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Court : Kerala

Decided On : Jun-04-2007

Reported in : 2007(2)KLJ689

Judge : Thottathil B. Radhakrishnan, J.

Acts : Payment of Gratuity Act, 1972 - Sections 4 and 4(6); Staff Regulations - Regulations 111 and 114

Appeal No. : O.P. No. 18753 of 2000

Appellant : C.C. Devassia

Respondent : Kerala Small Industries Devt. Corpn. Ltd. and ors.

Advocate for Def. : M.A. Manhu, SC

Advocate for Pet/Ap. : K.P. Dandapani, Adv.

Disposition : Petition allowed

Judgement :

Thottathil B. Radhakrishnan, J.

1. Heard.

2. Petitioner was the Manager of the Sales Emporium of SIDCO in Ernakulam during the year 1995. SIDCO procured furniture from St. Mary's Wood Works & Industries and supplied it to the Harijan Hostel at Ernakulam, on requisition. Those goods were found to be substandard, by the Government, following inspection on the basis of anonymous complaints. SIDCO black listed the manufacturer and warned the petitioner.

3. Going by the counter affidavit, the Forest Department had certified that the wood used is Aanjili wood and there was no adverse comment about quality of the wood or the workmanship of the articles. The action taken by SIDCO against the manufacturer led to O.P. No. 15824/1998 before this Court, resulting in SIDCO being directed to release amounts to that unit, with interest.

4. Thereafter, the Vigilance Department of the State Government enquired into the matter and found that the furniture supplied to the Harijan Hostel were substandard and the unit was found to have committed certain irregularities. There upon, the Managing Director of SIDCO instructed the Senior Manager, Marketing, to black list that unit and suspend all transactions. This was done.

5. In the meanwhile, on 15-03-1997, Ext. P4 show cause notice with memo of charges was issued to the petitioner proposing disciplinary action. I may at once notice that the petitioner was not placed under suspension. He promptly gave Ext. P5 reply.

6. By Ext. P6 proceedings, the petitioner was relieved from services, with effect from 31-03-1998, on attaining the age of superannuation. Thus, the employer, SIDCO, had permitted the petitioner to retire from service.

7. Thereafter, ultimately, after enquiry, the petitioner was issued Ext. PI 2 proceedings, whereby, the disciplinary authority came to the conclusion that the possibility of imposing punishment is not contemplated in view of the fact that the petitioner had retired from service on 31 -03-1998 and, accordingly, decided to recover an amount of Rs. 1,11,970/- from the gratuity of the petitioner. This action is under challenge.

8. As already noticed, the petitioner retired and was relieved of his duties on superannuation by the decision of the employer in that regard, during the pendency of the disciplinary proceedings. It is not a case where he was placed under suspension and not permitted to superannuate during the pendency of the disciplinary proceedings. The disciplinary authority came to the conclusion that no penalty could be imposed on the petitioner. Under such circumstances, all that falls for consideration in this original petition is the legality or otherwise of the decision of the disciplinary authority which results in recovery from gratuity.

9. SIDCO is a Government company. Ext. P13 is the Staff Regulations that governs its employees. Regulation 114 provides for recovery from pay of the whole or part of the pecuniary loss caused to the Corporation by negligence or breach of orders, subject to the condition that the instalment of such recovery together with all the recoveries from the employee's salary for a month does not exceed 50 percent of his pay at the time of the recovery. The show cause notice issued to the petitioner was as against proposed disciplinary proceedings. Regulation 111 enumerates the penalties which could be imposed on an employee. This includes Clause (iv) which provides for recovery from pay, of the whole or part of any pecuniary loss caused to SIDCO by negligence or breach of orders on the part of the employee. Even if I were to take it that on the culmination of the disciplinary proceedings, the authority, having found, in its wisdom, that it is impermissible to impose a penalty, had imposed only recovery in terms of Regulation 114, such recovery could be only from pay. The Staff Regulations of SIDCO does not provide for recovery from gratuity. Hence, the recovery by way of penalty or by recourse to Regulation 114, could only be from pay and not from gratuity.

10. That apart, the company cannot formulate a regulation for recovery from gratuity because the right to gratuity is governed by the Payment of Gratuity Act, 1972, which, as per Section 4 enjoins payment of gratuity subject to whatever is provided by that Statute. Going by those statutory provisions, an employer is entitled to forfeit gratuity, either wholly or partially, only to the extent provided under Sub-section (6) of Section 4 of that Act. That provision comes into play only in cases where the services of an employee are terminated. It therefore does not

apply to a case where the delinquent employee was permitted to retire on superannuation. Such forfeiture under Section 4(6) of the Payment of Gratuity Act, 1972 can be imposed only when the services of the employee have been terminated. Indisputably, in the case in hand, the services of the petitioner were not terminated.

11. For the foregoing reasons, the impugned recovery from the gratuity of the petitioner is illegal and is liable to be set aside.

11.1. In the result, the decision contained in the impugned Ext.P12 is set aside. It is directed that all amounts withheld from the gratuity due to the petitioner shall be released. Having regard to the totality of the facts and circumstances, claims for interest and costs are refused. The respondents shall satisfy the directions contained in this judgment, within six months from the date of receipt of a copy of this judgment.

The original petition is allowed as above.

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