

(2011) 02 BOM CK 0165

Bombay High Court

Case No: Writ Petition No. 675 of 2000

Maharashtra State Road
Transport Corporation

APPELLANT

Vs

Maruti Ramchandra Mastud

RESPONDENT

Date of Decision: Feb. 15, 2011

Acts Referred:

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

Citation: (2011) 6 BomCR 577 : (2011) 129 FLR 166 : (2011) 3 LLJ 607 : (2011) LLR 397 :
(2011) 3 MhLj 134

Hon'ble Judges: Nishita Mhatre, J

Bench: Single Bench

Advocate: G.A. Karmarkar, instructed by G.S. Hegde, for the Appellant; S.N. Bhosale, for the Respondent

Final Decision: Dismissed

Judgement

Nishita Mhatre, J.

This Writ Petition challenges the order dated 29th November, 1997 passed in Application (PGA) No. 12 of 1995 by the Controlling Authority as well as the order dated 22nd July, 1999 passed in Appeal (PGA) No. 2 of 1998 by the Appellate Authority under the Payment of Gratuity Act. Both the Authorities have directed the Petitioner to pay gratuity to the Respondent in terms of the Payment of Gratuity Act, 1972, (for short "the Act").

2. The Respondent was employed as a "Store Keeper" with the Petitioner. He worked for 36 years. When he retired, he was not paid the entire amount of gratuity payable to him under the said Act. This was because, according to the petitioner, while working as a "Store Keeper", the Respondent had caused a loss to the Petitioner to the tune of `26,477.75. Being aggrieved by the action of the Petitioner, the Respondent preferred an application under the Act before the Controlling Authority.

3. That application was opposed by the Petitioner by contending that the Respondent was not entitled to the entire amount of gratuity as he was responsible for the losses which had occurred because of the shortage in stocks in the stores. According to the Petitioner, he being the Store Keeper, he was responsible for the entire stock.

4. The Controlling Authority did not accept the contentions of the Petitioner and allowed the application for payment of gratuity. It was found that the Petitioner has not followed any procedure of law to fix the responsibility for the shortage of stock on the Respondent. Accordingly, the Controlling Authority held that the gratuity could not be reduced without following the procedure required in law.

5. Being aggrieved by this decision, the Petitioner approached the Appellate Authority. The decision of the Controlling Authority was confirmed by the Appellate Authority. It held that the deficit in stock could not be attributed only to any default on the part of the Respondent. The Appellate Authority held that no opportunity was given by the Petitioner to the Respondent of being heard and the responsibility for the shortage had been fixed on the Respondent without there being any material on record to indicate that he was in fact responsible for the shortage. The Appellate Authority further concluded that the losses or deficits had occurred before the Respondent took charge as a "Store Keeper" and, therefore, it was of the view that the reasons for withholding the gratuity payable to the Respondent were unacceptable.

6. It appears from the record that no evidence was led by the Petitioner before the Controlling Authority to prove that the deficit had occurred because of the Respondent's acts. Admittedly, no domestic enquiry had been held and, therefore, there was no material on record to indicate that the shortage of stock had occurred because of any lapses on the part of the Respondent. It is in these circumstances that both the Authorities below have found that withholding the gratuity was impermissible. u/s 4(6)(a) of the Act, the gratuity of an employee whose services have been terminated for an act of willful omission or negligence or loss or destruction of the employer's property can be forfeited to the extent of the damage or loss caused. Under Clause 4(6)(b) of the said Act, it can be forfeited either wholly or in part when the services of an employee are terminated for riotous or disorderly conduct or any other act of violence or for an offence involving moral turpitude.

7. The provisions of Section 4(6) of the said Act do not come into play unless there is a termination of service of an employee by the employer for the aforesaid acts. In the present case, admittedly, there was no termination of service of the Respondent due to the alleged acts committed by him which resulted in shortage of stock. Therefore, the question of Section 4(6) of the said Act, which empowers the employer to withhold gratuity under certain conditions, being applicable does not arise. The Respondent retired from service on attaining the age of superannuation and it is at that stage that he sought the payment of gratuity.

8. In my opinion, the impugned orders need not be interfered with as both the Authorities have decided the issue correctly. The Writ Petition is dismissed.

9. The amount of gratuity shall be disbursed forthwith to the Respondent by the Appellate Authority with whom the aforesaid amount of gratuity must have been deposited by the Petitioner while filing the Appeal, together with interest, if any, accrued thereon. In the event the amount has not been deposited with the Appellate Authority, the Petitioner shall pay the entire gratuity to the Respondent together with interest @ 6% p.a. from the date gratuity became payable till realization within eight weeks from today.

10. Rule discharged. No order as to costs.