authority Under the Payment of Gratuity Act, 1972 Maurya Lok Complex 2nd Floor, Patna-800001
4. Shri Arun Kumar George, Ex-Manager Depot. Son of Late George Michael, Resident of Ganaga Vihar Colony (Fair Field Colony), PO and PS- Digha Ghat, District-Patna, PIN-842011.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.P.K. Verma, Sr. Adv.
Mr. Saroj Kumar Sharma, Adv.
For the Respondent/s : Mr.

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-04-2019

Heard Shri P.K. Verma, learned counsel for the
appellant.

The contention raised is that the learned Single
Judge while dismissing the writ petition has not appreciated the
real nature of the controversy and the action taken by the
appellant Corporation which was an exercise of re-calculation



of the gratuity as per the last wages to which the respondent was entitled and it was not a case of forfeiture of gratuity.

Learned counsel submits that once the punishment order arising out of a disciplinary proceedings had been passed against the respondent-petitioner and he did not choose to challenge the order or the penalty imposed, then the quantum of such wages drawn by the respondent-petitioner as per the punishment order has to be made the basis for calculating the quantum of gratuity payable and that has been done by the appellant to which extent there is no dispute.

The background on which the aforesaid arguments have been advanced appears to be that the respondent-petitioner was served with a memorandum of charge regarding financial irregularities and loss to the Corporation on 23rd January, 2013. He, however, attained the age of superannuation on 31st January, 2013. The appellant Corporation maintains that the respondent-petitioner was relieved from his post and he was not retired, whereafter the respondent-petitioner continued to be governed by the disciplinary proceedings and, ultimately, the punishment order of reduction of 5 stages in the time-scale of pay with cumulative effect coupled with a recovery of Rs.1 lac was



awarded to him on 9th September, 2014.

The respondent-petitioner had not been paid his entire gratuity for which he approached the competent authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as the 1972 Act) and, accordingly, the controlling authority passed an order for releasing the entire amount of gratuity payable to the respondent-petitioner vide order dated 30th September, 2013. The appellant Corporation filed an appeal before the appellate authority and, simultaneously, deposited the amount of gratuity that was payable as per the order of the controlling authority being a condition precedent for the purpose of entertaining of the appeal. Shri Verma contends that this was not a voluntary payment made, but it was a compulsory deposit which was to be undertaken and the respondent-petitioner withdrew the said amount which was obviously subject to the order passed in the appeal or even thereafter.

After the punishment order was passed against the respondent-petitioner on 9th September, 2014, and the appeal filed by the appellant was dismissed by the appellate authority under the 1972 Act, the writ petition giving rise to the present appeal was filed by the appellant contending: (1) that



the respondent-petitioner had not been retired, but he had been relieved; (2) that he had been awarded a penalty of reduction of 5 stages in the time-scale of pay with cumulative effect that directly reduced the amount of last wages withdrawn; (3) accordingly, the appellant also claimed reduction of the amount from the gratuity that had been paid in terms of the order of the controlling authority contending that this excess amount has been calculated on the basis of the last wages drawn as per the penalty order in the disciplinary proceedings; (4) the case was not one of forfeiture as per the terminology used in Section-4(6) of the 1972 Act and was rather a matter of re-calculation of the amount payable to the respondent-petitioner; (5) the payment had not been made voluntarily, but was on account of compulsory deposit and, therefore, the respondent-petitioner received it not on account of voluntary payment of the amount, but as compulsory deposit made before the authority that is subject to the outcome of the present litigation.

There is yet another fact which deserves to be noticed that the punishment order dt. 9.9.2014 itself recites categorically that the recovery of a loss of Rs.1,00,000/-, as indicated therein, shall be made “excluding gratuity”.

The question is ‘can the refund as claimed by the



appellant be treated to be a correct exercise of authority on re-calculation on the basis of last wages or not'. We find that if it is not a case of forfeiture as contemplated under Section 4(6) of the 1972 Act, then re-calculation of the wages resulting in the reduction of the last wages drawn will not amount to a forfeiture of gratuity and, therefore, any excess amount paid may be recoverable provided the payment has not been done voluntarily. In the instant case, as noted above, the payment was not made voluntarily, but on account of the compulsory deposit made during appeal.

The next question, therefore, arises 'can a refund on the basis of re-calculation be permitted from the amount of gratuity'. The learned counsel has further contended that since the respondent-petitioner had been relieved and not retired, therefore, this entire exercise was permissible.

We are unable to accept this submission both on law as well as in fact, the reason being that by merely using the word 'relieved' the fact that the respondent-petitioner had been relieved on superannuation does not alter the nature of segregation of service which is nothing else but retirement. Apart from this, the penalty order itself recites that the order was being passed against the respondent-petitioner and the



description is (now retired). This, therefore, clearly contradicts the arguments which have been advanced by the learned counsel raised with the aid of the word relieved. It is, therefore, amply clear that the respondent-petitioner was being treated as having retired by the appellants themselves and, therefore, the mere use of the word 'relieved' as pleaded does not carry any meaning.

However, coming to the real issue with regard to the authority of the appellants to recover the amount on the basis of re-calculation, as urged, it is correct that if a re-calculation is made on the basis of any punishment order that results in proportionate reduction in the last wages drawn, then it is obvious that if the payment of gratuity has not been made, the appellant would be liable to pay only the reduced amount. But, in the present case, the order of punishment dated 9th September, 2014 itself recites that the recovery of the amount of Rs.1,00,000/- shall be made "excluding gratuity". If the appellant has voluntarily chosen not to realize the amount from the gratuity payable to the respondent-petitioner, then the appellant cannot be permitted to do something indirectly which is not permissible directly. In the wake of the aforesaid facts, even though the position of law could have been differently



explained, the facts of the present case do not permit so and, therefore, no interference is called for with the impugned judgement of the learned Single Judge keeping in view the observations made hereinabove.

The appeal, accordingly, fails and is hereby dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/-

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