
Mahavir Singh Tyagi Vs Food Corporation of India and Others

Writ Petition (C) No. 11750 of 2006

Court: Delhi High Court

Date of Decision: May 23, 2013

Acts Referred:

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

Citation: (2013) LLR 1016

Hon'ble Judges: Valmiki J Mehta, J

Bench: Single Bench

Advocate: Gulab Chandra, for the Appellant;

Judgement

Valmiki J Mehta, J.

By this writ petition, the petitioner prays for issuing of a writ or direction to the respondent No. 1/employer/Food

Corporation of India to release the gratuity amount of the petitioner alongwith interest. It is not disputed that against the petitioner various

disciplinary orders have been passed whereby amounts have been directed to be recovered from his retirement benefits. The orders which are

passed in this regard by the disciplinary authority are dated 6.1.2005 (four in number) and 28.12.2004 (two in number). Different amounts as

penalties have been imposed against the petitioner. Respondent accordingly has taken action for recovery of the said amounts from the retirement

dues of the petitioner.

2. On behalf of the petitioner, it is contended that even if orders passed against the petitioner are final, however from the gratuity amount payable

to the petitioner, no amount can be recovered without condition of termination of petitioner"s services being fulfilled and as contained in Section

4(6) of the Payment of Gratuity Act, 1972 (hereinafter referred to as "the Act") being satisfied. The said provision reads as under:-

Section 4. Payment of gratuity (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.

3. Learned counsel for the petitioner relies upon the judgment of the Supreme Court in the case of Jaswant Singh Gill Vs. Bharat Coking Coal Ltd.

and Others, which holds that internal rules of a company cannot prevail over the statutory provision of Section 4(6) of the Act and unless the

conditions contained in Section 4(6) are satisfied amounts cannot be recovered from the gratuity payable to an employee on retirement.

4. In my opinion contention of the petitioner is correct in view of the judgment of the Supreme Court in the case of Jaswant Singh Gill (supra) and

the writ petition has to be allowed because by the impugned orders the service of the petitioner has not been directed to be terminated but only

monetary penalties were imposed. Once petitioner is not terminated from service then from the gratuity amount nothing can be recovered. It is

directed that the respondent No. 1 will be entitled to deduct the amounts contained in the penalty orders dated 6.1.2005 and 28.12.2004 from the

retiral/superannuation payments to be made to the petitioner except from the gratuity amount.

5. Accordingly, respondent No. 1 is now directed to calculate the retirement dues payable to the petitioner within a period of four weeks of the

present order being communicated to it. Petitioner will be entitled to make representation as regards the calculations arrived at by the respondent

No. 1 within a period of one month thereafter. It is clarified that the respondent No. 1 can adjust the penalties imposed upon the petitioner under

the penalty orders dated 6.1.2005 and 28.12.2004 from the other retirement dues of the petitioner except the gratuity amount. The balance

amount which would be payable to the petitioner after adjustment of the amounts due under the penalty orders to the respondent No. 1, the said

amount(if any) alongwith the gratuity payable be released to the petitioner within a period of four months from today. Petitioner will also be entitled

to interest @ 9% per annum simple from the date of retirement of the petitioner on 31.12.2004 and till the amount due to the petitioner is paid in

terms of present judgment. Writ petition is accordingly allowed and disposed of subject to the aforesaid observations.