

(2010) 06 JH CK 0009

Jharkhand High Court**Case No:** Writ Petition (L) No. 572 of 2010

Bharat Coking Coal Limited

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: June 30, 2010**Acts Referred:**

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

Citation: (2011) 128 FLR 87 : (2011) 2 LLJ 533 : (2011) LLR 203 : (2011) 1 JLR 30**Hon'ble Judges:** Narendra Nath Tiwari, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

Narendra Nath Tiwari, J.

In this writ petition the Petitioner has prayed for quashing the order dated 12.12.08 (Annexure-4) passed by the Controlling Authority under Payment of Gratuity Act, 1972-cum-Assistant Labour Commissioner (Central), Dhanbad-I and the order dated 5.5.2009 (Annexure-5) passed by the Appellate Authority under Payment of Gratuity Act 1972-cum-Regional Labour Commissioner (Central), Dhanbad. By the impugned order Annexure-4 to the writ petition, the controlling authority has held that the applicant-Respondent is entitled to receive gratuity amount of Rs. 3,50,000/- under the Payment of Gratuity Act, 1972. The appellate authority by his order as contained in Annexure-S to the writ petition, has upheld the order of the controlling authority.

2. According to the Petitioner, the applicant was not entitled to get the gratuity amount until conclusion of the departmental proceeding, which was pending till the date he had retired. Mr. Mehta submitted that Clause 34.2 of the Conduct, Discipline and Appeal Rules, 1078 (hereinafter referred to as the C. D. A Rules") provides for continuation of the proceeding against an employee even after his retirement. Clause 34.3 of the said Rules gives power to the disciplinary authority to withhold payment of gratuity, for ordering recovery of the whole or part of any pecuniary loss

caused to the Company out of the gratuity amount or in case the employee is found guilty of the offence/misconduct, as mentioned in Sub-section 6 of Section 4 of the Payment of Gratuity Act, 1972 or found to have caused pecuniary loss to the Company by his misconduct or negligence, during his service period.

3. It has been submitted that since the disciplinary proceeding against the concerned employee is still pending, the Management is entitled to withhold the payment of gratuity till conclusion of the departmental proceeding. Learned controlling authority as well as learned appellate authority failed to take into consideration the said aspect of the matter and have erroneously directed for payment of gratuity to the employee.

4. Learned J.C. to Assistant Solicitor General of India, on the other hand, submitted that the controlling authority as well as the appellate authority have thoroughly considered the facts and the relevant aspects of the matter and have rightly held that the concerned employee is entitled to get the amount of gratuity after his retirement, as provided by the Payment of Gratuity Act and the rules framed thereunder.

5. I have heard learned Counsel for the parties and considered the facts and materials on record. I have also perused the impugned orders of the Controlling Authority under the Payment of Gratuity Act-cum-Assistant Labour Commissioner (Central), Dhanbad (Annexure-4) as also the order of the Appellate Authority under the Payment of Gratuity Act, 1972-cum-Regional Labour Commissioner (Central), Dhanbad. The controlling authority has dealt with the facts and the stand taken by both the parties and has also considered the provisions of the C.D.A Rules and the provisions of the Payment of Gratuity Act, 1972 and the Rules framed thereunder and has held that the amount of gratuity is payable to the applicant-employee, as the provision of Section 4(6) of the Payment of Gratuity Act, 1972 is not attracted. The Management has no authority to withhold the amount of gratuity of an employee and the concerned employee is entitled to receive the total gratuity amount. The appellate authority has also concurred with the said finding of the controlling authority.

6. Section 4 of the Payment of Gratuity Act, 1972 provides for payment of gratuity on the termination of the employment of an employee on his superannuation, retirement resignation or on his death or disablement due to accident or disease. Section 4(6) provides for forfeiture of gratuity under certain condition and to the extent of certain amount which reads thus:

Notwithstanding anything contained in Sub-section (1),-

(a) 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;

(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 offense involving moral turpitude, provided that such offense is committed by him in the course of his employment

7. In the instant case, admittedly, the concerned employee has not been terminated for any of the reasons enumerated in Section 4(6) of the Payment of Gratuity Act, 1972, rather the concerned employee has been superannuated on attaining the age of superannuation. The controlling authority as well as the appellate authority have, thus, not committed any error in rendering the impugned orders holding that the concerned employee is entitled to receive the amount of gratuity under the Payment of Gratuity Act, 1972. I find no ground made out to interfere with the said impugned orders.

This writ petition is, accordingly, dismissed.