

(2012) 132 FLR 204

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 1593 (SB) of 2011

Subodh Nath Gupta

APPELLANT

Vs

Chairman,
Administrative
Committee, U.P.,
Cooperative Dairy
Federation and Milk
Union Centralized
Services and Another

RESPONDENT

Date of Decision: Oct. 10, 2011

Acts Referred:

Payment of Gratuity Act, 1972 " Section 4, 4(1), 4(6)

Citation: (2012) 132 FLR 204

Hon'ble Judges: Surendra Vikram Singh Rathore, J; Pradeep Kant, J

Bench: Division Bench

Advocate: Sudeep Kumar, for the Appellant; Lalit Shukla, for the Respondent

Final Decision: Allowed

Judgement

Pradeep Kant and Surendra Vikram Singh Rathore, JJ.

Sri Lalit Shukla, appearing for the respondents, stated that the facts are not being

disputed, as pleaded in the writ petition and only a legal question is involved, therefore, the petition may be decided finally, as respondents have

instructed not to file counter affidavit.

Sri Sudeep Kumar, appearing for the petitioner also says that the matter may be decided finally.

The petitioner, who was working as Manager (FO), Grade-III in Pradeshik Cooperative Dairy Federation Ltd. (hereinafter referred to as

"PCDF") has been denied payment of gratuity to the extent of Rs. 2,77,750/- alongwith the amount of Group Insurance amounting to Rs. 8,616/-,

leave encashment and arrears of Dearness Allowance.

2. The petitioner belongs to centralized cadre of service of PCDF. The petitioner was initially appointed in the PCDF on 20.9.1985 on the post of

Management Trainee (FO) and his services were regularized on 1.11.1988 as Manager (FO), Grade-III. Thereafter the petitioner continued to

work as Manager (FO), Grade-III and on 25.7.2006, he tendered his resignation. His resignation was accepted by the competent authority on

22.12.2006 with effect from the afternoon of 24.8.2006. Though the petitioner's resignation was accepted admittedly on 22.12.2006 with effect

from the afternoon of 24.8.2006, but the pending departmental inquiries against him were directed to be continued, in which the petitioner

participated without any protest and ultimately three separate orders of recovery were passed against him, namely, (1) order dated 5.4.2007

(recovery of Rs. 4,600/-); (2) order dated 22.10.2007 (recovery of Rs. 10,215/-); and (3) order dated 6.8.2009 (recovery of Rs. 1,14,859.20).

These three orders are also under challenge in the present petition.

3. Counsel for the petitioner clarifies that though the aforesaid amounts, if totalled together, would come much less than Rs. 3,08,611/- i.e. the

amount of gratuity, but because of the audit objection, an amount of Rs. 1,64,985/- has also been withheld.

Learned Counsel for the petitioner assailing the aforesaid orders submitted that once the resignation of the petitioner was accepted by the

competent authority, merely because disciplinary inquiries which were initiated since before, were allowed to continue, would not give any authority

to the PCDF or its authorities to continue with the enquiry or to pass any order for recovery, as once the resignation was accepted, the relationship

of master and servant ceased and there is no rule/regulation under which a person belonging to centralized services could have been proceeded

with the departmental enquiry after his retirement or resignation.

He also submitted that there is no provision under the Payment of Gratuity Act, which permits such withholding of gratuity, as the petitioner's case

does not fall within the exception given u/s 4(6) of the Act.

4. Sri Lalit Shukla, learned Counsel for the respondents does not dispute and rather admits that the petitioner had put in more than five years of

service and thereafter he resigned. He on the basis of record, also admits that the petitioner's resignation was accepted by the competent authority

on 22.12.2006 with effect from the afternoon of 24.8.2006. He also does not dispute that in terms of section 4(1) of the Payment of Gratuity Act

(hereinafter referred to as "the Act"), the petitioner would be entitled for payment of gratuity, he having put in more than five years of service and

having resigned thereafter. But his defence is; that (1) the petitioner without any objection participated in the disciplinary enquiry, which continued

after his resignation was accepted and, therefore, he cannot now raise a grievance that the proceedings of enquiry were totally without jurisdiction

or that he could not have been subjected to enquiry after his resignation was accepted. He also submits that it has been found that by the

petitioner's conduct, loss was caused to PCDF, therefore, such amount to the extent of loss can very well be recovered from the gratuity of the

petitioner; and (2) referring to section 4(6) of the Act, he submits that the petitioner's case falls within the exception given therein, as he has been

found guilty of negligence, resulting into loss of funds of PCDF.

5. We take up the first issue first, namely, whether in view of the recitals made in the order accepting resignation of the petitioner dated

22.12.2006 that the departmental enquiry shall continue, his payments could have been made dependent upon the outcome of the enquiry, and

whether his participation in the enquiry would debar the petitioner from challenging the continuance of disciplinary proceedings and his participation

in the enquiry without protest would mean acquiescence, which will again disentitle him to challenge the orders passed in such enquiry.

6. Learned Counsel for the respondents could not dispute and rather admits that there is no regulation under the service rules, which permits either

initiation of disciplinary enquiry or continuance thereof, after the employee belonging to centralized services under the PCDF either retires or

resigns.

7. That being so, the question would be whether by writing in the order of acceptance of resignation that the enquiry would continue even after

acceptance of resignation would confer authority upon the PCDF and its officers to continue with the enquiry, when the regulations do not permit.

8. In the case of Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, , the apex Court held that in view of the absence of such provision

in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant.

There is also no provision for conducting a disciplinary enquiry after retirement of the appellant nor any provision stating that in case misconduct is

established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.1995, there was no authority

vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to

the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on

retirement.

9. In the case of Jaswant Singh Gill Vs. Bharat Coking Coal Ltd. and Others, , the Supreme Court considering the effect of Rule 27 of Coal India

Executives Conduct, Discipline and Appeal Rules, 1978, which provides for recovery from gratuity only to the extent of loss caused to the

Company by negligence or breach of orders or trust, and also the provisions of Payment of Gratuity Act and in particular Clause 4 including sub-

clause (6), held that the rules have to give way to the statutory provision in the Act. It was also observed that the penalties, as provided under Rule 27 must be imposed so long an employee remains in service and not thereafter. Even the punishment of deduction of retiral dues could not be awarded.

10. In a Division Bench Judgment of this Court in the case of U.P. State Ware Housing Corp. Vs. Brish Bhan Singh and Another, , it has been

held that continuance of disciplinary enquiry after superannuation of the charged employee would not be possible, unless service rules or regulations so provide.

11. In another Division Bench judgment of the this Court in the case of P.P. Pandey v. State of U.P. and others (Writ Petition No. 989 of 2010),

decided on 5.7.2011, in which one of us (Pradeep Kant, J.) was a member, the same view was reiterated that in the absence of any statutory

provision or rule, disciplinary enquiry can neither be initiated nor continued nor any punishment can be inflicted after an employee retires.

12. Here, in the instant case, the services of the petitioner was governed by the U.P. Cooperative Societies Employees Service Regulations, 1975,

which dealt with all the situations arising out of misconduct of an employee during the course of his service. It provides for award of major

punishment as well as minor punishment under Regulation 84.

13. Regulation 84 sub-clause (d) provides for recovery from pay or security deposit to compensate in whole or in part for any pecuniary loss

caused to the cooperative society by the employee"s conduct.

14. Thus, if any loss because of the negligence of the petitioner was caused, there was a clear provision under the service regulations to hold an

enquiry and recover the loss, but this could have been done only till he was in service. The moment the petitioner"s resignation was accepted, the

relationship of master and servant ceased and in the absence of any service regulations, permitting the continuance of disciplinary enquiry, neither

the disciplinary enquiry could have been continued nor any order of recovery could have been passed.

15. The petitioner was not directed to be continued in service and rather to the contrary, the resignation was specifically accepted with effect from

a back date i.e. 24.8.2006, making it very clear that he cannot be treated to be in service from the said date, which was a conscious decision

taken by the PCDF and, therefore, it leaves no doubt that the moment the resignation was accepted, the relationship of master and servant ceased.

16. Merely because in the acceptance letter it was stated that the pending enquiry shall continue and the dues of the petitioner would depend upon

the outcome of the enquiry, it would not confer any jurisdiction or authority upon the PCDF to continue with the enquiry and to award punishment.

There cannot be any estoppel against law. The relationship of master and servant having come to an end by operation of law, namely, on the

factum of acceptance of resignation of the petitioner, the recital made therein for continuance of enquiry would be of no avail nor the respondents

could have acquired any jurisdiction to continue with the same.

17. For the aforesaid reasons, we are of the considered opinion that after the acceptance of resignation of the petitioner, neither the disciplinary

enquiry could have been continued nor any punishment could have been awarded, for the reason of cessation of relationship of master and servant

and also for the reason that for such loss, may be because of the alleged negligence of the petitioner, the punishment could have been awarded only

under Regulation 84, when he was in service, but no recovery could have been ordered from his retiral dues.

18. On the next plea of the respondents that in view of sub-clause (6) of section 4 of the Payment of Gratuity Act, the gratuity can be withheld for

the reason that it has been established that the petitioner had caused financial loss to the PCDF because of his negligence, suffice would be to

mention that the punishment for loss because of negligence of the petitioner (PCDF employee) could have been awarded only under Regulation

84(d), when he was in service, whereas sub-clause (6) of section 4 of the Payment of Gratuity Act, carves out an exception to the extent that

payment of gratuity only in those cases where service has been terminated due to wilful omission or negligence, which has caused 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.

19. The argument of Sri Lalit Shukla that the gratuity can be withheld for any act, wilful omission or negligence causing any damage or loss to the

employer, even if the services of the employee have not been terminated, does not flow from the aforesaid provisions of Payment of Gratuity Act

nor is in conformity with the service regulations.

20. Clause (a) of sub-clause (6) of section 4 makes it very clear that the gratuity of an employee, whose services have been terminated for any act,

wilful 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, meaning thereby that there has to be an order of termination of service and such termination should be for the

reason that he has caused damage or loss to the employer.

21. In the case of Jaswant Singh Gill (supra), the Apex Court while considering the aforesaid provisions of the Payment of Gratuity Act, in Para-13

of the report, observed that 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.

22. This again makes it clear that if the reason for termination is negligence, causing loss or damage etc. to the employer, then of course, the

gratuity to the extent of such loss can be forfeited, but unless the services are terminated for any such reason, no recovery can be made nor any

order for recovery can be passed against the employee, who is no more in service, either because of retirement or because of resignation being

accepted.

23. A Division Bench of this Court, in which one of us (Pradeep Kant, J.) was a member, had an occasion to consider the aforesaid plea in the

case of Mahesh Bal Bhardwaj v. U.P. Cooperative Federation Ltd. and another, (2008) 1 UPLBEC 45, wherein the Court held that the gratuity

cannot be withheld, unless either of the conditions, as mentioned in sub-clause (6) of section 4 of the Act are present.

24. In another judgment of a Division Bench of this Court, in which one of us (Pradeep Kant, J.) was a member in Writ Petition No. 1519 (SB) of

2002, Kanti Prasad Sharma v. U.P. Cooperative Dairy Federation and Milk Union Centralised Services and another, decided on 26.4.2004, the

Court had an occasion to consider the provisions of the aforesaid section 4 of Payment of Gratuity Act and the Court found that if none of the

conditions, as given in section 4, sub-clause (6) exists, the gratuity cannot be withheld.

25. The aforesaid provision gives authority to the employer to withhold the gratuity only in case of termination of service, that too for the reason

given in the aforesaid provisions.

26. For the aforesaid reasons, since in the instant case, neither the respondents were having any authority or jurisdiction to continue with the

enquiry after the resignation of the petitioner was accepted nor the gratuity could have been withheld for making up the alleged loss, in terms of the

orders passed in the enquiry, we set aside the orders dated 7.7.2011, 6.8.2009, 22.10.2007 and 5.4.2007, contained in Annexure Nos. 1, 2, 3

and 4 respectively to the writ petition.

27. We further issue a writ of mandamus directing the respondents to release all the payments towards gratuity and other dues, which have been

withheld on account of aforesaid disciplinary proceedings. Since the petitioner has been denied the benefit of gratuity for the last couple of years,

we direct that the petitioner shall also be entitled to the statutory interest under the Payment of Gratuity Act.

The payment shall be made within a maximum period of six weeks from the date of receipt of a certified copy of this order.

The writ petition is allowed. No order as to costs.